

Industrial Property

Published monthly
Annual subscription:
180 Swiss francs
Each monthly issue:
23 Swiss francs

30th Year – No. 1
January 1991

Monthly Review of the
World Intellectual Property Organization

Contents

TREATIES (Status on January 1, 1991)

Convention Establishing the World Intellectual Property Organization (WIPO)	3
Paris Convention for the Protection of Industrial Property	6
Other Industrial Property Treaties Administered by WIPO:	
Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	9
Madrid Agreement Concerning the International Registration of Marks	10
Hague Agreement Concerning the International Deposit of Industrial Designs	11
Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks	12
Lisbon Agreement for the Protection of Appellations of Origin and their International Registration	13
Locarno Agreement Establishing an International Classification for Industrial Designs	13
Patent Cooperation Treaty	14
Strasbourg Agreement Concerning the International Patent Classification	15
Trademark Registration Treaty	15
Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks	16
Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure	16
Nairobi Treaty on the Protection of the Olympic Symbol	17
Treaty on Intellectual Property in Respect of Integrated Circuits	18
Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks	18
International Convention for the Protection of New Varieties of Plants	19
Industrial Property Treaties Not Administered by WIPO:	
African Intellectual Property Organization	20
African Regional Industrial Property Organization	20
Benelux Trademark Office/Benelux Designs Office	20
Council of Europe	21
European Patent Organisation	21
GOVERNING BODIES AND COMMITTEES (Status on January 1, 1991)	
WIPO	22
Paris Union	23

(Continued overleaf)

WIPO 1991

Any reproduction of official notes or reports, articles and translations of laws or agreements published in this review is authorized only with the prior consent of WIPO.

ISSN 0019-8625

Madrid Union (Marks)	23
Hague Union	23
Nice Union	23
Lisbon Union	23
Locarno Union	24
PCT [Patent Cooperation Treaty] Union	24
IPC [International Patent Classification] Union	24
TRT [Trademark Registration Treaty] Union	24
Vienna Union	24
Budapest Union	24
 HIGH OFFICIALS OF WIPO (Status on January 1, 1991)	 24
 NOTIFICATIONS CONCERNING TREATIES	
WIPO Convention. Membership of the Republic of Yemen	25
Paris Convention, Madrid Agreement (Indications of Source), Madrid Agreement (Marks), Hague Agreement, Nice Agreement, Strasbourg Agreement, Budapest Treaty, Locarno Agreement. Ceasing of the German Democratic Republic Being a Party to Certain Treaties Administered by WIPO	25
Madrid Agreement (Marks). New Member of the Madrid Union: Poland	25
Budapest Treaty. Depository Institutions Having Acquired the Status of International Depository Authority (Status on January 1, 1991)	26
 ACTIVITIES OF THE INTERNATIONAL BUREAU	
The World Intellectual Property Organization in 1990—Overview of Activities and Developments	35
 WIPO MEETINGS	
Paris Union. Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions. Eighth Session (Second Part) (Geneva, October 29 to November 9, 1990)	41
 NEWS ITEMS	
Malta, Mongolia	98
 CALENDAR OF MEETINGS	 99

INDUSTRIAL PROPERTY LAWS AND TREATIES
(INSERT)

Editor's Note

CANADA

Patent Cooperation Treaty Regulations (SOR/89-453, of October 1989) Text 2-003

HUNGARY

Decree of the Council of Ministers Concerning the Functions and Competences of the National Office of Inventions (No. 136 MT of December 22, 1989)..... Text 1-001

CUMULATIVE INDEX (of legal texts published from February 1976 to December 1990 as an annex to *Industrial Property*)

Treaties

(Status on January 1, 1991)

Convention Establishing the World Intellectual Property Organization

WIPO Convention (1967), amended in 1979

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) ¹	
Algeria	April 16, 1975	P	—
Angola (c) ²	April 15, 1985	—	—
Argentina	October 8, 1980	P	B
Australia	August 10, 1972	P	B
Austria	August 11, 1973	P	B
Bahamas	January 4, 1977	P	B
Bangladesh	May 11, 1985	P	—
Barbados	October 5, 1979	P	B
Belgium	January 31, 1975	P	B
Benin	March 9, 1975	P	B
Brazil	March 20, 1975	P	B
Bulgaria	May 19, 1970	P	B
Burkina Faso	August 23, 1975	P	B
Burundi	March 30, 1977	P	—
Byelorussian SSR (c) ²	April 26, 1970	—	—
Cameroon	November 3, 1973	P	B
Canada	June 26, 1970	P	B
Central African Republic	August 23, 1978	P	B
Chad	September 26, 1970	P	B
Chile	June 25, 1975	—	B
China	June 3, 1980	P	—
Colombia	May 4, 1980	—	B
Congo	December 2, 1975	P	B
Costa Rica	June 10, 1981	—	B
Côte d'Ivoire	May 1, 1974	P	B
Cuba	March 27, 1975	P	—
Cyprus	October 26, 1984	P	B
Czechoslovakia	December 22, 1970	P	B
Democratic People's Republic of Korea	August 17, 1974	P	—
Denmark	April 26, 1970	P	B
Ecuador (c) ²	May 22, 1988	—	—
Egypt	April 21, 1975	P	B
El Salvador (c) ²	September 18, 1979	—	—
Fiji	March 11, 1972	—	B
Finland	September 8, 1970	P	B
France	October 18, 1974	P	B
Gabon	June 6, 1975	P	B
Gambia (s) ²	December 10, 1980	—	—
Germany	September 19, 1970	P	B
Ghana	June 12, 1976	P	—

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) ¹	
Greece	March 4, 1976	P	B
Guatemala (c) ²	April 30, 1983	—	—
Guinea	November 13, 1980	P	B
Guinea-Bissau	June 28, 1988	P	—
Haiti	November 2, 1983	P	—
Holy See	April 20, 1975	P	B
Honduras	November 15, 1983	—	B
Hungary	April 26, 1970	P	B
Iceland	September 13, 1986	P	B
India	May 1, 1975	—	B
Indonesia	December 18, 1979	P	—
Iraq	January 21, 1976	P	—
Ireland	April 26, 1970	P	B
Israel	April 26, 1970	P	B
Italy	April 20, 1977	P	B
Jamaica (c) ²	December 25, 1978	—	—
Japan	April 20, 1975	P	B
Jordan	July 12, 1972	P	—
Kenya	October 5, 1971	P	—
Lebanon	December 30, 1986	P	—
Lesotho	November 18, 1986	P	B
Liberia	March 8, 1989	—	B
Libya	September 28, 1976	P	B
Liechtenstein	May 21, 1972	P	B
Luxembourg	March 19, 1975	P	B
Madagascar	December 22, 1989	P	—
Malawi	June 11, 1970	P	—
Malaysia	January 1, 1989	P	B
Mali	August 14, 1982	P	B
Malta	December 7, 1977	P	B
Mauritania	September 17, 1976	P	B
Mauritius	September 21, 1976	P	B
Mexico	June 14, 1975	P	B
Monaco	March 3, 1975	P	B
Mongolia	February 28, 1979	P	—
Morocco	July 27, 1971	P	B
Netherlands	January 9, 1975	P	B
New Zealand	June 20, 1984	P	—
Nicaragua (c) ²	May 5, 1985	—	—
Niger	May 18, 1975	P	B
Norway	June 8, 1974	P	B
Pakistan	January 6, 1977	—	B
Panama (c) ²	September 17, 1983	—	—
Paraguay (c) ²	June 20, 1987	—	—
Peru	September 4, 1980	—	B
Philippines	July 14, 1980	P	B
Poland	March 23, 1975	P	B
Portugal	April 27, 1975	P	B
Qatar (b) ²	September 3, 1976	—	—
Republic of Korea	March 1, 1979	P	—

State	Date on which State became member of WIPO	Member also of Paris Union (P) and/or Berne Union (B) ¹	
Romania	April 26, 1970	P	B
Rwanda	February 3, 1984	P	B
Saudi Arabia (a) ²	May 22, 1982	—	—
Senegal	April 26, 1970	P	B
Sierra Leone (s) ²	May 18, 1986	—	—
Singapore (c) ²	December 10, 1990	—	—
Somalia (s) ²	November 18, 1982	—	—
South Africa	March 23, 1975	P	B
Soviet Union	April 26, 1970	P	—
Spain	April 26, 1970	P	B
Sri Lanka	September 20, 1978	P	B
Sudan	February 15, 1974	P	—
Suriname	November 25, 1975	P	B
Swaziland (c) ²	August 18, 1988	—	—
Sweden	April 26, 1970	P	B
Switzerland	April 26, 1970	P	B
Thailand	December 25, 1989	—	B
Togo	April 28, 1975	P	B
Trinidad and Tobago	August 16, 1988	P	B
Tunisia	November 28, 1975	P	B
Turkey	May 12, 1976	P	—
Uganda	October 18, 1973	P	—
Ukrainian SSR (c) ²	April 26, 1970	—	—
United Arab Emirates (b) ²	September 24, 1974	—	—
United Kingdom	April 26, 1970	P	B
United Republic of Tanzania	December 30, 1983	P	—
United States of America	August 25, 1970	P	B
Uruguay	December 21, 1979	P	B
Venezuela	November 23, 1984	—	B
Viet Nam	July 2, 1976	P	—
Yemen (s) ²	March 29, 1979	—	—
Yugoslavia	October 11, 1973	P	B
Zaire	January 28, 1975	P	B
Zambia	May 14, 1977	P	—
Zimbabwe	December 29, 1981	P	B

(Total: 125 States)

¹ "P" means that the State is also a member of the International Union for the Protection of Industrial Property (Paris Union), founded by the Paris Convention for the Protection of Industrial Property, and has ratified or acceded to at least the administrative and final provisions (Articles 13 to 30) of the Stockholm Act (1967) of that Convention.

"B" means that the State is also a member of the International Union for the Protection of Literary and Artistic Works (Berne Union), founded by the Berne Convention for the Protection of Literary and Artistic Works, and has ratified or acceded to at least the administrative and final provisions (Articles 22 to 38) of the Stockholm Act (1967) or the Paris Act (1971) of that Convention.

² "(a)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class A for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)(a)).

"(b)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class B for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)(a)).

"(c)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that it chose Class C for the purpose of establishing its contribution (see WIPO Convention, Article 11(4)(a)).

"(s)" means that the State is a member of the World Intellectual Property Organization without being a member of either the Paris Union or the Berne Union and that, as a least developed country, Class S automatically applies for the purpose of establishing its contribution.

Paris Convention for the Protection of Industrial Property

Paris Convention (1883), revised at Brussels (1900), Washington (1911), The Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967), and amended in 1979

(Paris Union)

State	Contribution class*	Date on which State became party to the Convention	Latest Act ¹ of the Convention to which State is party and date on which State became party to that Act
Algeria	VI	March 1, 1966	Stockholm: April 20, 1975 ²
Argentina	VI	February 10, 1967	<i>Lisbon:</i> February 10, 1967 Stockholm, Articles 13 to 30: October 8, 1980
Australia	III	October 10, 1925	Stockholm, Articles 1 to 12: September 27, 1975 Stockholm, Articles 13 to 30: August 25, 1972
Austria	IV	January 1, 1909	Stockholm: August 18, 1973
Bahamas	VII	July 10, 1973	<i>Lisbon:</i> July 10, 1973 Stockholm, Articles 13 to 30: March 10, 1977
Bangladesh	S	March 3, 1991	Stockholm: March 3, 1991 ²
Barbados	VII	March 12, 1985	Stockholm: March 12, 1985
Belgium	III	July 7, 1884	Stockholm: February 12, 1975
Benin	S	January 10, 1967	Stockholm: March 12, 1975
Brazil	VI	July 7, 1884	<i>The Hague:</i> October 26, 1929 Stockholm, Articles 13 to 30: March 24, 1975 ²
Bulgaria	VI	June 13, 1921	Stockholm, Articles 1 to 12: May 19 or 27, 1970 ³ Stockholm, Articles 13 to 30: May 27, 1970 ²
Burkina Faso	S	November 19, 1963	Stockholm: September 2, 1975
Burundi	S	September 3, 1977	Stockholm: September 3, 1977
Cameroon	VII	May 10, 1964	Stockholm: April 20, 1975
Canada	III	June 12, 1925	<i>London:</i> July 30, 1951 Stockholm, Articles 13 to 30: July 7, 1970
Central African Republic	S	November 19, 1963	Stockholm: September 5, 1978
Chad	S	November 19, 1963	Stockholm: September 26, 1970
China	III	March 19, 1985	Stockholm: March 19, 1985 ²
Congo	VII	September 2, 1963	Stockholm: December 5, 1975
Côte d'Ivoire	VII	October 23, 1963	Stockholm: May 4, 1974
Cuba	VII	November 17, 1904	Stockholm: April 8, 1975 ²
Cyprus	VII	January 17, 1966	Stockholm: April 3, 1984
Czechoslovakia	IV	October 5, 1919	Stockholm: December 29, 1970 ²
Democratic People's Republic of Korea	VII	June 10, 1980	Stockholm: June 10, 1980
Denmark ⁴	IV	October 1, 1894	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
<i>Dominican Republic</i>	VI	<i>July 11, 1890</i>	<i>The Hague:</i> April 6, 1951
Egypt	VII	July 1, 1951	Stockholm: March 6, 1975 ²
Finland	IV	September 20, 1921	Stockholm, Articles 1 to 12: October 21, 1975 Stockholm, Articles 13 to 30: September 15, 1970
France ⁵	I	July 7, 1884	Stockholm: August 12, 1975
Gabon	VII	February 29, 1964	Stockholm: June 10, 1975
Germany	I	May 1, 1903	Stockholm: September 19, 1970
Ghana	VII	September 28, 1976	Stockholm: September 28, 1976
Greece	V	October 2, 1924	Stockholm: July 15, 1976
Guinea	S	February 5, 1982	Stockholm: February 5, 1982
Guinea-Bissau	S	June 28, 1988	Stockholm: June 28, 1988
Haiti	S	July 1, 1958	Stockholm: November 3, 1983
Holy See	VII	September 29, 1960	Stockholm: April 24, 1975
Hungary	V	January 1, 1909	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970 ²

State	Contribution class*	Date on which State became party to the Convention	Latest Act ¹ of the Convention to which State is party and date on which State became party to that Act
Iceland	VII	May 5, 1962	<i>London:</i> May 5, 1962 Stockholm, Articles 13 to 30: December 28, 1984
Indonesia	VI	December 24, 1950	<i>London:</i> December 24, 1950 Stockholm, Articles 13 to 30: December 20, 1979 ²
<i>Iran (Islamic Republic of)</i> . .	VI	<i>December 16, 1959</i>	<i>Lisbon:</i> January 4, 1962
Iraq	VII	January 24, 1976	Stockholm: January 24, 1976 ²
Ireland	IV	December 4, 1925	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
Israel	VI	March 24, 1950	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
Italy	III	July 7, 1884	Stockholm: April 24, 1977
Japan	I	July 15, 1899	Stockholm, Articles 1 to 12: October 1, 1975 Stockholm, Articles 13 to 30: April 24, 1975
Jordan	VII	July 17, 1972	Stockholm: July 17, 1972
Kenya	VI	June 14, 1965	Stockholm: October 26, 1971
Lebanon	VII	September 1, 1924	<i>London:</i> September 30, 1947 Stockholm, Articles 13 to 30: December 30, 1986 ²
Lesotho	S	September 28, 1989	Stockholm: September 28, 1989 ²
Libya	VI	September 28, 1976	Stockholm: September 28, 1976 ²
Liechtenstein	VII	July 14, 1933	Stockholm: May 25, 1972
Luxembourg	VII	June 30, 1922	Stockholm: March 24, 1975
Madagascar	VII	December 21, 1963	Stockholm: April 10, 1972
Malawi	S	July 6, 1964	Stockholm: June 25, 1970
Malaysia	VII	January 1, 1989	Stockholm: January 1, 1989
Mali	S	March 1, 1983	Stockholm: March 1, 1983
Malta	VII	October 20, 1967	<i>Lisbon:</i> October 20, 1967 Stockholm, Articles 13 to 30: December 12, 1977 ²
Mauritania	S	April 11, 1965	Stockholm: September 21, 1976
Mauritius	VII	September 24, 1976	Stockholm: September 24, 1976
Mexico	IV	September 7, 1903	Stockholm: July 26, 1976
Monaco	VII	April 29, 1956	Stockholm: October 4, 1975
Mongolia	VII	April 21, 1985	Stockholm: April 21, 1985 ²
Morocco	VI	July 30, 1917	Stockholm: August 6, 1971
Netherlands ⁶	III	July 7, 1884	Stockholm: January 10, 1975
New Zealand ⁷	V	July 29, 1931	<i>London:</i> July 14, 1946 Stockholm, Articles 13 to 30: June 20, 1984
Niger	S	July 5, 1964	Stockholm: March 6, 1975
<i>Nigeria</i>	VI	<i>September 2, 1963</i>	<i>Lisbon:</i> September 2, 1963
Norway	IV	July 1, 1885	Stockholm: June 13, 1974
Philippines	VI	September 27, 1965	<i>Lisbon:</i> September 27, 1965 Stockholm, Articles 13 to 30: July 16, 1980
Poland	V	November 10, 1919	Stockholm: March 24, 1975 ²
Portugal	IV	July 7, 1884	Stockholm: April 30, 1975
Republic of Korea	VI	May 4, 1980	Stockholm: May 4, 1980
Romania	VI	October 6, 1920	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970 ²
Rwanda	S	March 1, 1984	Stockholm: March 1, 1984
<i>San Marino</i>	VI	<i>March 4, 1960</i>	<i>London:</i> March 4, 1960
Senegal	VII	December 21, 1963	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
South Africa	IV	December 1, 1947	Stockholm: March 24, 1975 ²
Soviet Union	I	July 1, 1965	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970 ²
Spain	IV	July 7, 1884	Stockholm: April 14, 1972
Sri Lanka	VII	December 29, 1952	<i>London:</i> December 29, 1952 Stockholm, Articles 13 to 30: September 23, 1978

State	Contribution class*	Date on which State became party to the Convention	Latest Act ¹ of the Convention to which State is party and date on which State became party to that Act
Sudan	S	April 16, 1984	Stockholm: April 16, 1984
Suriname	VII	November 25, 1975	Stockholm: November 25, 1975
Sweden	III	July 1, 1885	Stockholm, Articles 1 to 12: October 9, 1970 Stockholm, Articles 13 to 30: April 26, 1970
Switzerland	III	July 7, 1884	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
Syria	VI	September 1, 1924	London: September 30, 1947
Togo	S	September 10, 1967	Stockholm: April 30, 1975
Trinidad and Tobago	VII	August 1, 1964	Stockholm: August 16, 1988
Tunisia	VII	July 7, 1884	Stockholm: April 12, 1976 ²
Turkey	VI	October 10, 1925	London: June 27, 1957 Stockholm, Articles 13 to 30: May 16, 1976
Uganda	S	June 14, 1965	Stockholm: October 20, 1973
United Kingdom ⁸	I	July 7, 1884	Stockholm, Articles 1 to 12: April 26 or May 19, 1970 ³ Stockholm, Articles 13 to 30: April 26, 1970
United Republic of Tanzania	S	June 16, 1963	Lisbon: June 16, 1963
United States of America ⁹	I	May 30, 1887	Stockholm, Articles 13 to 30: December 30, 1983 Stockholm, Articles 1 to 12: August 25, 1973 Stockholm, Articles 13 to 30: September 5, 1970
Uruguay	VII	March 18, 1967	Stockholm: December 28, 1979
Viet Nam	VII	March 8, 1949	Stockholm: July 2, 1976 ²
Yugoslavia	VI	February 26, 1921	Stockholm: October 16, 1973
Zaire	VI	January 31, 1975	Stockholm: January 31, 1975
Zambia	VII	April 6, 1965	Lisbon: April 6, 1965 Stockholm, Articles 13 to 30: May 14, 1977
Zimbabwe	VII	April 18, 1980	Stockholm: December 30, 1981

(Total: 100 States)

* Contributions in classes I to VII correspond to 25, 20, 15, 10, 5, 3 and 1 units, respectively. In class S, they correspond to 1/8 of one unit.

¹ "Stockholm" means the Paris Convention for the Protection of Industrial Property as revised at Stockholm on July 14, 1967 (Stockholm Act); "Lisbon" means the Paris Convention as revised at Lisbon on October 31, 1958 (Lisbon Act); "London" means the Paris Convention as revised at London on June 2, 1934 (London Act); "The Hague" means the Paris Convention as revised at The Hague on November 6, 1925 (Hague Act).

² With the declaration provided for in Article 28(2) of the Stockholm Act relating to the International Court of Justice.

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

⁴ Denmark extended the application of the Stockholm Act to the Faroe Islands with effect from August 6, 1971.

⁵ Including all Overseas Departments and Territories.

⁶ Ratification for the Kingdom in Europe, the Netherlands Antilles and Aruba.

⁷ The accession of New Zealand to the Stockholm Act, with the exception of Articles 1 to 12, extends to the Cook Islands, Niue and Tokelau.

⁸ The United Kingdom extended the application of the Stockholm Act to the territory of Hong Kong with effect from November 16, 1977, and to the Isle of Man with effect from October 29, 1983.

⁹ The United States of America extended the application of the Stockholm Act to all territories and possessions of the United States of America, including the Commonwealth of Puerto Rico, as from August 25, 1973.

Other Industrial Property Treaties Administered by WIPO

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

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

State	Date on which State became party to the Agreement	Latest Act of the Agreement to which State is party and date on which State became party to that Act (see, however, for some States, the Additional Act of Stockholm)	Date on which State became party to the Additional Act of Stockholm
Algeria	July 5, 1972	Lisbon: July 5, 1972	July 5, 1972
Brazil	October 3, 1896	<i>The Hague: October 26, 1929</i>	—
Bulgaria	August 12, 1975	Lisbon: August 12, 1975	August 12, 1975
Cuba	January 1, 1905	Lisbon: October 11, 1964	October 7, 1980
Czechoslovakia	September 30, 1921	Lisbon: June 1, 1963	December 29, 1970
Dominican Republic	April 6, 1951	<i>The Hague: April 6, 1951</i>	—
Egypt	July 1, 1952	Lisbon: March 6, 1975	March 6, 1975
France ¹	July 15, 1892	Lisbon: June 1, 1963	August 12, 1975
Germany	June 12, 1925	Lisbon: June 1, 1963	September 19, 1970
Hungary	June 5, 1934	Lisbon: March 23, 1967	April 26, 1970
Ireland	December 4, 1925	Lisbon: June 9, 1967	April 26, 1970
Israel	March 24, 1950	Lisbon: July 2, 1967	April 26, 1970
Italy	March 5, 1951	Lisbon: December 29, 1968	April 24, 1977
Japan	July 8, 1953	Lisbon: August 21, 1965	April 24, 1975
Lebanon	September 1, 1924	<i>London: September 30, 1947</i>	—
Liechtenstein	July 14, 1933	Lisbon: April 10, 1972	May 25, 1972
Monaco	April 29, 1956	Lisbon: June 1, 1963	October 4, 1975
Morocco	July 30, 1917	<i>Lisbon: May 15, 1967</i>	—
New Zealand	July 29, 1931	<i>London: May 17, 1947</i>	—
Poland	December 10, 1928	<i>The Hague: December 10, 1928</i>	—
Portugal	October 31, 1893	<i>London: November 7, 1949</i>	—
San Marino	September 25, 1960	<i>London: September 25, 1960</i>	—
Spain	July 15, 1892	Lisbon: August 14, 1973	August 14, 1973
Sri Lanka	December 29, 1952	<i>London: December 29, 1952</i>	—
Sweden	January 1, 1934	Lisbon: October 3, 1969	April 26, 1970
Switzerland	July 15, 1892	Lisbon: June 1, 1963	April 26, 1970
Syria	September 1, 1924	<i>London: September 30, 1947</i>	—
Tunisia	July 15, 1892	<i>London: October 4, 1942</i>	—
Turkey	August 21, 1930	<i>London: June 27, 1957</i>	—
United Kingdom	July 15, 1892	Lisbon: June 1, 1963	April 26, 1970

(Total: 30 States)

¹ Including all Overseas Departments and Territories.

Madrid Agreement Concerning the International Registration of Marks

Madrid Agreement (Marks) (1891), revised at
Brussels (1900), Washington (1911),
The Hague (1925), London (1934), Nice (1957) and Stockholm (1967), and amended in 1979
(Madrid Union)

State ¹	Date on which State became party to the Agreement	Latest Act of the Agreement to which State is party and date on which State became party to that Act
Algeria	July 5, 1972	Stockholm: July 5, 1972
Austria	January 1, 1909	Stockholm: August 18, 1973
Belgium ²	July 15, 1892	Stockholm: February 12, 1975
Bulgaria	August 1, 1985	Stockholm: August 1, 1985
China ⁵	October 4, 1989	Stockholm: October 4, 1989
Cuba ⁵	December 6, 1989	Stockholm: December 6, 1989
Czechoslovakia	October 5, 1919	Stockholm: December 22 or 29, 1970 ³
Democratic People's Republic of Korea	June 10, 1980	Stockholm: June 10, 1980
Egypt	July 1, 1952	Stockholm: March 6, 1975
France ⁴	July 15, 1892	Stockholm: August 12, 1975
Germany	December 1, 1922	Stockholm: September 19, or December 22, 1970 ³
Hungary	January 1, 1909	Stockholm: September 19, or December 22, 1970 ³
Italy	October 15, 1894	Stockholm: April 24, 1977
Liechtenstein	July 14, 1933	Stockholm: May 25, 1972
Luxembourg ²	September 1, 1924	Stockholm: March 24, 1975
Monaco	April 29, 1956	Stockholm: October 4, 1975
Mongolia ⁵	April 21, 1985	Stockholm: April 21, 1985
Morocco	July 30, 1917	Stockholm: January 24, 1976
Netherlands ^{2, 6}	March 1, 1893	Stockholm: March 6, 1975
Poland ⁵	March 18, 1991	Stockholm: March 18, 1991
Portugal	October 31, 1893	Stockholm: November 22, 1988
Romania	October 6, 1920	Stockholm: September 19, or December 22, 1970 ³
San Marino	September 25, 1960	Nice: December 15, 1966
Soviet Union ⁵	July 1, 1976	Stockholm: July 1, 1976
Spain ⁷	July 15, 1892	Stockholm: June 8, 1979
Sudan	May 16, 1984	Stockholm: May 16, 1984
Switzerland	July 15, 1892	Stockholm: September 19, or December 22, 1970 ³
Viet Nam	March 8, 1949	Stockholm: July 2, 1976
Yugoslavia	February 26, 1921	Stockholm: October 16, 1973

(Total: 29 States)

¹ All the States have declared, under Article 3bis of the Nice or Stockholm Act, that the protection arising from international registration shall not extend to them unless the proprietor of the mark so requests (the dates in parentheses indicate the effective date of the declaration in respect of each State): Algeria (July 5, 1972), Austria (February 8, 1970), Belgium (December 15, 1966), Bulgaria (August 1, 1985), China (October 4, 1989), Cuba (December 6, 1989), Czechoslovakia (April 14, 1971), Democratic People's Republic of Korea (June 10, 1980), Egypt (March 1, 1967), France (July 1, 1973), Germany (July 1, 1973) (October 25, 1967, in respect of the German Democratic Republic), Hungary (October 30, 1970), Italy (June 14, 1967), Liechtenstein (January 1, 1973), Luxembourg (December 15, 1966), Monaco (December 15, 1966), Mongolia (April 21, 1985), Morocco (December 18, 1970), Netherlands (December 15, 1966), Poland (March 18, 1991), Portugal (December 15, 1966), Romania (June 10, 1967), San Marino (August 14, 1969), Soviet Union (July 1, 1976), Spain (December 15, 1966), Sudan (May 16, 1984), Switzerland (January 1, 1973), Viet Nam (July 2, 1976) (May 15, 1973, in respect of the Republic of South Viet-Nam), Yugoslavia (June 29, 1972).

² As from January 1, 1971, the territories in Europe of Belgium, Luxembourg and the Netherlands are, for the application of the Madrid Agreement (Marks), to be deemed a single country.

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

⁴ Including all Overseas Departments and Territories.

⁵ In accordance with Article 14(2)(d) and (f), this State declared that the application of the Stockholm Act was limited to marks registered from the date on which its accession entered into force, that is: China: October 4, 1989; Cuba: December 6, 1989; Mongolia: April 21, 1985; Poland: March 18, 1991; Soviet Union: July 1, 1976.

⁶ The instrument of ratification of the Stockholm Act was deposited for the Kingdom in Europe. The Netherlands, which had extended the application of the Stockholm Act to Aruba with effect from November 8, 1986, suspended that application as from that date for an indefinite period.

⁷ Spain declared that it no longer wished to be bound by instruments earlier than the Nice Act. This declaration became effective on December 15, 1966. The Madrid Agreement (Marks) was thus not applicable between Spain and the following States between December 15, 1966, and the date indicated for each State: Austria (February 8, 1970), Hungary (March 23, 1967), Liechtenstein (May 29, 1967), Morocco (December 18, 1970), Viet Nam (May 15, 1973).

Hague Agreement Concerning the International Deposit of Industrial Designs

Hague Agreement (1925), revised at London (1934) and The Hague (1960),¹ supplemented by the Additional Act of Monaco (1961),² the Complementary Act of Stockholm (1967) and the Protocol of Geneva (1975),³ and amended in 1979

(Hague Union)

State	Date on which State became party to the Agreement	Date on which State became party to the London Act	Date on which State became party to the Hague Act ¹	Date on which State became party to the Complementary Act of Stockholm
Belgium ^{4,5}	April 1, 1979	—	August 1, 1984	May 28, 1979
Benin	November 2, 1986	November 2, 1986	November 2, 1986	January 2, 1987
Egypt	July 1, 1952	July 1, 1952	—	—
France ⁶	October 20, 1930	June 25, 1939	August 1, 1984	September 27, 1975
Germany	June 1, 1928	June 13, 1939	August 1, 1984	September 27, 1975
Holy See	September 29, 1960	September 29, 1960	—	—
Hungary ⁷	April 7, 1984	April 7, 1984	August 1, 1984	April 7, 1984
Indonesia	December 24, 1950	December 24, 1950	—	—
Italy	June 13, 1987	—	June 13, 1987	August 13, 1987
Liechtenstein	July 14, 1933	January 28, 1951	August 1, 1984	September 27, 1975
Luxembourg ⁵	April 1, 1979	—	August 1, 1984	May 28, 1979
Monaco	April 29, 1956	April 29, 1956	August 1, 1984	September 27, 1975
Morocco	October 20, 1930	January 21, 1941	—	—
Netherlands ^{4,5}	April 1, 1979	—	August 1, 1984 ⁸	May 28, 1979 ⁸
Senegal	June 30, 1984	June 30, 1984	August 1, 1984	June 30, 1984
Spain	June 1, 1928	March 2, 1956	—	—
Suriname	November 25, 1975	November 25, 1975	August 1, 1984	February 23, 1977
Switzerland	June 1, 1928	November 24, 1939	August 1, 1984	September 27, 1975
Tunisia	October 20, 1930	October 4, 1942	—	—

(Total: 19 States)

¹ The Protocol to the Hague Act (1960) is not yet in force. It has been ratified by or acceded to by the following States: Belgium, France, Germany, Italy, Liechtenstein, Monaco, Netherlands, Switzerland.

² The Additional Act of Monaco (1961) is in force in respect of the following States as from the dates indicated: France (December 1, 1962), Germany (December 1, 1962), Liechtenstein (July 9, 1966), Monaco (September 14, 1963), Netherlands (as far as the Netherlands Antilles is concerned) (September 14, 1963), Spain (August 31, 1969), Suriname (November 25, 1975) and Switzerland (December 21, 1962). See also footnote 4.

³ The Protocol of Geneva (1975), in accordance with Article 11(2)(a) thereof, ceased to have effect as of August 1, 1984; however, as provided by Article 11(2)(b), States bound by the Protocol (Belgium (as from April 1, 1979), France (as from February 18, 1980), Germany (as from December 26, 1981), Hungary (as from April 7, 1984), Liechtenstein (as from April 1, 1979), Luxembourg (as from April 1, 1979), Monaco (as from March 5, 1981), Netherlands (as from April 1, 1979), Senegal (as from June 30, 1984), Suriname (as from April 1, 1979) and Switzerland (as from April 1, 1979)) are not relieved of their obligations thereunder in respect of industrial designs whose date of international deposit is prior to August 1, 1984.

⁴ Belgium had withdrawn from the Hague Union with effect from January 1, 1975. The Netherlands had denounced, in respect of the Kingdom in Europe and with effect from January 1, 1975, the Hague Agreement (1925) and the subsequent Acts to which the Netherlands had adhered, specifying that the said Agreement and Acts – London Act (1934) and Additional Act of Monaco (1961) – would remain in force in respect of the Netherlands Antilles and Suriname. As a result of their ratification of the Protocol of Geneva (1975) and its entry into force on April 1, 1979, Belgium and the Netherlands became, again, as from that date, members of the Hague Union.

⁵ The territories in Europe of Belgium, Luxembourg and the Netherlands are, for the application of the Hague Agreement, to be deemed a single country.

⁶ Including all Overseas Departments and Territories.

⁷ With the declaration that Hungary does not consider itself bound by the Protocol annexed to the Hague Act (1960).

⁸ Ratification for the Kingdom in Europe.

**Nice Agreement Concerning the International Classification of Goods and Services for the Purposes
of the Registration of Marks**

Nice Agreement (1957), revised at Stockholm (1967) and at Geneva (1977), and amended in 1979
(Nice Union)

State	Date on which State became party to the Agreement	Latest Act of the Agreement to which State is party and date on which it became party to that Act
Algeria	July 5, 1972	Stockholm: July 5, 1972
Australia	April 8, 1961	Geneva: February 6, 1979
Austria	November 30, 1969	Geneva: August 21, 1982
Barbados	March 12, 1985	Geneva: March 12, 1985
Belgium	June 6, 1962	Geneva: November 20, 1984
Benin	February 6, 1979	Geneva: February 6, 1979
Czechoslovakia	April 8, 1961	Geneva: February 6, 1979
Denmark ¹	November 30, 1961	Geneva: June 3, 1981
Finland	August 18, 1973	Geneva: February 6, 1979
France ²	April 8, 1961	Geneva: April 22, 1980
Germany	January 29, 1962	Geneva: January 12, 1982
Hungary	March 23, 1967	Geneva: August 21, 1982
Ireland	December 12, 1966	Geneva: February 6, 1979
Israel	April 8, 1961	Stockholm: November 12, 1969, or March 18, 1970 ³
Italy	April 8, 1961	Geneva: February 19, 1983
Japan	February 20, 1990	Geneva: February 20, 1990
Lebanon	April 8, 1961	Nice: April 8, 1961
Liechtenstein	May 29, 1967	Geneva: February 14, 1987
Luxembourg	March 24, 1975	Geneva: December 21, 1983
Monaco	April 8, 1961	Geneva: May 9, 1981
Morocco	October 1, 1966	Stockholm: January 24, 1976
Netherlands ⁴	August 20, 1962	Geneva: August 15, 1979
Norway	July 28, 1961	Geneva: July 7, 1981
Portugal	April 8, 1961	Geneva: July 30, 1982
Soviet Union	July 26, 1971	Geneva: December 30, 1987
Spain	April 8, 1961	Geneva: May 9, 1979
Suriname	December 16, 1981	Geneva: December 16, 1981
Sweden	July 28, 1961	Geneva: February 6, 1979
Switzerland	August 20, 1962	Geneva: April 22, 1986
Tunisia	May 29, 1967	Nice: May 29, 1967
United Kingdom	April 15, 1963	Geneva: July 3, 1979
United States of America	May 25, 1972	Geneva: February 29, 1984
Yugoslavia	August 30, 1966	Stockholm: October 16, 1973

(Total: 33 States)

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

² Including all Overseas Departments and Territories.

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

⁴ The Netherlands, which had extended the application of the Geneva Act to Aruba with effect from November 8, 1986, suspended that application as from that date for an indefinite period.

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

Lisbon Agreement (1958), revised at Stockholm (1967), and amended in 1979

(Lisbon Union)

State	Date on which State became party to the Agreement	Latest Act of the Agreement to which State is party and date on which it became party to Act
Algeria	July 5, 1972	Stockholm: October 31, 1973
Bulgaria	August 12, 1975	Stockholm: August 12, 1975
Burkina Faso	September 2, 1975	Stockholm: September 2, 1975
Congo	November 16, 1977	Stockholm: November 16, 1977
Cuba	September 25, 1966	Stockholm: April 8, 1975
Czechoslovakia	September 25, 1966	Stockholm: October 31, 1973
France ¹	September 25, 1966	Stockholm: August 12, 1975
Gabon	June 10, 1975	Stockholm: June 10, 1975
Haiti	September 25, 1966	Lisbon: September 25, 1966
Hungary	March 23, 1967	Stockholm: October 31, 1973
Israel	September 25, 1966	Stockholm: October 31, 1973
Italy	December 29, 1968	Stockholm: April 24, 1977
Mexico	September 25, 1966	Lisbon: September 25, 1966
Portugal	September 25, 1966	Lisbon: September 25, 1966
Togo	April 30, 1975	Stockholm: April 30, 1975
Tunisia	October 31, 1973	Stockholm: October 31, 1973

(Total: 16 States)

¹ Including all Overseas Departments and Territories.

Locarno Agreement Establishing an International Classification for Industrial Designs

Locarno Agreement (1968), amended in 1979

(Locarno Union)

State	Date on which State became party to the Agreement	State	Date on which State became party to the Agreement
Austria	September 26, 1990	Italy	August 12, 1975
Czechoslovakia	April 27, 1971	Netherlands ²	March 30, 1977
Denmark	April 27, 1971	Norway	April 27, 1971
Finland	May 16, 1972	Soviet Union	December 15, 1972
France ¹	September 13, 1975	Spain	November 17, 1973
Germany	October 25, 1990	Sweden	April 27, 1971
Hungary	January 1, 1974	Switzerland	April 27, 1971
Ireland	April 27, 1971	Yugoslavia	October 16, 1973

(Total: 16 States)

¹ Including all Overseas Departments and Territories.

² The Netherlands extended the application of the Locarno Agreement to Aruba with effect from November 8, 1986.

Patent Cooperation Treaty

PCT (Washington, 1970), amended in 1979 and modified in 1984

(PCT Union)

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Australia	March 31, 1980	Japan	October 1, 1978
Austria	April 23, 1979	Liechtenstein ²	March 19, 1980
Barbados	March 12, 1985	Luxembourg	April 30, 1978
Belgium	December 14, 1981	Madagascar ⁶	January 24, 1978
Benin	February 26, 1987	Malawi	January 24, 1978
Brazil	April 9, 1978	Mali	October 19, 1984
Bulgaria ¹	May 21, 1984	Mauritania	April 13, 1983
Burkina Faso	March 21, 1989	Monaco	June 22, 1979
Cameroon	January 24, 1978	Netherlands ⁷	July 10, 1979
Canada	January 2, 1990	Norway ³	January 1, 1980
Central African Republic	January 24, 1978	Poland ⁵	December 25, 1990
Chad	January 24, 1978	Republic of Korea	August 10, 1984
Congo	January 24, 1978	Romania ¹	July 23, 1979
Democratic People's Republic of Korea	July 8, 1980	Senegal	January 24, 1978
Denmark	December 1, 1978	Soviet Union ¹	March 29, 1978
Finland ³	October 1, 1980	Spain ²	November 16, 1989
France ^{1, 4}	February 25, 1978	Sri Lanka	February 26, 1982
Gabon	January 24, 1978	Sudan	April 16, 1984
Germany	January 24, 1978	Sweden ³	May 17, 1978
Greece ²	October 9, 1990	Switzerland ²	January 24, 1978
Hungary ¹	June 27, 1980	Togo	January 24, 1978
Italy	March 28, 1985	United Kingdom ⁸	January 24, 1978
		United States of America ^{9, 10}	January 24, 1978

(Total: 45 States)

¹ With the declaration provided for in Article 64(5).

² With the declaration provided for in Article 64(1)(a).

³ With the declaration provided for in Article 64(2)(a)(ii).

⁴ Including all Overseas Departments and Territories.

⁵ With the declaration provided for in Article 64(2)(a)(i) and (ii).

⁶ According to information received from the Minister for Foreign Affairs of Madagascar concerning international applications designating Madagascar, the industrial property legislation, adopted by the competent authorities, provides, among other things, for the prolongation of the time limits under Articles 22 and 39 until such time as the new patent legislation will, after its entry into force, permit the processing of patent applications in Madagascar. The said prolonged time limits will be fixed in a decree which will be promulgated in due course. The Government of Madagascar has expressed the desire that this information be conveyed to applicants using the PCT system and designating or electing Madagascar, or intending to do so, so that they may take cognizance of the possibility thus offered them validly to designate or elect Madagascar and to wait with the action required to start the national phase under Articles 22 and 39 until after the new legislation has entered into force and the time limits to be observed under it have been determined.

⁷ Ratification for the Kingdom in Europe, the Netherlands Antilles and Aruba.

⁸ The United Kingdom extended the application of the PCT to the territory of Hong Kong with effect from April 15, 1981, and to the Isle of Man with effect from October 29, 1983.

⁹ With the declarations provided for in Articles 64(3)(a) and 64(4)(a).

¹⁰ Extends to all areas for which the United States of America has international responsibility.

INTERNATIONAL SEARCHING AUTHORITIES UNDER ARTICLE 16 OF THE PATENT COOPERATION TREATY

The Patent Offices of Australia, Austria, Japan, the Soviet Union, Sweden, the United States of America, and the European Patent Office.

INTERNATIONAL PRELIMINARY EXAMINING AUTHORITIES UNDER ARTICLE 32 OF THE PATENT COOPERATION TREATY

The Patent Offices of Australia, Austria, Japan, the Soviet Union, Sweden, the United Kingdom, the United States of America, and the European Patent Office.

Strasbourg Agreement Concerning the International Patent Classification

Strasbourg Agreement (1971), amended in 1979

(IPC Union)

State	Date on which State became party to the Agreement	State	Date on which State became party to the Agreement
Australia ¹	November 12, 1975	Japan	August 18, 1977
Austria	October 7, 1975	Luxembourg ²	April 9, 1977
Belgium ²	July 4, 1976	Monaco ²	June 13, 1976
Brazil	October 7, 1975	Netherlands ³	October 7, 1975
Czechoslovakia	August 3, 1978	Norway ¹	October 7, 1975
Denmark	October 7, 1975	Portugal	May 1, 1979
Egypt	October 17, 1975	Soviet Union	October 3, 1976
Finland ¹	May 16, 1976	Spain ^{1, 2}	November 29, 1975
France ²	October 7, 1975	Suriname	November 25, 1975
Germany	October 7, 1975	Sweden	October 7, 1975
Ireland ¹	October 7, 1975	Switzerland	October 7, 1975
Israel	October 7, 1975	United Kingdom ¹	October 7, 1975
Italy ²	March 30, 1980	United States of America	October 7, 1975

(Total: 26 States)

¹ With the reservation provided for in Article 4(4)(i).

² With the reservation provided for in Article 4(4)(ii).

³ Ratification for the Kingdom in Europe, the Netherlands Antilles and Aruba.

Trademark Registration Treaty

TRT (Vienna, 1973), amended in 1980

(TRT Union)

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Burkina Faso	August 7, 1980	Soviet Union ¹	August 7, 1980
Congo	August 7, 1980	Togo	August 7, 1980
Gabon	August 7, 1980		

(Total: 5 States)

¹ With the declaration provided for in Article 46(2).

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

Vienna Agreement (1973)

(Vienna Union)

State	Date on which State became party to the Agreement	State	Date on which State became party to the Agreement
France	August 9, 1985	Sweden	August 9, 1985
Luxembourg	August 9, 1985	Tunisia	August 9, 1985
Netherlands ¹	August 9, 1985		

(Total: 5 States)

¹ Ratification for the Kingdom in Europe.

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

Budapest Treaty (1977), modified in 1980

(Budapest Union)

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Australia	July 7, 1987	Liechtenstein	August 19, 1981
Austria	April 26, 1984	Netherlands ¹	July 2, 1987
Belgium	December 15, 1983	Norway	January 1, 1986
Bulgaria	August 19, 1980	Philippines	October 21, 1981
Czechoslovakia	August 5, 1989	Republic of Korea	March 28, 1988
Denmark	July 1, 1985	Soviet Union	April 22, 1981
Finland	September 1, 1985	Spain	March 19, 1981
France	August 19, 1980	Sweden	October 1, 1983
Germany	January 20, 1981	Switzerland	August 19, 1981
Hungary	August 19, 1980	United Kingdom	December 29, 1980
Italy	March 23, 1986	United States of America	August 19, 1980
Japan	August 19, 1980		

(Total: 23 States)

¹ Ratification for the Kingdom in Europe, the Netherlands Antilles and Aruba.

DECLARATIONS OF ACCEPTANCE FILED UNDER ARTICLE 9(1)(a) OF THE BUDAPEST TREATY
BY INTERGOVERNMENTAL INDUSTRIAL PROPERTY ORGANIZATIONS

Organization	Effective date
European Patent Organisation	November 26, 1980

INTERNATIONAL DEPOSITARY AUTHORITIES UNDER ARTICLE 7 OF THE BUDAPEST TREATY¹

Institution	Country	Date status acquired
Agricultural Research Service Culture Collection	United States of America	January 31, 1981
American Type Culture Collection	United States of America	January 31, 1981
Australian Government Analytical Laboratories	Australia	September 30, 1988
Centraalbureau voor Schimmelcultures	Netherlands	October 1, 1981
Collection Nationale de Cultures de Microorganismes	France	August 31, 1984
Commonwealth Agricultural Bureau, International Mycological Institute	United Kingdom	March 31, 1983
Culture Collection of Algae and Protozoa	United Kingdom	September 30, 1982
DSM — Deutsche Sammlung von Mikroorganismen und Zellkulturen GmbH	Germany	October 1, 1981
European Collection of Animal Cell Cultures	United Kingdom	September 30, 1984
Fermentation Research Institute	Japan	May 1, 1981
IMET — Nationale Sammlung von Mikroorganismen	Germany ²	August 31, 1989
In Vitro International, Inc.	United States of America	November 30, 1983
Institute of Microorganism Biochemistry and Physiology of the USSR Academy of Science	Soviet Union	August 31, 1987
Korean Collection for Type Cultures	Republic of Korea	June 30, 1990
Korean Culture Centre of Microorganisms	Republic of Korea	June 30, 1990
National Bank for Industrial Microorganisms and Cell Cultures	Bulgaria	October 31, 1987
National Collection of Agricultural and Industrial Microorganisms	Hungary	June 1, 1986
National Collection of Food Bacteria	United Kingdom	February 28, 1990
National Collection of Type Cultures	United Kingdom	August 31, 1982
National Collection of Yeast Cultures	United Kingdom	January 31, 1982
National Collections of Industrial and Marine Bacteria Ltd.	United Kingdom	March 31, 1982
USSR Research Institute for Antibiotics of the USSR Ministry of the Medical and Microbiological Industry	Soviet Union	August 31, 1987
USSR Research Institute for Genetics and Industrial Microorganism Breeding of the USSR Ministry of the Medical and Microbiological Industry	Soviet Union	August 31, 1987

(Total: 23 Authorities)

¹ A list of the kinds of microorganisms that may be deposited with, and the amount of fees charged by, the international depository authorities appears under "Notifications Concerning Treaties" on p. 26.

² The status of this international depository authority, located on the territory which, before October 3, 1990, constituted the German Democratic Republic, is under examination.

Nairobi Treaty on the Protection of the Olympic Symbol

Nairobi Treaty (1981)

State	Date on which State became party to the Treaty	State	Date on which State became party to the Treaty
Algeria	August 16, 1984	India	October 19, 1983
Argentina	January 10, 1986	Italy	October 25, 1985
Barbados	February 28, 1986	Jamaica	March 17, 1984
Bolivia	August 11, 1985	Kenya	September 25, 1982
Brazil	August 10, 1984	Mexico	May 16, 1985
Bulgaria	May 6, 1984	Oman	March 26, 1986
Chile	December 14, 1983	Qatar	July 23, 1983
Congo	March 8, 1983	San Marino	March 18, 1986
Cuba	October 21, 1984	Senegal	August 6, 1984
Cyprus	August 11, 1985	Soviet Union	April 17, 1986
Egypt	October 1, 1982	Sri Lanka	February 19, 1984
El Salvador	October 14, 1984	Syria	April 13, 1984
Equatorial Guinea	September 25, 1982	Togo	December 8, 1983
Ethiopia	September 25, 1982	Tunisia	May 21, 1983
Greece	August 29, 1983	Uganda	October 21, 1983
Guatemala	February 21, 1983	Uruguay	April 16, 1984

(Total: 32 States)

Treaty on Intellectual Property in Respect of Integrated Circuits (1989)**Signatory States*

China, Egypt, Ghana, Guatemala, India, Liberia, Yugoslavia, Zambia (8).

Ratification

Egypt (1).

* This instrument is not yet in force.

**Protocol Relating to the Madrid Agreement
Concerning the International Registration of Marks (1989)****Signatory States*

Austria, Belgium, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Morocco, Netherlands, Portugal, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, Yugoslavia (27).

* This instrument is not yet in force.

International Convention for the Protection of New Varieties of Plants

UPOV Convention (1961), as revised at Geneva (1972 and 1978)

(UPOV)*

State	Date on which State became party to the Convention	No. of contribution units chosen	Date on which State became party to the Convention of 1961	Date on which State became party to the 1978 Act
Australia	March 1, 1989	1.0	—	March 1, 1989
Belgium ^{1,2}	December 5, 1976	1.5	December 5, 1976	—
Denmark ^{1,3}	October 6, 1968	1.5	October 6, 1968	November 8, 1981
France ^{1,2,4}	October 3, 1971	5.0	October 3, 1971	March 17, 1983
Germany ¹	August 10, 1968	5.0	August 10, 1968	April 12, 1986
Hungary	April 16, 1983	0.5	—	April 16, 1983
Ireland	November 8, 1981	1.0	—	November 8, 1981
Israel ¹	December 12, 1979	0.5	December 12, 1979	May 12, 1984
Italy ¹	July 1, 1977	2.0	July 1, 1977	May 28, 1986
Japan	September 3, 1982	5.0	—	September 3, 1982
Netherlands ¹	August 10, 1968	3.0	August 10, 1968	September 2, 1984 ⁵
New Zealand	November 8, 1981	1.0	—	November 8, 1981
Poland	November 11, 1989	0.5	—	November 11, 1989
South Africa ¹	November 6, 1977	1.0	November 6, 1977	November 8, 1981
Spain ^{1,6}	May 18, 1980	1.0	May 18, 1980	—
Sweden ¹	December 17, 1971	1.5	December 17, 1971	January 1, 1983
Switzerland ¹	July 10, 1977	1.5	July 10, 1977	November 8, 1981
United Kingdom ¹	August 10, 1968	5.0	August 10, 1968	September 24, 1983
United States of America ⁷	November 8, 1981	5.0	—	November 8, 1981

(Total: 19 States)

* UPOV is an independent intergovernmental organization having legal personality. Pursuant to an agreement concluded between WIPO and UPOV, the Director General of WIPO is the Secretary-General of UPOV and WIPO provides administrative and financial services for UPOV.

¹ The Additional Act of 1972 is in force in respect of the following States as from the dates indicated hereafter: Belgium (February 11, 1977); Denmark (February 11, 1977); France (February 11, 1977); Germany (February 11, 1977); Israel (December 12, 1979); Italy (July 1, 1977); Netherlands (February 11, 1977); South Africa (November 6, 1977); Spain (May 18, 1980); Sweden (February 11, 1977); Switzerland (July 10, 1977); United Kingdom (July 31, 1980).

² With a notification under Article 34(2) of the 1978 Act.

³ With a declaration that the Convention of 1961, the Additional Act of 1972 and the 1978 Act do not bind Greenland and the Faroe Islands.

⁴ With a declaration that the 1978 Act applies to the territory of the French Republic, including the Overseas Departments and Territories.

⁵ Ratification for the Kingdom in Europe. The Netherlands extended the application of the 1978 Act to Aruba with effect from November 8, 1986.

⁶ With a declaration that the Convention of 1961 and the Additional Act of 1972 apply to the entire territory of Spain.

⁷ With a notification under Article 37(1) and (2) of the 1978 Act.

Industrial Property Treaties Not Administered by WIPO

AFRICAN INTELLECTUAL PROPERTY ORGANIZATION (AIPO)

Libreville Agreement (1962), as revised at Bangui (1977)

State	Latest Act of the Agreement to which State is party and date on which State became party to that Act
Benin	Bangui: March 19, 1983
Burkina Faso	Bangui: June 1, 1983
Cameroon	Bangui: February 8, 1982
Central African Republic	Bangui: February 8, 1982
Chad	Bangui: November 5, 1988
Congo	Bangui: February 8, 1982
Côte d'Ivoire	Bangui: February 8, 1982
Gabon	Bangui: February 8, 1982
Guinea	Bangui: January 13, 1990
Mali	Bangui: September 30, 1984
Mauritania	Bangui: February 8, 1982
Niger	Bangui: February 8, 1982
Senegal	Bangui: February 8, 1982
Togo	Bangui: February 8, 1982

AFRICAN REGIONAL INDUSTRIAL PROPERTY ORGANIZATION (ARIPO)*

Lusaka Agreement on the Creation of the African Regional Industrial Property Organization (1976)

State	Date on which State became party to the Agreement
Botswana	February 6, 1985
Gambia	February 15, 1978
Ghana	February 15, 1978
Kenya	February 15, 1978
Lesotho	July 23, 1987
Malawi	February 15, 1978
Sierra Leone	December 5, 1980
Somalia	March 10, 1981
Sudan	May 2, 1978
Swaziland	December 17, 1987
Uganda	August 8, 1978
United Republic of Tanzania	October 12, 1983
Zambia	February 15, 1978
Zimbabwe	November 11, 1980

Harare Protocol on Patents and Industrial Designs Within the Framework of the African Regional Industrial Property Organization (1982)

State	Date on which State became party to the Protocol
Botswana	May 6, 1985
Gambia	January 16, 1986
Ghana	April 25, 1984
Kenya	October 24, 1984
Lesotho	October 23, 1987
Malawi	April 25, 1984
Sudan	April 25, 1984
Swaziland	March 17, 1988
Uganda	April 25, 1984
Zambia	February 26, 1986
Zimbabwe	April 25, 1984

* Formerly "Industrial Property Organization for English-Speaking Africa (ESARIPO)."

BENELUX TRADEMARK OFFICE (BBM) BENELUX DESIGNS OFFICE (BBDM)

Benelux Convention on Marks (1962)

State	Date on which State became party to the Convention
Belgium	July 1, 1969
Luxembourg	July 1, 1969
Netherlands	July 1, 1969

Benelux Designs Convention (1966)

State	Date on which State became party to the Convention
Belgium	January 1, 1974
Luxembourg	January 1, 1974
Netherlands	January 1, 1974

COUNCIL OF EUROPE

**European Convention relating to the Formalities
required for Patent Applications (1953)**

State	Date on which State became party to the Convention
Iceland	April 1, 1966
Israel*	May 1, 1966
South Africa*	December 1, 1957
Spain	July 1, 1967
Turkey	November 1, 1956

* Not member of the Council of Europe.

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

State	Date on which State became party to the Convention
Denmark	December 30, 1989
France	August 1, 1980
Germany	August 1, 1980
Ireland	August 1, 1980
Italy	May 18, 1981
Liechtenstein	August 1, 1980
Luxembourg	August 1, 1980
Netherlands	December 3, 1987
Sweden	August 1, 1980
Switzerland	August 1, 1980
United Kingdom	August 1, 1980

EUROPEAN PATENT ORGANISATION (EPO)

**Convention on the Grant of European Patents (1973)
(European Patent Convention)**

State	Date on which State became party to the Convention
Austria	May 1, 1979
Belgium	October 7, 1977
Denmark	January 1, 1990
France	October 7, 1977
Germany	October 7, 1977
Greece	October 1, 1986
Italy	December 1, 1978
Liechtenstein	April 1, 1980
Luxembourg	October 7, 1977
Netherlands	October 7, 1977
Spain	October 1, 1986
Sweden	May 1, 1978
Switzerland	October 7, 1977
United Kingdom	October 7, 1977

Governing Bodies and Committees

(Status on January 1, 1991)

WIPO

General Assembly: Algeria, Argentina, Australia, Austria, Bahamas, Bangladesh (as from March 3, 1991), Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Fiji, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, Guinea-Bissau, Haiti, Holy See, Honduras, Hungary, Iceland, India, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Niger, Norway, Pakistan, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, South Africa,¹ Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Thailand, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe (106).

Conference: The same States as above, with Angola, Byelorussian SSR, Ecuador, El Salvador, Gambia, Guatemala, Jamaica, Nicaragua, Panama, Paraguay, Qatar, Saudi Arabia, Sierra Leone, Singapore, Somalia, Swaziland, Ukrainian SSR, United Arab Emirates, Yemen (125).

Coordination Committee: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Belgium, Brazil, Bulgaria, Cameroon, Canada, Chile, China, Colombia, Côte d'Ivoire, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, Finland, France, Germany, Ghana, Guinea, Hungary, India, Indonesia, Ireland, Italy, Japan, Kenya, Mexico, Netherlands, Nicaragua, Pakistan, Panama, Poland, Portugal, Republic of Korea, Senegal, Soviet Union, Sweden, Switzerland, Syria, United Kingdom, United States of America, Uruguay, Venezuela, Yemen (49).

WIPO Budget Committee: Brazil, Canada, Chile, China, Czechoslovakia, Egypt, France, Germany, India, Japan, Soviet Union, Switzerland (*ex officio*), United Republic of Tanzania, United States of America, Yugoslavia (15).

WIPO Premises Committee: Argentina, Brazil, China, Egypt, France, Germany, India, Nigeria, Soviet Union, Switzerland, United States of America (11).

WIPO Permanent Committee for Development Cooperation Related to Industrial Property: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, Chile, China, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, El Salvador, Finland, France, Gabon, Gambia, Germany, Ghana, Greece, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Iraq, Israel, Italy, Jamaica, Japan, Jordan, Kenya, Lebanon, Lesotho, Liberia, Libya, Malawi, Malaysia, Mali, Mauritania, Mauritius, Mexico, Mongolia, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Panama, Paraguay, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Sierra Leone, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Tunisia, Turkey, Uganda, United Arab Emirates, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Venezuela, Viet Nam, Yemen, Yugoslavia, Zaire, Zambia, Zimbabwe (105).

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights: Algeria, Angola, Argentina, Australia, Austria, Bangladesh, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Chile, Colombia, Congo, Costa Rica, Côte d'Ivoire, Cyprus, Czechoslovakia, Denmark, Egypt, El Salvador, Fiji, Finland, France, Gambia, Germany, Ghana, Guatemala, Guinea, Guinea-Bissau, Haiti, Honduras, Hungary, India, Indonesia, Israel, Italy, Japan, Jordan, Kenya, Lesotho, Malawi, Malaysia, Mali, Mauritius, Mexico, Morocco, Netherlands, New Zealand, Nicaragua, Niger, Norway, Pakistan, Peru, Philippines, Poland,

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

Portugal, Romania, Saudi Arabia, Senegal, Somalia, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Swaziland, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yemen, Zaire, Zambia, Zimbabwe (87).

WIPO Permanent Committee on Industrial Property Information: Algeria, Argentina, Australia, Austria, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, China, Congo, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Dominican Republic, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Hungary, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kenya, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Mexico, Monaco, Mongolia, Netherlands, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Trinidad and Tobago, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Viet Nam, Yugoslavia, Zambia, African Intellectual Property Organization, African Regional Industrial Property Organization, Benelux Designs Office, Benelux Trademark Office, European Patent Organisation (75).

Paris Union

Assembly: Algeria, Argentina, Australia, Austria, Bahamas, Bangladesh (as from March 3, 1991), Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Burundi, Cameroon, Canada, Central African Republic, Chad, China, Congo, Côte d'Ivoire, Cuba, Cyprus, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, Finland, France, Gabon, Germany, Ghana, Greece, Guinea, Guinea-Bissau, Haiti, Holy See, Hungary, Iceland, Indonesia, Iraq, Ireland, Israel, Italy, Japan, Jordan, Kenya, Lebanon, Lesotho, Libya, Liechtenstein, Luxembourg, Madagascar, Malawi, Malaysia, Mali, Malta, Mauritania, Mauritius, Mexico, Monaco, Mongolia, Morocco, Netherlands, New Zealand, Niger, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Rwanda, Senegal, South Africa,² Soviet Union, Spain, Sri Lanka, Sudan, Suriname, Sweden, Switzerland, Togo, Trinidad and Tobago, Tunisia, Turkey, Uganda, United Kingdom, United Republic of Tanzania, United States of America, Uruguay, Viet Nam, Yugoslavia, Zaire, Zambia, Zimbabwe (95).

² According to a decision of the WIPO Coordination Committee, not to be invited "to any meeting of WIPO and its Bodies and Unions" (see *Industrial Property*, 1977, p. 231).

Conference of Representatives: Dominican Republic, Iran (Islamic Republic of), Nigeria, San Marino, Syria (5).

Executive Committee: Algeria, Argentina, Australia, Austria, Brazil, China, Cuba, Democratic People's Republic of Korea, Egypt, Finland, France, Ghana, Hungary, Indonesia, Japan, Kenya, Republic of Korea, Senegal, Soviet Union, Switzerland, Syria (*associate member*), United Kingdom, United States of America, Uruguay (24).

Madrid Union (Marks)

Assembly: Algeria, Austria, Belgium, Bulgaria, China, Cuba, Czechoslovakia, Democratic People's Republic of Korea, Egypt, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Mongolia, Morocco, Netherlands, Poland (as from March 18, 1991), Portugal, Romania, Soviet Union, Spain, Sudan, Switzerland, Viet Nam, Yugoslavia (28).

Hague Union

Assembly: Belgium, Benin, France, Germany, Hungary, Italy, Liechtenstein, Luxembourg, Monaco, Netherlands, Senegal, Suriname, Switzerland (13).

Conference of Representatives: Egypt, Holy See, Indonesia, Morocco, Spain, Tunisia (6).

Nice Union

Assembly: Algeria, Australia, Austria, Barbados, Belgium, Benin, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Monaco, Morocco, Netherlands, Norway, Portugal, Soviet Union, Spain, Suriname, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia (31).

Conference of Representatives: Lebanon, Tunisia (2).

Lisbon Union

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

Council: Haiti, Mexico, Portugal (3).

Locarno Union

Assembly: Austria, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Ireland, Italy, Netherlands, Norway, Soviet Union, Spain, Sweden, Switzerland, Yugoslavia (16).

PCT Union

Assembly: Australia, Austria, Barbados, Belgium, Benin, Brazil, Bulgaria, Burkina Faso, Cameroon, Canada, Central African Republic, Chad, Congo, Democratic People's Republic of Korea, Denmark, Finland, France, Gabon, Germany, Greece, Hungary, Italy, Japan, Liechtenstein, Luxembourg, Madagascar, Malawi, Mali, Mauritania, Monaco, Netherlands, Norway, Poland, Republic of Korea, Romania, Senegal, Soviet Union, Spain, Sri Lanka, Sudan, Sweden, Switzerland, Togo, United Kingdom, United States of America (45).

IPC Union

Assembly: Australia, Austria, Belgium, Brazil, Czechoslovakia, Denmark, Egypt, Finland, France,

Germany, Ireland, Israel, Italy, Japan, Luxembourg, Monaco, Netherlands, Norway, Portugal, Soviet Union, Spain, Suriname, Sweden, Switzerland, United Kingdom, United States of America (26).

TRT Union

Assembly: Burkina Faso, Congo, Gabon, Soviet Union, Togo (5).

Vienna Union

Assembly: France, Luxembourg, Netherlands, Sweden, Tunisia (5).

Budapest Union

Assembly: Australia, Austria, Belgium, Bulgaria, Czechoslovakia, Denmark, Finland, France, Germany, Hungary, Italy, Japan, Liechtenstein, Netherlands, Norway, Philippines, Republic of Korea, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America (23).

High Officials of WIPO

(Status on January 1, 1991)

Director General and Deputy Directors General of WIPO

Director General:

Dr. Arpad Bogsch

Deputy Directors General:

Lev Efremovich Kostikov
Shahid Alikhan

Notifications Concerning Treaties

WIPO Convention

Membership of the Republic of Yemen

The Director General of the World Intellectual Property Organization (WIPO) has been informed in two notes dated May 19, 1990, and May 22, 1990, of the Ministers for Foreign Affairs of the Yemen Arab Republic and the People's Democratic Republic of Yemen, that the said two States merged on May 22, 1990, into a single State called the "Republic of Yemen" and, in view of the fact that the said States were party to the Convention Establishing the World Intellectual Property Organization and were members of the World Intellectual Property Organization (WIPO), as from May 22, 1990:

the said two States are, since the said date, no longer party to the said Convention and are no longer members of the said Organization, and

from the said date, they are replaced by the Republic of Yemen, which is considered to be party to the said Convention and a member of WIPO. The contribution class of the Republic of Yemen is S.

WIPO Notification No. 151, of December 20, 1990.

**Paris Convention,
Madrid Agreement (Indications
of Source),
Madrid Agreement (Marks),
Hague Agreement,
Nice Agreement, Strasbourg Agreement,
Budapest Treaty, Locarno Agreement**

**Ceasing of the German Democratic Republic
Being a Party to Certain Treaties
Administered by WIPO**

Through the accession, effective October 3, 1990, of the German Democratic Republic to the Federal Republic of Germany, the German Democratic Republic ceased, on the said date, to be a party to the following treaties administered by WIPO:

- the Paris Convention for the Protection of Industrial Property
- the Berne Convention for the Protection of Literary and Artistic Works
- the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods
- the Madrid Agreement Concerning the International Registration of Marks
- the Hague Agreement Concerning the International Deposit of Industrial Designs
- the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks
- the Strasbourg Agreement Concerning the International Patent Classification
- the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure
- the Locarno Agreement Establishing an International Classification for Industrial Designs.

As to the applicability, in the territory that, until October 3, 1990, was the former German Democratic Republic, of the treaties listed above (to which the former German Democratic Republic was, and the Federal Republic of Germany is, a party), separate notifications will be made as soon as the required information is received by the Director General of WIPO from the Government of the Federal Republic of Germany.

Paris Notification No. 123, Madrid (Indications of Source) Notification No. 22, Madrid (Marks) Notification No. 44, The Hague Notification No. 31, Nice Notification No. 70, Strasbourg Notification No. 35, Budapest Notification No. 94, Locarno Notification No. 25, of December 20, 1990.

Madrid Agreement (Marks)

New Member of the Madrid Union

POLAND

The Government of Poland deposited, on December 14, 1990, its instrument of accession to

the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979.

The said instrument of accession contains the following declaration:

“The Republic of Poland declares that, in accordance with Article 3bis(1), the protection resulting from the international registration shall extend to the territory of the Republic of Poland only at the express request of the proprietor of the mark and that, in accordance with Article 14(2)(d) and (f), the application of the said Agreement shall be limited to marks registered from the date

on which its accession enters into force.” (*Translation*)

Poland has not heretofore been a member of the Union for the International Registration of Marks (“Madrid Union”), founded by the Madrid Agreement.

The Madrid Agreement, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979, will enter into force, with respect to Poland, on March 18, 1991. On that date, Poland will become a member of the Madrid Union.

Madrid (Marks) Notification No. 45, of December 18, 1990.

Budapest Treaty

Depositary Institutions Having Acquired the Status of International Depositary Authority (Status on January 1, 1991)

Pursuant to Rule 13.2(a) of the Regulations under the Budapest Treaty for the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the following is a list of international depositary authorities as on January 1, 1991, indicating the kinds of microorganisms that may be deposited with, and the amount of fees charged by, the said authorities.

INTERNATIONAL DEPOSITARY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
AGRICULTURAL RESEARCH SERVICE CULTURE COLLECTION (NRRL) 1815 North University Street Peoria, Illinois 61604 United States of America (See <i>Industrial Property</i> , 1981, pp. 22, 23 and 121; 1983, p. 248; 1987, p. 247.)	1. All strains of agriculturally and industrially important bacteria, yeasts, molds and <i>Actinomycetales</i> , EXCEPT: a. <i>Actinobacillus</i> (all species); <i>Actinomyces</i> (<i>anaerobic/microaerophilic</i> , all species); <i>Arizona</i> (all species); <i>Bacillus anthracis</i> ; <i>Bartonella</i> (all species); <i>Bordetella</i> (all species); <i>Borrelia</i> (all species); <i>Brucella</i> (all species); <i>Clostridium botulinum</i> ; <i>Clostridium chauvoei</i> ; <i>Clostridium haemolyticum</i> ; <i>Clostridium histolyticum</i> ; <i>Clostridium novyi</i> ; <i>Clostridium septicum</i> ; <i>Clostridium tetani</i> ; <i>Corynebacterium diphtheriae</i> ; <i>Corynebacterium equi</i> ; <i>Corynebacterium haemolyticum</i> ; <i>Corynebacterium pseudotuberculosis</i> ; <i>Corynebacterium pyogenes</i> ; <i>Corynebacterium renale</i> ; <i>Diplococcus</i> (all species); <i>Erysipelothrix</i> (all species); <i>Escherichia coli</i> (all enteropathogenic types); <i>Francisella</i> (all species); <i>Haemophilus</i> (all species); <i>Herellea</i> (all species); <i>Klebsiella</i> (all species); <i>Leptospira</i> (all species); <i>Listeria</i> (all species); <i>Mima</i> (all species); <i>Moraxella</i> (all species);	Applicable to patent cultures deposited after October 30, 1983. No fee charged for cultures on deposit or received before that date. (a) Deposit of each strain US\$ 500 (payable at the time of deposit) (b) Distribution of all released cultures 20 Checks, in US dollars, should be made payable to the Agricultural Research Service, United States Department of Agriculture. United States Department of Agriculture laboratories and designated cooperators are exempt from payment of fees.

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
NRRL (<i>continued</i>)	<p><i>Mycobacterium avium</i>; <i>Mycobacterium bovis</i>; <i>Mycobacterium tuberculosis</i>; <i>Mycoplasma</i> (all species); <i>Neisseria</i> (all species); <i>Pasteurella</i> (all species); <i>Pseudomonas pseudomallei</i>; <i>Salmonella</i> (all species); <i>Shigella</i> (all species); <i>Sphaerophorus</i> (all species); <i>Streptobacillus</i> (all species); <i>Streptococcus</i> (all pathogenic species); <i>Treponema</i> (all species); <i>Vibrio</i> (all species); <i>Yersinia</i> (all species).</p> <p>b. <i>Blastomyces</i> (all species); <i>Coccidioides</i> (all species); <i>Cryptococcus neoformans</i>; <i>Cryptococcus uniguttulatus</i>; <i>Histoplasma</i> (all species); <i>Paracoccidioides</i> (all species).</p> <p>c. All viral, Rickettsial, and Chlamydial agents.</p> <p>d. Agents which may introduce or disseminate any contagious or infectious disease of animals, humans or poultry and which require a permit for entry and/or distribution within the United States of America.</p> <p>e. Agents which are classified as plant pests and which require a permit for entry and/or distribution within the United States of America.</p> <p>f. Mixtures of microorganisms.</p> <p>g. Fastidious microorganisms which require (in the view of the Curator) more than reasonable attention in handling and preparation of lyophilized material.</p> <p>h. Phages not inserted in microorganisms.</p> <p>i. Monoclonal antibodies.</p> <p>j. All cell lines.</p> <p>k. Plasmids not inserted in microorganisms.</p> <p>2. Recombinant strains of microorganisms, strains containing recombinant DNA molecules, strains containing their own naturally occurring plasmid(s), strains containing inserted naturally occurring plasmid(s) from another host, strains containing inserted constructed plasmid(s), and strains containing viruses of any kind, excluding those already listed as nonacceptable, only if the deposit document accompanying the microbial preparation(s) includes a clear statement that progeny of the strain(s) can be processed at a Physical Containment Level of P1 or less and Biological Containment requirements meet all other criteria specified by the U.S. Department of Health and Human Services, National Institutes of Health <i>Guidelines for Research Involving Recombinant DNA Molecules</i>, December 1978 (<i>Federal Register</i>, Vol. 43, No. 247- Friday, December 22, 1978) and any subsequent revisions.</p>	
<p>AMERICAN TYPE CULTURE COLLECTION (ATCC) 12301 Parklawn Drive Rockville, Maryland 20852 United States of America</p> <p>(See <i>Industrial Property</i>, 1981, pp. 20 and 121; 1982, pp. 147 and 220; 1985, pp. 163; 1986, pp. 295 and 372; 1989, pp. 119.)</p>	<p>Algae, animal embryos, animal viruses, bacteria, cell lines, fungi, hybridomas, oncogenes, plant viruses, plasmids, plant tissue cultures, phages, protozoa, seeds, yeasts.</p> <p>The ATCC must be informed of the physical containment level required for experiments using the host vector system, as described in the 1980 National Institutes of Health <i>Guide-</i></p>	<p>(a) Storage US\$ 870 - if the right under Rule 11.4(g) to be notified of the furnishing of samples is waived 570</p> <p>(b) Issuance of a viability statement - bacteria (without plasmids) 100 - fungi (including yeast) 100</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
<p>ATCC (<i>continued</i>)</p>	<p><i>lines for Research Involving Recombinant DNA Molecules</i> (i.e., P1, P2, P3 or P4 facility). The ATCC, for the time being, will accept only those hosts containing plasmids which can be worked in a P1 or P2 facility.</p> <p>Certain animal viruses may require viability testing in an animal host, which the ATCC may be unable to provide. In such case, the deposit cannot be accepted. Plant viruses which cannot be mechanically inoculated also cannot be accepted.</p>	<ul style="list-style-type: none"> - protozoa 100 - algae 100 - animal cell cultures fee must be decided - (including hybridoma lines) on an individual basis - animal and plant viruses - bacteria (with plasmids) <p>(c) Furnishing of a sample under Rules 11.2 and 11.3 (per sample)</p> <p><i>ATCC Cultures</i></p> <p>Algae, bacteria, bacteriophages, fungi, plant tissue cultures, plasmids, protozoa, vectors and yeasts</p> <ul style="list-style-type: none"> - U.S. non-profit institutions 45 - Foreign non-profit institutions 45* - Other U.S. and foreign institutions 70 <p><i>ATCC Cell Lines and Oncogenes</i></p> <ul style="list-style-type: none"> - U.S. non-profit institutions 50 - Foreign non-profit institutions 50** - Other U.S. and foreign institutions 80 <p><i>ATCC Viruses, Animal and Plant, Rickettsiae and Chlamydiae</i></p> <ul style="list-style-type: none"> - U.S. non-profit institutions 40 - Foreign non-profit institutions 40*** - Other U.S. and foreign institutions 64 <p>Cell lines ordered in flasks, protozoa ordered in test tubes, and other deposits specially ordered in test tubes carry an additional fee of US \$35.</p> <p>The minimum invoice is US \$45. Orders received for lesser amounts will be invoiced at the minimum.</p> <p style="text-align: right;">* Subject to an additional US \$25 per culture handling and processing charge. ** Subject to an additional US \$30 per culture handling and processing charge. *** Subject to an additional US \$24 per culture handling and processing charge.</p>
<p>AUSTRALIAN GOVERNMENT ANALYTICAL LABORATORIES (AGAL) The New South Wales Regional Laboratory 1, Suakin Street Pymble, NSW 2073 Australia (See <i>Industrial Property</i>, 1988, p. 329; 1990, p. 99.)</p>	<p>Bacteria (including actinomycetes), yeasts and fungi other than known human and animal pathogens, that can be preserved without significant change to their properties by the methods of preservation in use (freezing and freeze-drying).</p> <p>Nucleic acid preparations and phages may be accepted if the depositor certifies that they pose no hazard when handled by normal laboratory procedures and the depositor supplies suitable material for preservation.</p> <p>At present, AGAL does not accept for deposit animal, plant, algal and protozoal cultures, cultures of viral, rickettsial and chlamydial agents, microorganisms which may require, in the view of the curator, special attention to handling and preparation for storage.</p>	<ul style="list-style-type: none"> (a) Storage \$ 750 (b) Issuance of a viability statement 90 (c) Furnishing of samples 60
<p>CENTRAALBUREAU VOOR SCHIMMELCULTURES (CBS) Oosterstraat 1 Postbus 273 NL-3740 AG Baarn Netherlands (See <i>Industrial Property</i>, 1981, pp. 219 and 221; 1984, pp. 148; 1985, pp. 235.)</p>	<p>Fungi, including yeasts; actinomycetes, bacteria other than actinomycetes.</p>	<ul style="list-style-type: none"> (a) Storage Hfl. 2,000 - if the depositor waives the right under Rule 11.4(g) to be notified of the furnishing of samples 1,500 (b) Issuance of a viability statement 150 (c) Furnishing of a sample - to a scientific institution 45

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
CBS (continued)		<ul style="list-style-type: none"> - in other cases 90 (d) Communication of information under Rule 7.6 40 (e) Delivering of attestation pursuant to Rule 8.2 40
<p>COLLECTION NATIONALE DE CULTURES DE MICROORGANISMES (CNCM) Institut Pasteur 28, rue du Dr Roux 75724 Paris Cédex 15 France</p> <p>(See <i>Industrial Property</i>, 1984, p. 240; 1989, p. 25.)</p>	<p>Bacteria (including actinomycetes), bacteria containing plasmids; filamentous fungi and yeasts, and viruses, EXCEPT:</p> <ul style="list-style-type: none"> - cellular cultures (animal cells, including hybridomas and plant cells); - microorganisms whose manipulation calls for physical insulation standards of P3 or P4 level, according to the information provided by the National Institutes of Health <i>Guidelines for Research Involving Recombinant DNA Molecules</i> and <i>Laboratory Safety Monograph</i>; - microorganisms liable to require viability testing that the CNCM is technically not able to carry out; - mixtures of undefined and/or unidentifiable microorganisms. <p>The CNCM reserves the possibility of refusing any microorganism for security reasons: specific risks to human beings, animals, plants and the environment.</p> <p>In the eventuality of the deposit of cultures that are not or cannot be lyophilized, the CNCM must be consulted, prior to the transmittal of the microorganism, regarding the possibilities and conditions for acceptance of the samples; however, it is advisable to make this prior consultation in all cases.</p>	<ul style="list-style-type: none"> (a) Storage <ul style="list-style-type: none"> - bacteria, fungi and yeasts, lyophilized or lyophilizable F.Fr.4,000 - all other acceptable case-by-case fee (b) Furnishing of samples (except in specific cases) (plus cost of transport) 700 (c) Issuance of a viability statement: <ul style="list-style-type: none"> - requiring a viability test (except in specific cases) 700 - in other cases 120 (d) Communication of information or issue of an attestation 250 <p>Fees are subject to Value Added Tax according to French provisions currently in force.</p>
<p>COMMONWEALTH AGRICULTURAL BUREAU (CAB), INTERNATIONAL MYCOLOGICAL INSTITUTE (CAB IMI) Ferry Lane Kew, Surrey TW9 3AF United Kingdom</p> <p>(See <i>Industrial Property</i>, 1983, p. 83; 1989, pp. 51 and 171.)</p>	<p>Fungal isolates, other than known human and animal pathogens and yeasts, that can be preserved without significant change to their properties by the methods of preservation in use.</p>	<ul style="list-style-type: none"> (a) Storage of each isolate of microorganism £ 575 (b) Issuance of a viability statement in those cases in which, in accordance with Rule 10.2, a fee may be charged 75 (c) Furnishing of a sample in accordance with Rule 11.2 or 11.3 45 (d) Delivering an attestation in accordance with Rule 8.2 15 <p>Fees paid within the United Kingdom are subject to Value Added Tax at the current rate; for details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>
<p>CULTURE COLLECTION OF ALGAE AND PROTOZOA (CCAP) INSTITUTE OF FRESHWATER ECOLOGY Windermere Laboratory Far Sawrey Ambleside, Cumbria LA22 0LP United Kingdom</p> <p>and</p> <p>DUNSTAFFNAGE MARINE LABORATORY P.O. Box 3 Oban, Argyll PA34 4AD United Kingdom</p> <p>(See <i>Industrial Property</i>, 1982, p. 239; 1986, p. 431; 1987, p. 175; 1990, p. 251.)</p>	<ul style="list-style-type: none"> (i) Freshwater and terrestrial algae and free-living protozoa (Institute of Freshwater Ecology); and (ii) marine algae, other than large seaweeds (Dunstaffnage Marine Laboratory). 	<p>Storage in accordance with the Treaty:</p> <ul style="list-style-type: none"> (a) cryopreserved strains £ 600 (b) other methods of maintenance fee to be decided on an individual basis <p>Issuance of a viability statement in those cases in which, in accordance with Rule 10.2, a fee may be charged 50</p> <p>Furnishing of a sample in accordance with Rule 11.2 or 11.3 40 (plus actual cost of carriage)</p> <p>Delivering an attestation in accordance with Rule 8.2 20</p> <p>The fees are subject to Value Added Tax where applicable; for details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
<p>DEUTSCHE SAMMLUNG VON MIKROORGANISMEN UND ZELLKULTUREN GmbH (DSM) Mascheroder Weg 1b D-3300 Braunschweig Germany</p> <p>(See <i>Industrial Property</i>, 1981, pp. 220 and 222; 1988, p. 139; 1990, pp. 71 and 249.)</p>	<p>Bacteria, including actinomycetes, fungi, including yeasts, bacteriophages, plasmids (a) in a host, (b) as an isolated DNA preparation, plant viruses, plant cell cultures. The following phytopathogenic microorganisms are not accepted for deposit:</p> <p><i>Coniothyrium fagacearum</i>; <i>Endothia parasitica</i>; <i>Gloeosporium ampelophagum</i>; <i>Septoria musiva</i>; <i>Synchytrium endobioticum</i>.</p> <p>DSM accepts for deposit only those bacteria, fungi, bacteriophages and plasmids which, pursuant to DIN 58 956 Part I (supplementary sheet 1), belong to hazard group I or II. It must be possible to process genetically manipulated strains or isolated DNA and also genetically manipulated plant viruses and plant cell cultures in accordance with Laboratory Safety Measures L1 or L2 contained in <i>Richtlinien zum Schutz vor Gefahren durch in-vitro neukombinierte Nukleinsäuren</i>, 1986 [guidelines on protection against hazards resulting from <i>in-vitro</i> recombinant nucleic acids]. Plant viruses which cannot multiply through mechanical infection of plants cannot be accepted for deposit. DSM reserves the right to refuse to accept for deposit material which in its view represents an unacceptable hazard. In all instances, it must be possible to preserve the deposited material by lyophilization or storage in liquid nitrogen without significant change.</p>	<p><i>I. Bacteria, fungi, bacteriophages, plasmids, plant viruses</i></p> <p>(a) Storage DM 1,100 – conversion of a deposit made outside the Budapest Treaty into a deposit according to the Budapest Treaty 1,100 – prolongation of the duration of the storage over the one provided by Rule 9, per year 36</p> <p>(b) Issuance of a viability statement – where a viability test is also requested 100 – on the basis of the last validity test 40</p> <p>(c) Furnishing of a sample 100</p> <p>(d) Communication of information under Rule 7.6 40</p> <p>(e) Attestation referred to in Rule 8.2 40</p> <p><i>II. Plant cell cultures</i></p> <p>(a) Storage 2,500 – conversion of a deposit made outside the Budapest Treaty into a deposit according to the Budapest Treaty 2,500 – prolongation of the duration of the storage over the one provided by Rule 9, per year 80</p> <p>(b) Issuance of a viability statement – where a viability test is also requested 200 – on the basis of the last validity test 40</p> <p>(c) Furnishing of a sample (plus current freight costs) 200</p> <p>(d) Communication of information under Rule 7.6 40</p> <p>(e) Attestation referred to in Rule 8.2 40</p> <p>The fees under (a), (b), (d) and (e) are subject to Value Added Tax (VAT), currently at the rate of 7%. Where samples are furnished, VAT will be charged only to requesting parties in Germany.</p> <p>Extra charges are payable for dispatch by air.</p>
<p>EUROPEAN COLLECTION OF ANIMAL CELL CULTURES (ECACC) Vaccine Research and Production Laboratory Public Health Laboratory Service Centre for Applied Microbiology and Research Porton Down Salisbury, Wiltshire SP4 0JG United Kingdom</p> <p>(See <i>Industrial Property</i>, 1984, p. 271; 1985, pp. 163 and 299; 1987, p. 147; 1990, p. 373.)</p>	<p>Animal cell cultures, including human cell lines, genetically modified cell lines and hybridomas that can be preserved without significant change to or loss of their properties by freezing and long-term storage; viruses capable of assay in tissue culture; plant cell suspension cultures; eukaryotic and viral recombinant DNA as naked DNA or cloned in a host organism. A statement on their possible pathogenicity to man and/or animals is required at the time of deposit. Up to and including ACDP Category 3* can be accepted for deposit.</p> <p>* Advisory Committee on Dangerous Pathogens: Categorisation of Pathogens according to Hazard and Categories of Containment ISBN 0/11/883761/3 HMSO London.</p>	<p><i>I. Cell lines, plant cell suspension cultures</i></p> <p>(a) Storage £ 750</p> <p>(b) Issuance of a viability statement 35</p> <p>(c) Furnishing of a sample (plus cost of carriage) 60</p> <p><i>II. Viruses</i></p> <p>(a) Storage 850</p> <p>(b) Issuance of a viability statement 150</p> <p>(c) Furnishing of a sample 100</p> <p><i>III. Eukaryotic and viral recombinant DNA as naked DNA or cloned into a host organism</i></p> <p>(a) Storage 400</p> <p>(b) Issuance of a viability statement 35</p> <p>(c) Furnishing of a sample (plus cost of carriage) 60</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
ECACC (<i>continued</i>)		The fees, plus Value Added Tax where applicable, are payable to the Public Health Laboratory Service Board. For details concerning the Value Added Tax liability, see <i>Industrial Property</i> , 1987, p. 203.
<p>FERMENTATION RESEARCH INSTITUTE (FRI) Agency of Industrial Science and Technology Ministry of International Trade and Industry 1-3, Higashi 1-chome Tsukuba-shi Ibaraki-ken 305 Japan</p> <p>(See <i>Industrial Property</i>, 1981, pp. 120 and 122; 1984, p. 114; 1987, p. 331; 1988, p. 139; 1989, pp. 51 and 172.)</p>	<p>Fungi, yeast, bacteria, actinomycetes, animal cell cultures and plant cell cultures, EXCEPT:</p> <ul style="list-style-type: none"> - microorganisms having properties which are or may be dangerous to human health or the environment; - microorganisms which require the physical containment level P3 or P4 for experiments, as described in the <i>Prime Minister's Guidelines for Recombinant DNA Experiments of 1986</i>. 	<p>(a) Storage:</p> <ul style="list-style-type: none"> - original deposit Yen 200,000 - new deposit 14,000 <p>(b) Attestation referred to in Rule 8.2 1,700</p> <p>(c) Issuance of a viability statement:</p> <ul style="list-style-type: none"> - if the depositor, when requesting the issuance of a viability statement, also requests a viability test 10,000 - other cases 1,700 <p>(d) Furnishing of a sample 11,000*</p> <p>(e) Communication of information under Rule 7.6 1,700</p> <p>Fees are expressed net of Value Added Tax according to Japanese provisions currently in force.</p> <p>* When furnishing a sample to a foreign institution:</p> <ul style="list-style-type: none"> - an additional 39,000 yen per package corresponding to the cost of a special container are payable for animal cell cultures; - an additional 800 yen per package corresponding to the cost of a special container are payable for other microorganisms.
<p>IMET-NATIONALE SAMMLUNG VON MIKROORGANISMEN¹ IMET-Hinterlegungsstelle Beutenbergstrasse 11 6900 Jena Germany</p> <p>(See <i>Industrial Property</i>, 1989, pp. 251.)</p> <p>¹ The status of this international depository authority, located on the territory which, before October 3, 1990, constituted the German Democratic Republic, is under review.</p>	<p>Strains of bacteria, including actinomycetes and cyanobacteria, fungi, including yeasts, unicellular and filamentous algae, bacterial viruses, plasmids <i>per se</i> or included in strains. Strains and materials constituting a danger for man's health or a hazard for the environment, or for the storage or maintenance of which the depository authority is technically not in a position, may be excluded from deposit.</p>	<p>(a) For the deposit, the issuance of a receipt and the first viability statement, a non-recurring fee of DM 1,500</p> <p>(b) For every subsequent viability statement 100</p> <p>(c) For furnishing a sample 100</p> <p>Fees must be paid in advance together with the application for the relevant service.</p>
<p>INSTITUTE OF MICROORGANISM BIOCHEMISTRY AND PHYSIOLOGY OF THE USSR ACADEMY OF SCIENCE (IBFM) Pushchino-na-Oke USSR-142292 Moscow Region Soviet Union</p> <p>(See <i>Industrial Property</i>, 1987, p. 249.)</p>	<p>Bacteria (including actinomycetes) and microscopic fungi (including yeasts), also if they are carriers of recombinant DNA, are accepted for deposit, to the exclusion of microorganisms that cause disease in man and animals and microorganisms that have a toxicogenic effect on plants or require them to be quarantined.</p>	<p>(a) For the deposit of a microorganism and its storage for 30 years Roubles 800</p> <p>(b) For each additional five-year period of storage 100</p> <p>(c) For the furnishing of a sample of a deposited microorganism 50</p> <p>The above amounts do not include mailing charges, which are invoiced separately at cost.</p> <p>Additional information concerning fees is contained in the "Regulations on the Collection of Payments"; see <i>Industrial Property</i>, 1987, p. 250.</p>
<p>IN VITRO INTERNATIONAL, INC. (IVI) 611(P) Hammonds Ferry Road Linthicum, Maryland 21090 United States of America</p> <p>(See <i>Industrial Property</i>, 1983, p. 306; 1987, pp. 24 and 248.)</p>	<p>Algae, bacteria with plasmids, bacteriophages, cell cultures, fungi, protozoa, animal and plant viruses and seeds. Recombinant strains of microorganisms will also be accepted, but IVI must be notified in advance of accepting the deposit of the physical containment level required for the host vector system, as prescribed by the National Institutes of Health <i>Guidelines</i>. At present, IVI will accept only hosts containing recombinant plasmids that can be worked in a P1 or P2 facility.</p>	<p>(a) Cultures deposited during a 12-month period:</p> <ul style="list-style-type: none"> 1 to 5 US\$ 610 each 6 to 10 550 each 11 to 15 480 each <p>(b) Samples of cultures furnished to the public:</p> <ul style="list-style-type: none"> 1 to 5 30 each 6 to 10 27.50 each 11 to 15 25 each <p>(c) Viability test 60</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
<p>KOREAN COLLECTION FOR TYPE CULTURES (KCTC) Genetic Engineering Center Korea Institute of Science and Technology 39-1, Hawolgokdong Sungbuk-gu Seoul Republic of Korea (See <i>Industrial Property</i>, 1990, p. 135.)</p>	<p>Algae, bacteria (including actinomycetes), bacteria containing plasmids, bacteriophages, cell cultures (including hybridoma lines), fungi (including yeasts), protozoa and animal and plant viruses, EXCEPT: (a) microorganisms having properties which are or may be dangerous to health or the environment; (b) microorganisms which need the special containment required for experiments.</p>	<p>(a) Storage: – original deposit Won 600,000 – new deposit 50,000 (b) Issuance of a viability statement – if the depositor requiring a viability statement has also requested a viability test 20,000 – in other cases 10,000 (c) Furnishing of a sample 50,000 (d) Issuance of an attestation under Rule 8.2 10,000 (e) Communication of information under Rule 7.6 10,000</p>
<p>KOREAN CULTURE CENTER OF MICROORGANISMS (KCCM) College of Engineering Yonsei University Sodaemun gu Seoul 120-749 Republic of Korea (See <i>Industrial Property</i>, 1990, p. 135.)</p>	<p>Bacteria, actinomycetes, fungi, yeasts, plasmids, bacteria containing plasmids, viruses, bacteriophages, EXCEPT: – hybridomas, plant tissue cultures, rickettsiae; – microorganisms liable to require viability testing that the KCCM is technically not able to carry out; – mixtures of undefined and/or unidentifiable microorganisms. The KCCM reserves the right to refuse any microorganism for security reasons: specific risks to human beings, animals, plants and the environment. In cases where a microorganism cannot be lyophilized, the KCCM must be consulted in advance about the conditions for acceptance.</p>	<p>(a) Storage: – original deposit Won 600,000 – new deposit 50,000 (b) Issuance of a viability statement – if the depositor requiring a viability statement has also requested a viability test 20,000 – in other cases 10,000 (c) Furnishing of a sample (plus cost of transport) 50,000 (d) Issuance of an attestation under Rule 8.2 10,000 (e) Communication of information under Rule 7.6 10,000</p>
<p>NATIONAL BANK FOR INDUSTRIAL MICROORGANISMS AND CELL CULTURES (NBIMCC) 125, Lenin Blvd. Block 2 Sofia Bulgaria (See <i>Industrial Property</i>, 1987, p. 363.)</p>	<p>Bacteria, actinomycetes, microscopic fungi, yeasts, microscopic algae, animal cell lines, animal viruses and microorganisms containing plasmids.</p>	<p>The deposit of a microorganism in connection with the filing of an application for an authorship certificate is free of charge. The deposit of a microorganism in connection with the filing of a patent application is subject to the following fees: (a) For the initial deposit and 30 years' storage Leva 1,000 (b) Upon prolongation of the deposit for each additional five-year period 150 (c) For the furnishing of a sample of a deposited strain of microorganism 100</p>
<p>NATIONAL COLLECTION OF AGRICULTURAL AND INDUSTRIAL MICROORGANISMS (NCAIM) Department of Microbiology and Biotechnology University of Horticulture and the Food Industry Somlói út 14-16 H-1118 Budapest Hungary (See <i>Industrial Property</i>, 1986, pp. 203 and 432.)</p>	<p>Bacteria (including <i>Streptomyces</i>) except obligate human pathogenic species (e.g., <i>Corynebacterium diphtheriae</i>, <i>Mycobacterium leprae</i>, <i>Yersinia pestis</i>, etc.). Fungi, including yeasts and molds, except some pathogens (<i>Blastomyces</i>, <i>Coccidioides</i>, <i>Histoplasma</i>, etc.), as well as certain basidiomycetous and plant pathogenic fungi which cannot be preserved reliably. Apart from the above-mentioned, the following may not, at present, be accepted for deposit: – viruses, phages, rickettsiae, – algae, protozoa, – cell lines, hybridomes.</p>	<p>(a) Storage of the microorganisms in accordance with Rule 9.1 Ft.15,000 (b) Issuance of an attestation in accordance with Rule 8.2 500 (c) Issuance of a viability statement, except in the cases provided for under Rule 10.2(e) 1,500 (d) Furnishing of a sample in accordance with Rule 11.2 or 11.3 (plus cost of transport) 2,000 (e) Communication of information under Rule 7.6 500</p>
<p>NATIONAL COLLECTION OF FOOD BACTERIA (NCFB) AFRC Institute of Food Research Reading Laboratory Shinfield Reading RG2 9AT United Kingdom (See <i>Industrial Property</i>, 1990, p. 55.)</p>	<p>Bacteria, including actinomycetes, that can be preserved without significant change to their properties by liquid nitrogen freezing or by lyophilization, and which are allocated to a hazard group no higher than Group 2 as defined by the UK Advisory Committee on Dangerous Pathogens (ACDP) (1984). Plasmids, including recombinants, either (i) cloned into a bacterial or actinomycete host, or</p>	<p>(a) Storage £ 350 (b) Issuance of viability statement 50 (c) Furnishing of a sample (plus cost of carriage) 30 Where applicable, charges are subject to Value Added Tax at the current rate. For details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
NCFB (<i>continued</i>)	<p>(ii) as naked DNA preparations.</p> <p>As regards (i), above, the hazard category of the host with or without its plasmid must be no higher than ACDP Group 2. As regards (ii), above, the phenotypic markers of the plasmid must be capable of expression in a bacterial or actinomycete host and must be readily detectable. In all cases, the physical containment requirements must not be higher than level II as defined by the UK Advisory Committee on Genetic Manipulation (ACGM), Guidance Note 15, and the deposited material must be capable of being preserved without significant change to its properties by liquid nitrogen freezing or lyophilization.</p> <p>Bacteriophages that have a hazard rating and containment requirements no greater than those cited above and which can be preserved without significant change to their properties by liquid nitrogen freezing or lyophilization.</p> <p>Notwithstanding the foregoing, the NCFB reserves the right to refuse to accept any material for deposit which, in the opinion of the Curator, presents an unacceptable hazard or is technically too difficult to handle.</p>	
<p>NATIONAL COLLECTION OF TYPE CULTURES (NCTC) Central Public Health Laboratory 61 Colindale Avenue London NW9 5HT United Kingdom</p> <p>(See <i>Industrial Property</i>, 1982, pp. 219 and 220.)</p>	<p>Bacteria that can be preserved without significant change to their properties by freeze-drying and which are pathogenic to man and/or animals.</p>	<p>(a) Storage £ 250</p> <p>(b) Issuance of a viability statement, where a fee may be charged 25</p> <p>(c) Furnishing of a sample in accordance with Rule 11.2 or 11.3 40</p> <p>Fees paid within the United Kingdom are subject to Value Added Tax at the current rate; for details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>
<p>NATIONAL COLLECTION OF YEAST CULTURES (NCYC) AFRC Institute of Food Research Norwich Laboratory Colney Lane Norwich NR4 7UA United Kingdom</p> <p>(See <i>Industrial Property</i>, 1982, pp. 24 and 26; 1988, p. 265; 1990, p. 25.)</p>	<p>Yeasts other than known pathogens that can be preserved without significant change to their properties by freeze-drying or, exceptionally, in active culture.</p>	<p>(a) Storage £ 350</p> <p>(b) Issuance of a viability statement, where a fee may be charged 50</p> <p>(c) Furnishing of a sample in accordance with Rule 11.2 or 11.3 (plus cost for postage and packing for destinations outside the United Kingdom) 30</p> <p>Fees paid within the United Kingdom are subject to Value Added Tax at the current rate; for details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>
<p>NATIONAL COLLECTIONS OF INDUSTRIAL AND MARINE BACTERIA LTD. (NCIMB) 23 St. Machar Drive Aberdeen AB2 1RY Scotland United Kingdom</p> <p>(See <i>Industrial Property</i>, 1982, pp. 121, 122 and 275; 1985, p. 25; 1986, p. 371; 1988, pp. 39 and 293; 1989, p. 24; 1990, p. 25.)</p>	<p>(a) Bacteria, including actinomycetes, that can be preserved without significant change to their properties by liquid nitrogen freezing or by freeze-drying (lyophilization), and which are allocated to a hazard group no higher than Group 2 as defined by the UK Advisory Committee on Dangerous Pathogens (ACDP).</p> <p>(b) Plasmids, including recombinants, either</p> <p>(i) cloned into a bacterial or actinomycete host, or</p> <p>(ii) as naked DNA preparations.</p> <p>As regards (i), above, the hazard category of the host with or without its plasmid must be no higher than ACDP Group 2.</p> <p>As regards (ii), above, the phenotypic markers of the plasmid must be capable of expression in a bacterial or actinomycete host and must be readily detectable. In all cases, the physical containment requirements must not be</p>	<p>(a) Storage £ 350</p> <p>(b) Issuance of a viability statement, where a fee may be charged 50</p> <p>(c) Furnishing of a sample in accordance with Rule 11.2 or 11.3 (plus actual cost of carriage) 30</p> <p>Where statutory provisions require NCIMB to obtain a license or certificate prior to accepting a deposit of seeds, the actual cost of obtaining any such license or certificate will be charged to the depositor.</p> <p>The fees are payable to the National Collections of Industrial and Marine Bacteria Ltd. Charges paid by individuals or organizations within the United Kingdom are subject to Value Added Tax at the current rate for carriage charges only. For details concerning the Value Added Tax liability, see <i>Industrial Property</i>, 1987, p. 203.</p>

INTERNATIONAL DEPOSITORY AUTHORITY	KINDS OF MICROORGANISMS THAT MAY BE DEPOSITED	FEES
NCIMB (<i>continued</i>)	<p>higher than level III as defined by the UK Advisory Committee on Genetic Manipulation (ACGM) and the properties of the deposited material must not be changed significantly by liquid nitrogen freezing or freeze-drying.</p> <p>(c) Bacteriophages that have a hazard rating and containment requirements no greater than those cited in (a) or (b), above, and which can be preserved without significant change to their properties by liquid nitrogen freezing or by lyophilization.</p> <p>(d) Yeasts (including those containing plasmids) that can be preserved without significant change to their properties by liquid nitrogen freezing or by freeze-drying, that are allocated to a hazard group no higher than ACDP Group 2, and which require physical containment no higher than level II ACGM.</p> <p>(e) Seeds that can be dried to a low moisture content and/or stored at low temperatures without excessive impairment of germination potential. The right is reserved to refuse the deposit of seeds where dormancy is exceptionally difficult to break.</p> <p>The acceptance of seeds by NCIMB and the furnishing of samples thereof are subject at all times to the provisions of the Plant Health (Great Britain) Order 1987, including any future amendments or revisions of that Order.</p> <p>NCIMB must be notified in advance of all intended deposits of seeds so that it may ensure that all relevant regulations are complied with. Any seeds received without prior notification may be destroyed immediately.</p> <p>Notwithstanding the foregoing, NCIMB reserves the right to refuse to accept any material for deposit which, in the opinion of the Curator, presents an unacceptable hazard or is technically too difficult to handle.</p> <p>In exceptional circumstances, NCIMB may accept deposits which can only be maintained in active culture, but acceptance of such deposits, and relevant fees, must be decided on an individual basis by prior negotiation with the prospective depositor.</p>	
<p>USSR RESEARCH INSTITUTE FOR ANTIBIOTICS OF THE USSR MINISTRY OF THE MEDICAL AND MICROBIOLOGICAL INDUSTRY (VNIIA) Nagatinskaya Street 3-a USSR-113105 Moscow Soviet Union</p> <p>(See <i>Industrial Property</i>, 1987, p. 250.)</p>	<p>Bacteria (including actinomycetes) and microscopic fungi (including yeasts) for essentially medical purposes are accepted for deposit, to the exclusion of microorganisms that cause disease in man and animals and microorganisms that are toxicogenic for plants or require them to be quarantined.</p>	<p>(a) For the deposit of a microorganism and its storage for 30 years Roubles 800</p> <p>(b) For each additional five-year period of storage 100</p> <p>(c) For the furnishing of a sample of a deposited microorganism 50</p> <p>The above amounts do not include mailing charges, which are invoiced separately at cost.</p> <p>Additional information concerning fees is contained in the "Regulations on the Collection of Payments"; see <i>Industrial Property</i>, 1987, p. 250.</p>
<p>USSR RESEARCH INSTITUTE FOR GENETICS AND INDUSTRIAL MICROORGANISM BREEDING OF THE USSR MINISTRY OF THE MEDICAL AND MICROBIOLOGICAL INDUSTRY (VNII Genetika) Dorozhnaya Street No. 8 USSR-113545 Moscow Soviet Union</p> <p>(See <i>Industrial Property</i>, 1987, p. 248.)</p>	<p>Bacteria (including actinomycetes) and microscopic fungi (including yeasts) for essentially industrial and non-medical purposes are accepted for deposit, to the exclusion of microorganisms that cause disease in man and animals and microorganisms that have a toxicogenic effect on plants or require them to be quarantined.</p>	<p>(a) For the deposit of a microorganism and its storage for 30 years Roubles 800</p> <p>(b) For each additional five-year period of storage 100</p> <p>(c) For the furnishing of a sample of a deposited microorganism 50</p> <p>The above amounts do not include mailing charges, which are invoiced separately at cost.</p> <p>Additional information concerning fees is contained in the "Regulations on the Collection of Payments"; see <i>Industrial Property</i>, 1987, p. 250.</p>

Activities of the International Bureau

The World Intellectual Property Organization in 1990— Overview of Activities and Developments

Introduction

For the World Intellectual Property Organization (WIPO), the year 1990 was characterized by significant progress and developments in several important areas of its work:

- the continuing strong pace of the Organization's development cooperation program in favor of developing countries, notwithstanding some signs that extra-budgetary resources for the program might decrease in the future;

- the completion of preparations for the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (Patent Law Treaty) which will be held in 1991;

- the completion of work on the Model Provisions for Legislation in the Field of Copyright;

- the fulfillment of the requirement of five ratifications or accessions for the entry into force of the Treaty on the International Registration of Audiovisual Works;

- the starting of new activities in the area of the setting of norms for the protection and enforcement of intellectual property rights;

- the highly satisfactory increase in the international registration activities in respect of patents, marks and industrial designs;

- the revision or preparation of regulations under the Patent Cooperation Treaty, the Madrid Agreement Concerning the International Registration of Marks and the Madrid Protocol;

- further accessions of States to various treaties administered by the Organization.

Development Cooperation Program

The main objectives of WIPO's development cooperation program are the following: assisting developing countries in the establishment or modernization of intellectual property systems suited to their development goals through developing human resources; facilitating the creation or improvement of national or regional legislation and their enforce-

ment; encouraging domestic inventive and creative artistic activity and the exploitation of its results; facilitating the acquisition of foreign patented technology, and the access to foreign works protected by copyright; facilitating the access to and the use of technological information contained in patent documents.

WIPO's training activities are meant to provide or enhance professional skills and capacities for the effective administration and use of the intellectual property system. In 1990, training, in various forms, was given to government officials and personnel from the technical, legal, industrial and commercial sectors.

One form of training consisted of study attachments abroad and on-the-job supervision by international experts. This form of training was given by nearly 100 international experts deployed for varying periods of time in developing countries with, in many cases, repeated visits to the same countries.

Training was also provided in the form of courses, study visits, workshops and seminars. In line with the wish of member States which are developing countries, most of such events were organized by WIPO in developing countries, and more experts from developing countries were invited as speakers or teachers in 1990 than in 1989. In all, a total of about 150 such events were organized at the national, subregional, regional and global levels. They provided basic knowledge of industrial property or copyright, or specialized information, both theoretical and practical, in areas such as search and examination with respect to patents and trademarks, computerization of industrial property office administration, the use of computerized patent information databases, the administration of the collection and distribution of copyright royalties and the promotion of innovative activities. Most of this kind of training took place in developing countries themselves and allowed large numbers of people from the government and private sectors of those countries to learn about the subject of intellectual property and its role in the development process. In all, 43 developing countries and five intergovernmental organizations hosted or co-organized (with WIPO) those events.

Their contribution was in funds or in kind. Over 5,000 men and women from those countries and organizations attended as participants.

A precondition for ensuring optimal benefits from the use of the intellectual property system by a country is the existence of appropriate national legislation. WIPO thus continued in 1990 to lay emphasis on the advice and assistance it gives to developing countries in the field of legislation. WIPO prepared draft laws and regulations which, depending on the country in question, dealt with one or more aspects of intellectual property, or commented on drafts prepared by the governments of the countries themselves. In all, some 50 countries benefited from such advice. A number of governments informed WIPO that the executive or legislative branches had approved laws or regulations which were based on drafts drawn up by the International Bureau of WIPO or commented upon by it.

Missions were undertaken to some 80 developing countries. Those missions, comprising WIPO officials and outside consultants employed by WIPO for the purpose, provided, *inter alia*, advice to government administrations on improvements to management of industrial property offices, on the acquisition and use of computers and other equipment and documentation, on the setting up of organizations for collective administration of rights under copyright law, as well as on the provision of better patent information services to the public. In planning and implementing such missions in a given country, WIPO relied, as in the past, on the government of that country for the identification of its needs and for guidance in relation to particular local conditions. In return, WIPO offered expertise blended with experience gained from practical knowledge of the situation in other countries. This ensured that the advice and assistance given by WIPO were appropriate to the country in question.

In seeking to help developing countries in encouraging domestic inventive activity, WIPO offered advice in the drafting of legislative provisions for the establishment of suitable institutional arrangements in favor of inventors, authors and other creators and organized conferences and seminars to discuss policy measures designed to support their endeavors. Moral recognition of their achievements remains a major source of satisfaction; WIPO continued therefore with its WIPO Gold Medal Award scheme for exceptional work done by inventors and creators, mainly in the context of special exhibitions.

WIPO continued to promote a dialogue between intellectual property administrations and their users, primarily in the non-government sectors. Such a dialogue was often arranged in the form of participation by both sides in discussions provided for that purpose in the seminars and symposia organized by WIPO.

As far as encouraging the effective use of the vast resource of technological information contained in patent documentation was concerned, there was a continuing substantial demand for WIPO's free state-of-the-art search service for developing countries. Approximately 500 search reports and copies of 3,000 patent documents were furnished to requesting governments and institutions in developing countries in the course of the year.

The Director General participated in September in the important Second United Nations Conference on the Least Developed Countries in Paris where he made a statement. In that statement, he described WIPO's contributions to the least developed countries in four areas: reducing their financial burden through special arrangements in respect of their contributions to WIPO as member States; developing human resources; intensifying cooperation between least developed countries and other developing countries; facilitating the transfer of technology through the strengthening of legal and institutional arrangements which safeguard property rights and which promote licensing of technology and know-how. He announced that WIPO would, in the near future, institute a new program for developing countries, including least developed countries, whereby they would receive equipment that would permit exploitation of the latest computer hardware and software in accessing technological information contained in patent documentation.

WIPO's development cooperation program had a full, fruitful and substantial year. Participation by countries, whether as donors or beneficiaries (or both), was almost universal: 500 developing countries and eight intergovernmental organizations benefited from that program while generous support, both in funds and in kind (expert services, equipment, documentation, training facilities, hosting of meetings), was given by 62 developing and industrialized countries and eight intergovernmental and non-governmental organizations.

The following countries and intergovernmental organizations made substantial funds available to WIPO for its development cooperation program: Finland, France, Germany, Japan and Sweden through funds-in-trust, and the United Nations Development Programme (UNDP) through interregional, regional and country projects.

WIPO continued its close cooperation with a number of intergovernmental organizations whose member States are comprised entirely of developing countries, in particular those organizations dealing with one or more aspects of intellectual property.

During the sessions of the Governing Bodies in September and October, numerous delegations of member States underlined the importance of the development cooperation program and expressed their satisfaction with the activities which had been carried out.

In the June 1990 session of the UNDP Governing Council, there was a review, *inter alia*, of the question of the role of specialized agencies (such as WIPO) as executing agencies of UNDP-financed projects as well as the related question of the support-cost reimbursement arrangements to take effect in 1992. The decisions of UNDP arising from that review, combined with an expected relative stagnation of resources made available by UNDP to developing countries (particularly the middle-income developing countries) for programs and projects in the field of intellectual property, and the decrease in the value of the dollar (in which the support-cost reimbursements are paid) vis-à-vis the Swiss franc (in which the support costs are incurred) will make it necessary, for maintaining the present level of activities in respect of developing countries, that sources other than UNDP be found if WIPO is expected to respond adequately to the needs and requests of developing countries, particularly the least-developed among them.

Setting of Norms and Standards

The objective in this area of work is to make the protection and enforcement of intellectual property rights more effective throughout the world with due regard to the social, cultural and economic goals of the different countries.

Significant work was accomplished during the year in several fields of intellectual property.

First, preparations for the Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as far as Patents are Concerned (Patent Law Treaty) were completed. That Conference will be held from June 3 to 28, 1991, in The Hague at the invitation of the Government of the Netherlands. For all developing countries party to the Paris Convention (64, as of January 1, 1991), the cost of travel and stay throughout the duration of the Conference of one representative per country will be borne by WIPO.

Second, about two years of intergovernmental discussions in WIPO culminated in the finalization of work on the Model Provisions for Legislation in the Field of Copyright. The Model Provisions, which are expected to be published in the first half of 1991, deal with, *inter alia*, the following matters: the subject matter of protection, rights protected, limitations of economic rights, duration of protection, ownership of rights, transfer of rights (including licenses and waiving the exercise of moral rights), collective administration of economic rights, obligations concerning equipment used for acts covered by protection, as well as measures, remedies and sanctions in case of piracy and other infringements.

The Model Provisions are intended to inspire and assist governments and legislators in their efforts to

improve their copyright laws and to harmonize, to the extent possible, such laws throughout the world.

Third, in September, the International Bureau published a study on the collective administration of copyright and neighboring rights which provides advice on the establishment and operation of collective administration organizations.

Fourth, during the year, five countries deposited instruments of ratification of, or accession to, the Treaty on the International Registration of Audiovisual Works, thereby fulfilling the requirement for the entry into force of the Treaty. The five countries are Austria, Burkina Faso, Czechoslovakia, France and Mexico. The Treaty will enter into force in February 1991. Preparations have begun for the establishment of the Registry of Audiovisual Works, as a unit of the International Bureau of WIPO, in Klosterneuburg, Austria.

Fifth, the Committee of Experts on the Settlement of Intellectual Property Disputes Between States held two sessions in February and October. In the first session, discussions were based on a memorandum prepared by the International Bureau which identified the main issues to be solved in a possible treaty on the settlement of such disputes and set out some of the principal considerations in favor of and against possible approaches to those issues. In the second session, discussions were based on two documents prepared by the International Bureau dealing with principles for such a draft treaty and with provisions on dispute settlement in treaties in the field of intellectual property. The following matters were, in particular, discussed: subject matter of disputes, the parties to disputes, disputes for which the proposed treaty would not apply, consultations, good offices, conciliation and mediation, panel procedure, reporting and arbitration. The Committee of Experts decided to meet again in 1991 to consider the texts of provisions, to be prepared by the International Bureau, which could be included in such a draft treaty.

Sixth, in June, the Committee of Experts on the Harmonization of Laws for the Protection of Marks held its second session. Discussions were based on the draft Trademark Law Treaty, prepared by the International Bureau. The provisions discussed concerned the establishment of a Union of the Contracting Parties, definitions of the main terms used in the draft Treaty, signs which can be registered as marks, the absolute grounds for refusal of registration, the grounds on which registration may be refused on the basis of a conflict with a prior right, the conditions and effects of registration of marks for goods and of marks for services, the requirement to use the International Classification adopted under the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, the conditions for obtaining a filing date, the conditions

that a Contracting Party may require an application to satisfy, the requirement of use as a condition of registration, the obligation on the part of a Contracting Party to notify an applicant of the grounds for the refusal of registration and to give the applicant an opportunity to make observations thereon, the establishment of time limits for the expeditious processing of applications, the publication of applications and registrations and the circumstances in which changes may be requested in registrations. It was agreed that the International Bureau should prepare a revised version of the draft Treaty for the next session of the Committee of Experts, to be held in 1991, taking into account the observations made during the second session.

Seventh, in May and June, the Committee of Experts on the International Protection of Geographical Indications held its first session in Geneva. Discussions were based on a document prepared by the International Bureau entitled "The Need for a New Treaty and its Possible Contents." That document contained an historical analysis of the basic concepts and terminology in relation to the protection of geographical indications, the existing multilateral treaties for the protection of geographical indications and the work previously undertaken within the framework of WIPO towards the adoption of new treaty provisions. It also outlined the perceived shortcomings of the existing multilateral treaties and investigated possible approaches that might be adopted in a new multilateral treaty, particularly in relation to the questions of the subject matter of protection, the conditions for according protection, the scope of protection, enforcement mechanisms, the possibility of a mechanism for the settlement of disputes and the establishment of a new international registration system. The Committee decided that the International Bureau should prepare a preliminary draft of a treaty, which should be submitted to a further session of the Committee and should provide alternatives in all those cases where the Committee had not yet reached agreement.

Eighth, in addition to the new activities described above in respect of norm and standard setting, work had also been started, during the year, by the International Bureau and external consultants engaged for that purpose, on the preparation of studies relating to the role of intellectual property in the field of franchising, on artificial intelligence, on individual (as distinguished from collective) contracts assigning or licensing rights in the field of copyright, on character merchandizing and on insurance against the risks of litigation concerning the validity of patents.

Revision of the Paris Convention for the Protection of Industrial Property

In November, the Assembly of the Paris Union decided that it would review, in September and

October 1991, further procedural steps relating to the conclusion of the Diplomatic Conference on the Revision of the Paris Convention.

International Registration Activities

The number of international registrations under the Patent Cooperation Treaty (PCT), the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Deposit of Industrial Designs confirmed the healthy growth in each of the three registration systems. The growth in 1990, compared to 1989, was 28% in the PCT system, 14% in the Madrid system and 7% in the Hague system. This growth made necessary new computerization measures, some of which became operational already in 1990, while others were being further elaborated or refined.

Patent Cooperation Treaty

Greece and Poland deposited instruments of accession to the PCT in July and September, respectively, bringing the total number of Contracting Parties to the PCT to 45.

In 1990, the number of record copies of international applications received by the International Bureau amounted to 19,159, 28% more than in 1989. The average number of Contracting States (to the PCT) designated per international application was 21. Thus, the international applications replaced over 400,000 national applications.

In January, WIPO credited to Contracting States concerned their share of the first yearly installment, for 1990, of the reimbursement of the PCT deficit-covering contributions paid by them.

Also in January, a meeting of all the International Searching and Preliminary Examining Authorities under the PCT was held in Geneva. The meeting considered reports by the said authorities concerning their practice and experience as International Searching and/or International Preliminary Examining Authorities. The meeting discussed the revision of the Guidelines for the two kinds of authorities and considered the desirability to amend certain provisions of the PCT Regulations concerning Chapter II of the PCT.

In July, September and December, the PCT Committee for Administrative and Legal Matters met to consider amendments to the PCT Regulations. The proposed amendments are expected to be submitted to the PCT Assembly for adoption in 1991. The objective of the amendments is to further streamline the procedures under the PCT to facilitate the work of applicants and of the offices and authorities concerned.

During the period covered by this report, the International Bureau started the development of a document-imaging and computer-aided publishing system for PCT operations, using state-of-the-art technology, in particular optical disc technology. The system will provide improved file storage and access, as well as improved organization of workflow and improved production of the *PCT Gazette* and PCT pamphlets.

The International Bureau, in cooperation with the European Patent Office, started the production of CD-ROMs (Compact Disc Read Only Memory) containing the PCT pamphlets published in 1990. Such CD-ROMs will greatly reduce the cost for industrial property offices, especially those in developing countries, in the efficient and rapid storage of and access to patent documents and information.

The PCT Assembly, which met in September and October, decided that each of the International Searching or Preliminary Examining Authorities and each of the other national offices that chose to receive the PCT pamphlets in CD-ROMs instead of paper or microfilm copies would be able to request the International Bureau to provide it with a free CD-ROM work station (a station consists of a micro-computer with a CD-ROM reader, a high resolution graphic screen and a laser printer).

Madrid (International Registration of Marks) Agreement

Poland deposited its instrument of accession to the Madrid Agreement in December 1990, bringing the total number of States party to the Agreement to 29.

In 1990, the number of international trademark registrations received by the International Bureau was 17,376, an increase of 16% over that of 1989, while the number of renewals was 4,800, an increase of 5% compared to 1989. The average number of countries covered by each international registration being nine, the international registrations effected in 1990 replaced some 200,000 national registrations.

In March and November, the Working Group on the Application of the Madrid Protocol of 1989 held two sessions with the aim of preparing new Regulations which would apply both under the Madrid Agreement and under the Madrid Protocol once the Madrid Protocol enters into force. Further sessions of the Working Group will be convened in 1991.

By the end of the year, computer equipment and software were installed that will enable the archiving of the files of the International Register of Marks on optical disks and that will provide for the computerized printing of the monthly gazette *Les Marques internationales* and of notifications of renewals and modifications of international marks as well as of extracts from the International Register of Marks.

In September and October, the Madrid Assembly approved the implementation of the ROMARIN project by the International Bureau. The said project would lead to the creation of two CD-ROMs containing data from the International Trademark Register on the textual and figurative elements of each international registration, together with the accompanying search indexes. This project would enable all member States of the Madrid Union to have equal and easy access to the data on the Register via those CD-ROMs since they will each receive, in 1991, a CD-ROM work station.

The Hague (International Deposit of Industrial Designs) Agreement

In 1990, the number of industrial design deposits and renewals received by the International Bureau was 4,345, an increase of 7% over that of 1989. As this growth is expected to continue in the foreseeable future, the International Bureau began plans for computerization of the operations during the year.

Locarno Union

The Assembly of the Locarno Union (for the International Classification of Industrial Designs) approved the creation of a new service to be provided, for a fee, by the International Bureau, that is, the provision of classification reports based on the said Classification.

New Accessions to Treaties

As far as the work of WIPO in promoting the worldwide recognition of and respect for intellectual property was concerned, ratifications and accessions to the following treaties administered by WIPO (except for the Treaty on the International Registration of Audiovisual Works, the PCT and the Madrid (International Registration of Marks) Agreement, mentioned above) took place in 1990 in respect of the following countries:

Singapore acceded to the WIPO Convention in September, bringing the total number of States party to the Convention to 125; Bangladesh acceded to the Paris Convention in December, bringing the total number of States members of the Paris Union to 100; Malaysia acceded to the Berne Convention in June, bringing the total number of States members of the Berne Union to 84; Poland acceded to the Madrid Agreement for the International Registration of Marks in December, bringing the total number of States members of the Madrid Union to 29; Austria and the Federal Republic of Germany adhered,

respectively, to the Locarno Agreement Establishing an International Classification for Industrial Designs in June and July, bringing the total number of States members of the Locarno Union to 17; Australia acceded to the Brussels Convention Relating to the

Distribution of Programme-Carrying Signals Transmitted by Satellite in July, bringing the total number of Contracting States to 13; Egypt ratified the Washington Treaty on Intellectual Property in Respect of Integrated Circuits (not yet in force) in July.

WIPO Meetings

Paris Union

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions

Second Part of the Eighth Session
(Geneva, October 29 to November 9, 1990)

NOTE*

The Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (hereinafter referred to as "the Committee of Experts") held the second part of its eighth session in Geneva from October 29 to November 9, 1990.¹

The following States members of the Paris Union were represented at the session: Algeria, Australia, Austria, Belgium, Brazil, Cameroon, Canada, China, Côte d'Ivoire, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Finland, France, Germany, Ghana, Guinea, Hungary, Indonesia, Iran (Islamic Republic of), Ireland, Israel, Italy, Japan, Kenya, Libya, Madagascar, Mexico, Netherlands, New Zealand, Nigeria, Norway, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Soviet Union, Spain, Sweden, Switzerland, Tunisia, United Kingdom, United States of America, Viet Nam (46).

The following States members of WIPO were represented by observers: Chile, India, Peru, Swaziland (4). Representatives of five intergovernmental organizations and 26 non-governmental organizations also participated in an observer capacity. The list of participants follows this Note.

The Committee of Experts considered the following 23 questions:

- (i) Administrative Revocation;
- (ii) Rights Conferred by the Patent;
- (iii) Prior User;

- (iv) Extent of Protection and Interpretation of Claims;
- (v) Term of Patent;
- (vi) Enforcement of Rights;
- (vii) Reversal of Burden of Proof;
- (viii) Obligations of the Right Holder;
- (ix) Remedial Measures Under National Legislation;
- (x) Assembly;
- (xi) International Bureau;
- (xii) Regulations;
- (xiii) Requirement of Unanimity for Amending Certain Rules;
- (xiv) Settlement of Disputes;
- (xv) Revision of the Treaty;
- (xvi) Protocols;
- (xvii) Becoming Party to the Treaty;
- (xviii) Entry into Force of the Treaty;
- (xix) Reservations;
- (xx) Special Exceptions;
- (xxi) Denunciation of the Treaty;
- (xxii) Languages of the Treaty; Signature;
- (xxiii) Depositary.

The discussions of the second part of the eighth session of the Committee of Experts were based, in addition to the documents referred to on pages 297 and 298 of the October 1990 issue of *Industrial Property*, on the following documents: "Draft Articles 18, 20 and 22" (proposal by the Netherlands) (document HL/CE/VIII/13 Rev.); "Draft Article 21" (proposal by France) (document HL/CE/VIII/16 Rev.); "Draft Article 24" (proposal by Germany) (document HL/CE/VIII/27); "Draft Article 19(3)(a)(i)" (proposal by the Netherlands) (document HL/CE/VIII/28); "Draft Articles 25, 31, 32 and 34" (proposal by Italy) (document HL/CE/VIII/29); "Draft Articles 25(3) and (4) and 31(1)(ii)" (Note by the International Bureau) (document HL/CE/VIII/30).

* Prepared by the International Bureau.

¹ For Notes on the first, second, third, fourth, the two parts of the fifth, sixth and seventh sessions and the first part of the eighth session, see *Industrial Property*, 1985, p. 267; 1986, p. 309; 1987, p. 204; 1988, pp. 179 and 358; 1989, pp. 53 and 269; 1990, pp. 140 and 297.

The Committee of Experts discussed the following questions:

Article 18: Administrative Revocation

In addition to the text of Article 18, as elaborated by the International Bureau, discussions were based on texts proposed by the Delegations of the Netherlands and the United States of America; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Administrative Revocation] (a) If a Contracting Party requires substantive examination, [Alternative A: any third party] [Alternative B: any person] shall have the right to request the Office of that Contracting Party to revoke, in whole or in part, a patent that the Office has granted, at least on the ground that, because of one or several given printed publications, the conditions of novelty or inventive step are not satisfied.

(b) A request for revocation shall be presentable during a period to be fixed by the Contracting Party that shall commence from the publication of the patent and that shall not be less than six months.

(c) No request for revocation shall be presentable if it is based only on formal grounds.

(d) Any third party requesting revocation and the owner of the patent shall be given adequate opportunity to present their arguments to the Office before a decision is made in respect of the request for revocation, except that a Contracting Party shall not be required to give such an opportunity where revocation is requested by the owner of the patent.

(2) [Prohibition of Pre-grant Opposition] No Contracting Party shall allow any party to oppose, before its Office, the grant of patents.”

[TEXT PROPOSED BY THE DELEGATION OF THE NETHERLANDS]

“(1) [Administrative Revocation] (a) If a Contracting Party requires substantive examination, any person shall have the right to request the competent Office (-) to revoke, in whole or in part, a patent that the Office has granted, at least on the ground that, because of one or several given publications, the conditions of novelty or inventive step are not satisfied.

(b) A request for revocation shall be presentable during a period to be fixed by the Contracting Party that shall commence from the publication of the grant of the patent and that shall not be less than three months.

(c) No request for revocation may be based on grounds of non-compliance with formal or procedural requirements.” (Document HL/CE/VIII/13, page 3)

“(d) any party requesting revocation shall have at least one opportunity to present full arguments to the Office relating to the permissible grounds for revocation. The owner of the patent shall have at least one opportunity to respond to all arguments and grounds for revocation before a decision is made in respect of the request for revocation. The decision of the Office may only be based on grounds or evidence of which the parties to the proceedings have had an opportunity to present their arguments.” (Document HL/CE/VIII/13 Rev., page 2)

[TEXT PROPOSED BY THE DELEGATION OF THE UNITED STATES OF AMERICA]

“(1)(d) Any third party requesting revocation shall have at least one opportunity to present full arguments to the Office relating to the permissible ground(s) for revocation. The owner of the patent shall have an opportunity to respond to all arguments and grounds made for revocation before a decision is made in respect of the request for revocation including the case where the revocation proceeding is invoked by the patent owner.” (Document HL/CE/VIII/14, page 6)

The portion of the report of the Committee of Experts concerning the discussion on Article 18 reads as follows:

“Paragraph (1)(a). The Delegation of the Netherlands presented its proposal contained in document HL/CE/VIII/13 to clarify the wording of paragraph (1)(a) as proposed by the International Bureau. The Delegation first stated that the use of the words ‘any person’ in its proposal meant that it preferred Alternative B proposed by the International Bureau, in other words that an administrative revocation could also be requested by the patent owner. It added that replacing the words ‘Office of that Contracting Party,’ proposed by the International Bureau, by the term ‘competent Office’ was intended to enable a regional office to take the revocation decision. The Delegation finally explained that deletion of the word ‘printed’ from the text proposed by the International Bureau (‘given printed publications’) was intended to give more flexibility and clarity since processes now existed to give a tangible form to a content other than those deriving from the traditional concept of printed matter. For example, an offset reproduction should be included in the concept of publication, but not making available to the public the file that contained the application.

The proposals by the Netherlands concerning the adoption of Alternative B proposed by the International Bureau and the use of the term ‘competent Office’ was supported by all those delegations that spoke on those items.

The proposal by the Netherlands concerning the deletion of the word ‘printed’ in the expression ‘given printed publications,’ proposed by the International Bureau, was supported by the Delegations of Japan, Germany, Austria, Canada,

Sweden, Switzerland, Finland, Norway and Hungary. The Delegation of Norway considered that the concept of 'given publications' could be specified under Rule 7, it being understood that it was to cover paper publications available to the public.

The Delegation of the United States of America held that the deletion of the word 'printed' could raise problems since it was tantamount to broadening the scope of the information to be submitted to an office in a request for revocation. It added that the concept of 'given printed publications' was important since it implied both that the publication should be material or tangible and that it should be available to the public.

The Representatives of AIPLA and ABA supported the position taken by the Delegation of the United States of America and suggested that an explanatory note be given to the word 'printed.'

The Delegation of Australia preferred that the word 'printed' be maintained and wondered whether the expression 'given publications' covered solely publication in a tangible form or also cases of oral disclosure or, for example, disclosure by means of television.

The Delegation of the Soviet Union proposed that the wording 'any official publication fixed on a medium' be used in order to exclude oral publication.

The Delegation of the United Kingdom thought that a compromise should be sought to take into account the position of the Delegation of the United States of America and suggested for that purpose that it could be mentioned that 'all publications' should be taken into account.

The Delegation of the Netherlands explained that its proposal did not cover all publications or technical information. For example, information could be contained on a computer tape, but, in such event, it would only be valid if it were available to the public in some way or other.

The Representative of the EPO held that the concept of 'given publications,' which also existed in the proposal by the International Bureau, was too vague. He stated that paragraph (1)(a) should, as a minimum condition, limit the pertinent state of the art cited in a request for administrative revocation of a patent to documents printed in a tangible form, thus excluding oral disclosure or prior public use. He explained that it was important that at least one copy of the document be available to the public whatever its method of printing.

The Representative of NYPTC supported the position expressed by the Representative of the EPO. He stated that the Contracting Parties could supplement the grounds referred to in paragraph (1)(a), subject to paragraphs (1)(c), which consti-

tuted the minimum. He further considered that the proposal by the Netherlands should be limited to publications in a tangible form and should not include oral evidence, in particular.

The Delegation of India considered that the approach adopted in draft Article 18, particularly paragraph (1)(a), was too narrow in respect of the grounds for revocation since no mention was made, for example, of the absence of the patentability conditions, of inadequate description of the invention or of ambiguity of the claims. Furthermore, the Delegation expressed reservations on draft Article 18 as a whole, since in India the revocation procedure took place before the courts, so that the administrative revocation provided for under draft Article 18 would constitute a duplication of the procedure under its national law.

The Delegation of Poland proposed that revocation be possible if the legal requirements for obtaining the patent had not been satisfied.

The Representative of LES proposed that revocation be linked to the fact that the novelty requirements had not been satisfied.

The Representative of AIPPI held that the concept of publication should not be limited and should include oral disclosure.

It was emphasized that Article 18 was of limited scope since it concerned solely administrative revocation which was intended to be a speedy procedure and to be limited as regards the grounds that could be invoked. It was also emphasized that the administrative revocation procedure would not replace judicial procedures for cancelling or invalidating a patent.

The Chairman concluded discussions on paragraph (1)(a) by stating that the delegations that had spoken preferred Alternative B proposed by the International Bureau and were in favor of inserting the term 'competent' before 'Office.' It was agreed that the International Bureau would endeavor to find a wording such as 'documents available to the public' in respect of the basis for any request for revocation.

Paragraph (1)(b). The Delegation of the Netherlands presented its proposal contained in document HL/CE/VIII/13 to clarify paragraph (1)(b) as proposed by the International Bureau. It first considered that publication of the patent as a starting point for the period during which a request for revocation could be submitted was not sufficiently precise since publication could be delayed. It therefore proposed publication of the grant of the patent since that constituted a fixed starting point corresponding to a specific action carried out by the majority of offices. The Delegation further proposed that the minimum period during which a request for revocation could be

submitted be reduced from six months to three months.

The proposal by the Netherlands concerning the starting point for the revocation request was supported by the Delegations of Germany, Norway, the United Kingdom, the Soviet Union, Switzerland, Portugal and Austria and by the Representatives of the EPO and AIPPI. The Delegation of Germany pointed out that it preferred the proposal by the Netherlands since the decisive date was the date of notification of the granting of the patent in the official gazette.

The proposal by the Netherlands concerning a three-month period in place of a six-month period was supported by the Delegations of Norway, Switzerland, Germany, Japan and Austria and by the Representative of FICPI. The Delegations of Switzerland and Germany stressed that it was a minimum period of time and that the Contracting Parties could provide for a longer period to take into account, in particular, a lapse of time that was too long between notification of grant of the patent in an official gazette and publication of the patent.

The Delegation of the United States of America considered that the notification of grant of a patent in an official gazette was only acceptable as a starting point if the patent documents were published shortly afterwards, since, otherwise, any person wishing to submit a request for revocation of a patent would have to carry out a search at the Office in order to examine the patent documents for those elements that would support his request and that would be difficult to envisage, particularly within a period, even if it were a minimum, of only three months. In any event, the period would have to be longer than three months. The Delegation added that, in its country, there was no limit for requesting review of a granted patent and it preferred no time limit. Furthermore, the number of such requests would be lower if there were no limit than in a system comprising a limit.

The Delegation of Japan supported the position of the Delegation of the United States of America as regards the starting point for the request for revocation and considered that it should be the date of publication of the patent and not that of notification of the grant.

The Representative of CNIPA, CIPA and EPI considered that the period of time should not begin to run until a patent was granted, until notification of grant appeared in the gazette and until it was effectively published. He added that all three events were decisive even if they did not always occur on the same day.

The position of the Delegation of the United States of America concerning the time limit for requesting revocation was supported by the Dele-

gations of the United Kingdom, Australia, Canada, New Zealand, Portugal, Hungary and China and by the Representatives of ABA, CNIPA, CIPA and EPI, AIPLA, NYPTC, IPO, APAA and PTIC.

The minimum period of six months proposed as a compromise by the International Bureau was held reasonable by the Delegations of the United Kingdom, Australia, Canada, New Zealand, Indonesia, Portugal, China and Czechoslovakia and by the Representatives of CNIPA, CIPA, and EPI, AIPLA, AIPPI, NYPTC and APAA. The Representative of AIPLA stressed that the six-month period was a strict minimum since examination of a patent file could be lengthy before instituting revocation procedure. The Representative of AIPPI proposed that there should be an upper limit to the period, possibly nine months, after which a request for administrative revocation could no longer be submitted, it being understood that a judicial request for nullity could be filed at any time.

The Delegation of the Soviet Union preferred a minimum period of six months, but was prepared to accept three months if the majority of delegations preferred such a time limit.

The Delegation of Hungary, while accepting the six-month period proposed by the International Bureau, wondered whether the minimum period could not be extended to nine months.

The Representatives of ABA, IPO and PTIC, while prepared to accept the minimum period of six months, would have preferred to have no set period, which would have enabled an applicant or user to request administrative revocation of a patent at any time.

In reply to a question from the Delegation of Indonesia, it was pointed out that the matter of administrative revocation had no bearing on the possibility of going to court at any time to seek the revocation, cancellation or invalidation of a patent.

Concluding the discussions on paragraph (1)(b), the Chairman said that the majority of delegations were favorable to the proposal by the Netherlands according to which the starting point of the period for a request for administrative revocation should be the publication in the official gazette of an announcement of the grant of the patent. With regard to the minimum period for making a revocation request, he noted that a majority of the delegations preferred a period of at least six months.

Paragraph (1)(c). The Delegation of the Netherlands presented its proposal, appearing in document HL/CE/VIII/13, the purpose of which was to clarify the International Bureau's proposal by stating the principle that non-compliance with

formal or procedural requirements did not provide grounds for a request for administrative revocation.

In reply to a remark by the Representative of ABA, it was pointed out that paragraph (1)(a) allowed Contracting Parties to provide for additional grounds for the administrative revocation of a patent, on condition that the grounds mentioned in paragraph (1)(c) were excluded.

The Chairman, having noted that there was no opposition from delegations, considered that the proposal by the Netherlands was approved.

Paragraph (1)(d). Two proposals were made on this paragraph, one by the United States of America (contained in document HL/CE/VIII/14) and the other by the Delegation of the Netherlands (contained in document HL/CE/VIII/13 Rev.).

The Delegation of the United States of America said that the purpose of its proposal was to introduce some cohesion between paragraph (1)(d) and paragraph (1)(a), under which anyone, including the owner of the patent, could file a request for revocation. Consequently, when the request came from a third party, the Office had to give him at least the possibility of presenting his arguments. As for the owner of the patent, he had to be allowed to respond to the arguments or grounds put forward by a third party or by the Office, including where he, the patent owner, was the one who had filed the revocation request.

The Delegation of the Netherlands said that the proposal by the United States of America was too liberal. Consequently it had drawn up a counter-proposal, according to which the possibility of presenting arguments at least once in support of a request was extended to all persons, including the owner of the patent. It added that the third sentence of its proposal, according to which a revocation decision might be based only on grounds regarding which the parties to the proceedings had had an opportunity to present their arguments, was a principle of equity.

In reply to a question from the Representative of ABA regarding the use of the expression 'at least one' in the proposals by the United States of America and the Netherlands, it was explained that the provisions of paragraph (1)(d) applied to every revocation proceeding that concerned a patent. It would thus be possible for them to have to be applied more than once in relation to the same patent.

In reply to a question from the Delegation of the United States of America, the Delegation of the Netherlands explained that the reference to 'the parties to the proceedings' in the third sentence of its proposal was a matter for the national or regional legislation of each Contracting Party.

The Delegation of Japan said that it was able to accept the proposal by the Delegation of the Netherlands insofar as the 'parties to the proceedings' were to be understood as the owner of the patent and the third party requesting revocation. It added that the third party should be able to respond at least to amendments made by the owner of the patent.

In reply to a question from the Delegation of Australia, the Delegation of the Netherlands said that the expression 'may only be based' in the third sentence of its proposal implied that the provision was mandatory and could have been written 'the Office shall base its decision....'

In reply to a question from the Chairman, the Delegation of the United States of America said that it would be able to accept the proposal by the Netherlands except for the obligation to allow all parties to take part in all stages of the procedure, which was liable to cause problems and among other things to delay its outcome. Only the owner of the patent should be allowed to participate to that extent.

The Delegation of Germany supported the proposal by the Netherlands and suggested, in response to the concern expressed by the United States of America, that the expression 'any party' might be replaced by 'any person' in the first line of the proposal, which would leave it to the Contracting Parties to determine who those persons should be.

The Delegation of Switzerland said that it supported the proposal by the Netherlands without any amendment.

The Delegation of Canada said that it supported paragraph (1)(d) as drafted by the International Bureau.

The Representative of CNIPA, CIPA and EPI emphasized the need for the patent owner to have a right of response, even where he had filed the revocation request.

The question of keeping the adjective 'permissible' qualifying the noun 'grounds' was raised. It was pointed out that the adjective would have to be deleted, as the object of the procedure was to determine whether or not a ground was permissible.

The Delegation of Australia said that it supported the proposal by the United States of America subject to the deletion of 'permissible.'

The Chairman concluded that the International Bureau would have to revise paragraph (1)(d) in the light of the proposals made by the United States of America and the Netherlands. With regard to the grounds for revocation and the arguments presented in support of a request for revocation, he suggested that the new text should provide for a mandatory right of reply in relation only to grounds (and not to evidence or argu-

ments), in other words that the Office should be allowed to base its decision only on grounds regarding which the owner of the patent had been able to present his arguments.

Paragraph (2). The Delegations of Austria, Norway, Denmark, Sweden and Finland said that they accepted paragraph (2), even though it would oblige them to amend their legislation, which provided for pre-grant opposition.

The Delegations of Canada, the United Kingdom, Hungary, Ireland and Romania and the Representatives of OAPI, AIPLA, ABA, FICPI and FCPA declared themselves in favor of paragraph (2). The Delegation of Hungary considered that the pre-grant opposition system made the patent grant procedure too long. The Representative of AIPLA, mentioning a resolution favorable to the harmonization process that had come from his organization, said that the conditions on which the process could be accepted included among other things the abolition of pre-grant opposition procedures.

The Delegations of Portugal and Brazil said that they wished to reserve their position on paragraph (2), as the Delegation of Brazil regarded the absolute prohibition of pre-grant opposition as going too far, and that national legislation should be allowed some flexibility.

The Delegation of Australia, supported by the Delegation of India, considered that pre-grant opposition should be retained, but made subject to specific periods.

The Delegation of Spain said that it would prefer to see paragraph (2) deleted, as it had some difficulty in accepting the absolute prohibition of pre-grant opposition.

In the light of the discussions on paragraph (2), the Chairman concluded that, while the reservations of the Delegations of Portugal and Brazil and the opposition of the Delegations of Spain, Australia and India had been noted, there was a clear majority in favor of paragraph (2) as proposed by the International Bureau. That majority included countries which, even though they had a different system, were able to consider amending their legislation accordingly.”

Article 19: Rights Conferred by the Patent

In addition to the text of Article 19, as elaborated by the International Bureau, discussions were based on texts proposed, respectively, by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People's Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of

Tanzania, Uruguay and Zaire and by the Delegations of Italy, Japan, the Netherlands and the United States of America. Those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“Alternative A

(1) [Products] *Where the subject matter of the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, at least the following acts:*

- (i) *the making of the product,*
- (ii) *the offering or the putting on the market of the product, the using of the product, or the importing or stocking of the product for such offering or putting on the market or for such use.*

(2) [Processes] *Where the subject matter of the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, at least the following acts:*

- (i) *the using of the process,*
- (ii) *in respect of any product directly resulting from the use of the process, any of the acts referred to in paragraph (1)(ii), even where a patent cannot be obtained for the said product.¹*

(3) [Exceptions to Paragraphs (1) and (2)] *(a) Notwithstanding paragraphs (1) and (2), any Contracting Party shall be free to provide that the owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in paragraphs (1) and (2) in the following circumstances:*

(i) *where the act concerns a product which has been put on the market by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in the territory of that Contracting Party, or, in the case of a group of States constituting a regional market, in the territory of one of the member States of such group;*

(ii) *where the act is done privately and on a non-commercial scale, provided that it does not significantly prejudice the economic interests of the owner of the patent;*

(iii) *where the act consists of making or using for exclusively experimental purposes, provided that it does not significantly prejudice the economic interests of the owner of the patent;*

¹ The final provisions of the Treaty (see document HL/CE/VIII/4) will contain a provision permitting a reservation to be made, under certain conditions, to the right prescribed in paragraph (2)(ii).

(iv) where the act consists of the preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(b) The provisions of paragraphs (1) and (2) shall not be interpreted as affecting the freedom that Contracting Parties have under the Paris Convention for the Protection of Industrial Property to allow, under certain circumstances, the performance of acts without the authorization of the owner of the patent.

(4) [Contributory Infringement] (a) Subject to subparagraph (b), a patent shall also confer on its owner the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patented invention, with means for carrying out the invention, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention. This provision shall not apply when the means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing the acts referred to in paragraph (3)(a)(ii), (iii) and (iv) shall not be considered to be parties entitled to exploit the invention within the meaning of subparagraph (a).

Alternative B:

[No Article 19]"

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MEXICO, MOROCCO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"Alternative A

(1) [Products] Where the subject matter of the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the following acts:

- (i) the making of the product,
- (ii) the offering for sale of the product, and the using of the product.

(2) [Processes] Where the subject matter of the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, the using of the process.

(3) [Exceptions to Paragraphs (1) and (2)]

(a) Notwithstanding paragraphs (1) and (2), any Contracting State shall be free to provide that the owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in paragraphs (1) and (2) in the following circumstances:

(i) where the act concerns the offer for sale or the use of a product which has been offered for sale by the owner of the patent, or with his express consent, insofar as such an act is performed after the product has been so offered for sale in the territory of that Contracting State;

(ii) where the act is done privately and on a non-commercial scale;

(iii) where the act consists of making or using for exclusively experimental, academic or scientific research purposes;

(iv) where the act consists of the preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(b) The provisions of paragraphs (1) and (2) shall not be interpreted as affecting the freedom that Contracting States have under the Paris Convention for the Protection of Industrial Property, to allow, under certain circumstances, the performance of acts without the authorization of the owner of the patent.

(c) Persons performing the acts referred to in paragraphs (3)(a)(ii), (iii) and (iv) shall not be considered to be parties entitled to exploit the invention within the meaning of subparagraph (a).

Alternative B

Deletion of Article 19 as proposed in Alternative B of WIPO text in document HL/CM/1." (Document HL/CE/VIII/22, pages 4 and 5)

[TEXT PROPOSED BY THE DELEGATION OF ITALY]

"(1) [Products] Where the subject matter of the patent concerns a product, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, at least the following acts:

- (i) the making of the product,
- (ii) the offering or the putting on the market of the product, the using of the product, or the importing or stocking of the product for such purposes.

(2) [Processes] Where the subject matter of the patent concerns a process, the owner of the patent shall have the right to prevent third parties from performing, without his authorization, at least the following acts:

- (i) the using of the process,
- (ii) in respect of any product directly obtained by the process, any of the acts referred to in paragraph (1)(ii), even where a patent cannot be obtained for the said product.

(3) [Exceptions to Paragraphs (1) and (2)]

(a) Notwithstanding paragraphs (1) and (2), any Contracting Party shall be free to provide that the owner of a patent has no right to prevent third parties from performing, without his authorization, the acts referred to in paragraphs (1) and (2) in the following circumstances:

(i) where the act concerns a product which has been put on the market by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in the territory of that Contracting State, or, in the case of a group of States constituting a regional market, in the territory of one of the member States of such group;

(ii) where the act is done privately and for a non-commercial purpose;

(iii) where the act consists of making or using for exclusively experimental purposes relating to the subject-matter of the patented invention;

(iv) where the act consists of the preparation for individual cases, in a pharmacy or by a medical doctor, of a medicine in accordance with a medical prescription or acts concerning the medicine so prepared.

(b) The provisions of paragraphs (1) and (2) shall not be interpreted as affecting the freedom that Contracting Parties have under the Paris Convention for the Protection of Industrial Property to allow, under certain circumstances, the performance of acts without the authorization of the owner of the patent.

(4) [*Contributory Infringement*] (a) Subject to paragraph (b), a patent shall at least confer on its owner the right to prevent third parties from supplying or offering to supply a person, other than a party entitled to exploit the patent invention, with means, relating to an essential element of that invention, for carrying out the invention, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention. This provision shall not apply when the means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.

(b) Persons performing the acts referred to in paragraph (3)(a)(ii), (iii) and (iv) shall not be considered to be parties entitled to exploit the invention within the meaning of subparagraph (a).” (Document HL/CE/VIII/11, pages 3 and 4)

[TEXT PROPOSED BY THE DELEGATION
OF JAPAN]

“(3)(a)(v) *Where the act prescribed under paragraph (1)(ii) concerns the very product existing in a Contracting State prior to the filing in that State of the application on which the patent is granted.*” (Document HL/CE/VIII/17, page 4)

[TEXT PROPOSED BY THE DELEGATION
OF THE NETHERLANDS]

“(3)(a)(i) where the act concerns a product which has been put on the market *either before publication by anybody or after publication by the owner of the patent, or with his express consent, insofar as such an act is performed after that product has been so put on the market in the territory of that Contracting Party, or, in the case of a group of States constituting a regional market, in the territory of one of the member States of such group;*” (Document HL/CE/VIII/28)

[TEXT PROPOSED BY THE DELEGATION OF
THE UNITED STATES OF AMERICA]

“[Alternative A]

....

(2bis) [*Inducement*] *A patent shall at least confer on its owner the right to prevent third parties from actively inducing the performance of the acts referred to in paragraphs (1) and (2) which result in actual infringement of the patent.*

(3) [*Exceptions to paragraphs (1) and (2)*]

(a)

(v) *where the act is done in reliance upon it not being prohibited by a valid claim present in a patent as initially granted, but it subsequently being prohib-*

ited by a valid claim of that patent changed in accordance with Articles 17 or 18.

(4) [*Contributory Infringement*] (a) Subject to subparagraph (b), a patent shall at least confer on its owner the right to prevent third parties from supplying a person, other than a party entitled to exploit the patented invention, with means, *relating to a material element of the invention, for carrying out the invention which results in actual infringement of the patent, when the third party knows, or it is obvious in the circumstances, that those means are suitable and intended for carrying out that invention.* This provision shall not apply when the means are staple commercial products and the circumstances of the supply of such products do not constitute inducement to infringe the patent.” (Document HL/CE/VIII/14, page 7)

The portion of the report of the Committee of Experts concerning the discussion on Article 19 reads as follows:

“*Paragraph (1).* (a) The Delegation of Brazil introduced the proposal to amend paragraph (1) (contained in document HL/CE/VIII/22) presented by a number of developing countries. The Delegation explained that the developing countries believed that the harmonization process should not address matters of substantive patent law, but confine itself only to matters of procedure and formalities. Those countries, therefore, still favored Alternative B in respect of Article 19, that is, that there should be no provision in the Treaty dealing with the rights conferred by the patent. If such a provision were to exist, it should be limited to the basic rights which every patent conferred, namely, rights in connection with the industrial exploitation of the patented invention and the commercialization of the relevant products. With regard to a product patent, those basic rights concerned the making, selling and using of the patented product.

(b) The Delegation pointed out that there was an error in the English and Spanish versions of the introductory portion of paragraph (1) of Article 19 (Alternative A) in document HL/CE/VIII/22. The words ‘at least’ were missing before the words ‘the following acts’ in the third line of paragraph (1). The proposal for paragraph (1) as contained in document HL/CE/VIII/22 should therefore be read as including the words ‘at least.’

(c) The Delegation indicated that the proposal in document HL/CE/VIII/22 omitted the acts of importation and stocking from the exclusive right conferred by the patent because patents were granted by a State with a view to patented inventions being worked in the relevant country and not for the purposes of importing or stocking the patented products. There was, however, no opposition to allowing other countries to provide in their laws for protection in respect of the acts of importation and stocking.

The text of paragraph (1) of Article 19 in document HL/CE/VIII/22 was supported by the Delegations of China, Ghana, Indonesia, Senegal, India, Algeria, the Democratic People's Republic of Korea, Cameroon, Tunisia and Peru, as well as by the Representative of ALIFAR. They stated that the rights conferred by a patent should not go beyond the rationale of the patent system as a means for creating an environment conducive to the industrial development of the country granting the patent. The right to control importation, in particular, was seen as going beyond the reasons justifying the patent system. Trade-related aspects should not be allowed to prevail over the technological aspects on which the patent system was based. Trade in counterfeit goods could and should be dealt with separately. Principles of public interest and the need to prevent the establishment of importation monopolies had to be taken into consideration. If a patent holder were to be granted a right to control or restrict the importation of patented products, the patent would be exploited by trade activities rather than through foreign direct investment, transfer of technology and industrial exploitation in the country, which are of vital importance for the economic development of developing countries.

The Delegation of Brazil stated that it could envisage accepting the notion that a patent holder should be allowed to prevent the importation of infringing counterfeit products. This limited purpose was not, however, clear from draft paragraph (I) of Article 19 (Alternative A) of the Draft Treaty. In any event, importation monopolies had to be avoided. Perhaps paragraph (1) of the Draft Treaty could be clarified to indicate that it referred only to counterfeit goods.

The Delegation of Indonesia said that the question of the movement of goods across borders was a trade issue, not a patent law issue. It did not seem appropriate to shift the issue of importation from one field to the other, nor to consider importation as a basic right inherent in a patent.

The Delegation of India stated that including importation among the protected acts under a patent not only concerned the issue of trade in infringing goods, but that other aspects would also come into play, for example, pricing of patented goods, availability of goods on the local market, etc.

The Delegation of Brazil explained that the act of 'putting on the market' of the patented product had been omitted in the proposal for paragraph (I) contained in document HL/CE/VIII/22 because that act was understood to be analogous to the act of importation.

The Representative of ALIFAR stated that the provision under discussion should seek an appropriate balance between the interests of the holders

of patent rights and those of the States which granted such patents. A formula should be found for this provision that would ensure the beneficial effects expected from the patent system. For developing countries those effects consisted in transfer of technology and technological development in the country issuing the patent.

The Delegations of the United Kingdom, Germany, Japan, Switzerland, Canada, France, Australia, the Netherlands, Austria and New Zealand considered that a provision dealing with the right conferred by the patent was an essential component of the Treaty and should therefore be maintained. They expressed support for the text of draft paragraph (1) as contained in Article 19 (Alternative A) of the Draft Treaty. A patent holder should be able to control the commercialization of the patented product, which included the act of putting the product on the market and, therefore, comprised the act of importation. The right to prevent the making of a patented product was only controllable territorially, and a loophole in the protection would occur if a third party could manufacture the patented product in a country other than the country where the patent had been granted and then import it into the country where the patent had been granted. The right to control importation was therefore a necessary corollary to the right to make the patented product. There was also a need to have the means for effectively preventing the counterfeiting of patented products. Although the commercialization of counterfeit products could be prevented at the points where such products were sold, offered for sale or used, it was preferable to be able to act at the point where counterfeit products were brought on the market. Being able to prevent importation seemed crucial in this respect. The deletion of the right to prevent third parties from importing or stocking a patented product for the purposes of commercialization, as proposed in document HL/CE/VIII/22, would entail an unacceptable weakening of the protection conferred by a patent.

The Delegation of the United States of America, while strongly supporting the inclusion in the Treaty of a provision dealing with the rights conferred by the patent, drew attention to the fact that in the United States of America there seemed to be no consensus at this time in respect of the inclusion of the act of importation as a protected act in the patent law. The minimum standard could be limited to the acts of making, using and selling. Moreover, the act of stocking did not seem to be covered by a generally accepted standard and did not seem essential at this time. This view was shared by the Delegation of New Zealand.

The Delegation of Germany noted that, in the light of the views expressed by the Delegations of

Brazil and Indonesia, agreement seemed to be possible on the principle that a patent holder should be able to prevent the importation of products that infringe a product patent. Such an agreement would be a definite step forward in achieving an agreed text on this provision.

The Representative of AIPLA stated that it was preferable to be able to act against one importer rather than against several distributors or users of infringing products after they had been imported into the country. In this respect, AIPLA aligned itself on the views expressed by the delegations that supported maintaining the act of unauthorized importation among those which a patent holder was entitled to prevent. Support for the provision as contained in the Draft Treaty was also expressed by the Representatives of AIPPI and LES.

The Representative of OAPI said that the Bangui Agreement of 1977 Relating to the Creation of an African Intellectual Property Organization contemplated the acts of importation and stocking among those which a patent holder could prevent third parties from performing. He noted, however, that those rights could be used to block local working of the patented invention.

The Chairman concluded that draft Article 19(1) to be presented at the Diplomatic Conference should include three alternatives: one should be based on draft paragraph (1) as contained in Alternative A of the International Bureau; one should be based on the text of paragraph (1) as contained in document HL/CE/VIII/22; and one should state that the Treaty should contain no provision corresponding to draft Article 19.

Paragraph (2). The Delegation of Brazil introduced the proposal presented by a number of developing countries (contained in document HL/CE/VIII/22) to amend draft paragraph (2) of Article 19 (Alternative A) of the Draft Treaty. The Delegation indicated that, as regards process patents, the fundamental right conferred on the patent holder was to prevent unauthorized use of the patented process. The proposing countries could therefore not subscribe to the text contained in the Draft Treaty which was tantamount to extending the protection under a patented process to products which were not protected by the patent and in some cases were not protectable at all by patents. The extension of process patent protection to the products obtained by the process could, in practice, give rise to trade harassment, trade distortions and restrictions of trade which had to be avoided. Although the provision could be used to prevent the distribution of counterfeit products, the text in the Draft Treaty was not clear enough in this respect, and was broad enough to be used to restrict also trade in legitimate products.

The views expressed by the Delegation of Brazil were supported by the Delegations of India, China, Romania, Tunisia, Algeria, Cameroon, Senegal, Indonesia, Peru and the Democratic People's Republic of Korea, and by the Representative of ALIFAR. In expressing their support, it was stated that draft paragraph (2) as contained in the Draft Treaty would allow an undue extension of protection to products which were not patented or even not patentable. Therefore, the provision could be used to circumvent exclusions provided under Article 10 of the Draft Treaty as proposed in document HL/CE/VIII/22. Protection for products should be sought through product patents, not through process patents. The extension of process patent protection to the products obtained from the patented process would tilt the balance of interest away from the public interest in favor of the patent holder. The provision contained in subparagraph (2)(ii) of the Draft Treaty should therefore be deleted.

The Representative of OAPI noted that the Bangui Agreement provided for process patents and for the extension of protection to products directly obtained by the patented process. OAPI, however, reserved its position in regard to the provision contained in subparagraph (2)(ii) of Article 19 until the subject of the reversal of the burden of proof had been dealt with.

The Representative of ALIFAR added that the 'extension of protection' to products obtained from the patented process was a notion contrary to the concept of a process patent as this was presently understood in the countries of Latin America.

The Delegations of Germany, Switzerland, the United Kingdom, the Soviet Union, Canada, the Netherlands, Australia, Hungary, Sweden, Austria and Poland, and the Representatives of ABA, MPI, AMPPI, NYPTC, AIPPI, APAA and LES expressed support for the text of draft paragraph (2) as contained in the Draft Treaty. Several of those delegations, however, preferred the wording of paragraph (2)(ii) as contained in the proposal submitted by the Delegation of Italy (contained in document HL/CE/VIII/11) which refers to 'any product directly obtained by the process,' rather than 'any product directly resulting from the use of the process.'

The Delegation of Norway, while supporting the first part of the text of draft paragraph (2)(ii), made a reservation concerning the words 'even where a patent cannot be obtained for the said product.' The Delegation felt that this would not always apply, such as in certain fields of biotechnology. The Delegation of the Netherlands supported this view.

In support of draft paragraph (2)(ii) providing for a right to prevent acts in respect of products

directly obtained by the patented process, it was stated that the purpose of such a provision was to ban the distribution of products that had been obtained by infringing the patented process. Where, after the actual infringement of the process, the infringer wanted to market the product obtained by that infringement, he should not be allowed to do so. This was a situation of continued liability. The provision, therefore, aimed at protecting the patented process, not the resulting product. It helped to avoid circumvention of patents for processes to produce products, the economic value of which lay in the products obtained by the use of the processes. The provision aided the enforcement of a process patent whether it was being infringed secretly within a country or through imports from other countries where the process was being used. In the latter case, the holder of the process patent should have the possibility of stopping and pursuing imports of the products obtained by the process. The provision contained in draft paragraph (2)(ii) did not restrict third party freedom to use a different process for the manufacture of the relevant products. That provision would only be applicable when a product was the result of an infringing act, namely, the unauthorized use of the patented process. The infringement of process patents normally occurred in confidential surroundings, and the process could be used for a full production run, after which the products obtained could be stockpiled and eventually distributed. It was crucial that the products obtained by such an infringement should be stopped from reaching the marketplace. The provision of subparagraph (2)(ii) would also apply to prevent the importation of products manufactured using the patented process in countries where there was no patent for such a process. A process could be used in a territory outside the jurisdiction of the country for which the patent had been granted, and such a process patent would be of no avail to prevent use of the relevant process outside that jurisdiction. The only way to deal with unauthorized extra-territorial use was to be able to prohibit distribution of the resulting products within the territory where the patent applied.

In reply to a question raised by the Delegation of Switzerland, it was explained that the minimum standard provided under draft paragraph (2) by the words 'at least' would allow Contracting Parties that so desired to extend protection beyond what was provided in that paragraph, in particular, to provide for adequate protection for biotechnological inventions where the product could not be considered as being obtained 'directly' by the patented process.

The Delegation of the United States of America sought amendment of draft paragraph

(2)(ii) in respect of products obtained by a patented process which were subsequently used or incorporated in another product. The term 'directly' should be deleted from draft paragraph (2)(ii). It was explained that the minimum standard as contained in that draft paragraph should apply beyond the product which was directly obtained by the patented process. However, a product should not be considered as obtained by the process if it has been modified substantially so that it had become a different product. Likewise, if a product obtained by a process was subsequently incorporated in a different product, the provision in respect of products resulting from the patented process should no longer apply where the product became a trivial, non-essential component of that different product.

The Chairman concluded that draft Article 19(2) to be presented at the Diplomatic Conference should include three alternatives: one should be based on Alternative A of draft Article 19, taking into account the drafting amendment proposed by Italy (contained in document HL/CE/VIII/11); one should be based on paragraph (2) as contained in document HL/CE/VIII/22; and one should state that the Treaty should contain no provision corresponding to draft Article 19. He noted that the proposal contained in document HL/CE/VIII/22 in respect of Article 19(2) was worded as an absolute standard for the protection of process patents and not as a minimum. That standard was lower than that currently existing in the patent laws of a significant number of countries so that the adoption of such a text would require those countries to change their national laws to lower their standard of protection. Such a possibility appeared to be unrealistic. The Chairman therefore appealed to the developing countries to consider the possibility of making the provision of paragraph (2) in document HL/CE/VIII/22 a minimum standard by adding the words 'at least' in the appropriate place, as had been done in respect of paragraph (1) of Article 19 in that same document.

The Delegation of Brazil, speaking on behalf of the developing countries, said that further thought would be given to this matter. The Chairman's idea would be discussed by the developing countries and amendments might be put forward in this connection.

Proposed paragraph (2bis). The Delegation of the United States of America presented its proposal (contained in document HL/CE/VIII/14) to introduce a new paragraph dealing with inducement to infringe a patent. The proposed new provision, which would constitute a minimum standard, was directed at complementing direct infringement and contributory infringement which

were already provided for in the Draft Treaty. It would oblige Contracting Parties to recognize the right of a patent holder to prevent at least purposeful inducement to infringe the patent. However, the provision would be applicable only when the inducement resulted in actual infringement of the patent. To illustrate the proposal, the example was given of a case where a kit containing staple articles which could be assembled into a device that would infringe a patented product was distributed together with clear instructions for assembling the parts in the kit into the patented device. Since the staple articles were distributed as unassembled loose parts, the act would not fall under the provisions of direct infringement of the patented device. The supply of staple articles was excluded from the provision on contributory infringement except where there was inducement to infringe. The proposed new provision on inducement would therefore fill a gap in the protection coverage afforded under draft Article 19 which seemed to be filled presently only in an implied way.

The inclusion of a special provision contemplating the case of inducement was supported by the Representatives of AIPLA, NYPTC, ABA, MPI and IPO. The Representative of ABA submitted, as a further example of inducement to infringe, the case where a company controlled by another company was induced by the controlling company to infringe a patent. In such a case, the controlling company would be liable for inducement, while the company actually infringing the patent would in fact have only reduced or no responsibility.

The introduction of a new provision dealing with inducement was considered to be unnecessary by the Delegations of Germany, Japan, the United Kingdom, Romania, the Republic of Korea, the Soviet Union, Australia and Brazil and the Representative of JPAA. It was pointed out that, on earlier occasions when this subject had been discussed it had been agreed that inducement should be covered by the relevant general provisions of civil law, the law of torts and criminal law in each of the countries. Acts such as inviting or encouraging to commit infringement were matters that should not be dealt with in patent law. Moreover, the proposed provision was incomplete, since there were other circumstances and conditions which would have to be met in order that liability be found under the law of torts or civil law. It was suggested that, rather than including a specific provision on inducement, the provision on contributory infringement should be kept broad enough to cover cases of inducement.

The Chairman concluded that the proposal of the United States of America, at least for the time being, had not obtained sufficient support.

Paragraph (3)(a). The Delegation of Spain said that it wished to reiterate what it had stated in previous sessions in the sense that all the exceptions contained in paragraph (3) should be established as mandatory standards for all Contracting Parties and not remain as facultative provisions.

Item (i). The Delegation of the Netherlands presented its proposal (contained in document HL/CE/VIII/28) to amend item (i) with a view to dealing with two cases, namely, the case where products were put on the market by the applicant after the publication of the patent application but before the grant of the patent, and the case where products were put on the market by any person, including a third party, after the filing date of a patent application but before the publication of the application. In the first case, it seemed unfair that a patent holder be allowed to prevent, for example, the use of a machine that would fall under the scope of a claimed invention if such machine had been put on the market by him in the period between the publication of the application and the issue of the patent. In such a case, the person using that very machine should be able to continue such use before the grant of the patent, in the same manner as he would be able to do so after the grant of the patent by virtue of the provision on exhaustion contained in paragraph (3)(a)(i). The second case concerned the situation where, for example, an independent inventor had put products on the market after the filing date of a patent application for that product but before the date of publication of that application. In this case, the holder of the patent should not be allowed to prevent the circulation and use of those products once the patent was granted. In both cases, a principle similar to that of the exhaustion of patent rights should apply in regard of such products.

In reply to a question raised by the Delegation of Japan as to whether the proposed provisions would also apply to products put on the market by a third party who had copied a product put on the market by the applicant between the date of filing and the date of publication of that application, the Delegation of the Netherlands explained that such products should be allowed to circulate freely even after the issue of the patent. The Delegation noted that such a solution would not contradict the prior user's right because a prior user was entitled to continue using the invention to the extent that he had been using it before the filing date of the application, whereas under the proposed amendment the third party would not be exempted from the patent, but the products that were produced before the publication of the application would be allowed to circulate freely.

The Delegations of Germany, Switzerland, Canada and France stated that they could not

support the proposal of the Delegation of the Netherlands. In support of this position, it was argued that the situation where a patent right or any other right in an invention had not yet arisen should not be confused with the case where a patent right was considered to be exhausted. In respect of the exhaustion of rights under the patent, preference was expressed for the text of subparagraph (3)(a)(i) as contained in the Draft Treaty.

The Delegation of the United States of America supported draft paragraph (3)(a)(i) as contained in the Draft Treaty.

The Delegation of Canada said that it could not support draft item (i) as contained in the Draft Treaty because that provision would not allow countries to provide for the international exhaustion of patent rights. The Delegation proposed to replace in draft item (i) the latter portion of that provision starting with the words 'the territory of' through to the end of the item by 'any country,' so that the latter portion of the provision would read 'after that product has been so put on the market in any country.'

The Delegations of Brazil and India expressed interest in the proposal by the Delegation of Canada, since it would preserve freedom for all the States to provide for international exhaustion if they so wished. They said that they would give further thought to this idea.

The Delegation of Switzerland said that it had a problem with the wording of draft item (i), to the extent that exhaustion seemed to be limited to the specific product that had been put on the market. This provision, if interpreted literally, would not allow for exhaustion in respect of products derived by multiplication or replication from biological material put on the market and in respect of which exhaustion may operate. In order that exhaustion may also apply to products derived by biological multiplication from the product that was actually put on the market, the Delegation proposed amending the wording of that subparagraph so that countries may be free to extend the provision of exhaustion to products derived from the product which was put on the market, in particular when the derivation or reproduction occurred in accordance with the intended purpose of the product put on the market. This question could either be dealt with in the Notes, or draft item (i) could be amended by adding the words 'or products obtained by biological multiplication of that product' after the words 'or with his expressed consent,' in the second line of that item.

It was agreed that the question raised by the Delegation of Switzerland should not be dealt with in the Draft Treaty, but should be left open pending further developments on the broader

subject of the protection of biotechnological inventions.

The Delegation of Brazil presented the proposal submitted by a number of developing countries (contained in document HL/CE/VIII/22) in respect of paragraph (3). As regards item (i), the words 'put on the market' were proposed to be replaced by the words 'offered for sale.' This change was consequential to the amendments proposed in respect of paragraphs (1) and (2) of the same proposal. The notion of putting on the market was seen as being potentially too broad.

Items (ii) and (iii). The Delegation of Brazil stated that the developing countries preferred a straightforward formulation without the provisos relating to the possible prejudice to the economic interests of the owner of the patent. Retaining such provisos could in practice complicate the application of the exception and cause problems when determining before the courts the applicability of the provisos. It seemed preferable to leave the courts to determine when an exception would be inapplicable by reason of a significant prejudice to the owner of the patent.

The proposal to delete the provisos contained in items (ii) and (iii) was supported by the Delegations of Germany, Norway, Senegal, Japan, Portugal, Austria, Peru, Guinea, the United Kingdom, Denmark, the Netherlands, the Republic of Korea, Finland, the Soviet Union, India and Hungary, and by the Representative of OAPI.

The Delegation of Japan suggested, as an alternative approach, that the gist of the deleted provisos be reflected in the Notes to the relevant provisions, or that a general proviso be inserted in a separate provision, for example, in draft paragraph (3)(b). In the latter case, the following words could be added at the end of draft paragraph (3)(b): 'provided that such exceptions do not unreasonably conflict with a normal exploitation of the patent and do not unreasonably prejudice the legitimate interests of the patent owner and of third parties.' This suggestion was welcomed with interest by the Delegation of the United Kingdom and by the Representative of UNICE.

The Delegations of the United States of America, Canada and Australia, and the Representatives of NYPTC, AIPLA, PTIC, AIPPI, UNICE and UEPIP supported maintaining the provisos in items (ii) and (iii), as they appeared in the Draft Treaty. It was noted that a number of delegations had recognized that in specific circumstances the acts provided for in the exception under subparagraphs (ii) and (iii) could significantly prejudice the interests of the owner of the patent, and that such a situation would be unfair. It seemed reasonable, therefore, that

provisos covering those cases be explicitly included in the Draft Treaty.

The Representative of the EPO drew attention to the proposals for paragraph (3)(a)(ii) and (iii) submitted by the Delegation of Italy (contained in document HL/CE/VIII/11). In respect of item (ii), it was proposed that the words 'non-commercial scale' be replaced by the words 'non-commercial purpose.' In item (iii), it was proposed that the words 'relating to the subject matter of the patented invention' be added.

The Delegation of India explained item (iii) of the proposal contained in document HL/CE/VIII/22, providing for an exception in the case of use of the invention for 'academic or scientific research purposes,' in addition to use for 'experimental purposes.' The Delegation stated that the exception for acts performed for academic or scientific research purposes should be retained because they were essential to the role of the patent system in furthering the development and progress of science and technology in developing countries.

The proposals of Italy concerning items (ii) and (iii) were supported by the Delegations of the United Kingdom, the Netherlands, Spain, Denmark, Austria, Japan, Australia and Poland. The Delegation of the United States of America supported item (ii) of the proposal of Italy and raised the question whether, under item (iii) of that proposal, pre-marketing tests would be permitted. As regards item (iii), it was, in particular, pointed out that use for analysis and developing an improvement was experimental use.

It was agreed that, in respect of items (ii) and (iii), three alternatives should be submitted to the Diplomatic Conference: one should be based on Alternative A as contained in the draft of the International Bureau and amended along the lines of the proposal of Italy; one should be based on the text in the proposal by a number of developing countries (contained in document HL/CE/VIII/22); and one should state that the Treaty should contain no provision corresponding to draft Article 19.

As regards the suggestion by the Delegation of Japan referred to in paragraph 99, above, it was noted that this could be submitted to the International Bureau for consideration.

Item (iv). It was agreed that this item could be forwarded to the Diplomatic Conference, since no observations had been made by the Committee on that provision.

Proposed item (v). The Delegation of the United States of America presented its proposal (contained in document HL/CE/VIII/14) for the inclusion of a new item (v) in draft subparagraph (3)(a) of draft Article 19. The new provision would deal with the case of intervening rights that

would arise in favor of a person who, relying on claims present in a patent as initially granted not being valid, performed acts or undertook preparations to that effect which subsequently fell under the scope of a valid claim as a result of the patent being reissued or modified after grant. In such cases a court should be allowed to decide, in order to protect third parties' activities and investments, to give permission for continuing practice of an invention, notwithstanding the patent. This proposal was supported by the Delegation of Canada.

The Delegations of Germany, Switzerland, Japan, the United Kingdom and France and the Representatives of AIPPI and CIPA said that they were unable to support the proposal by the United States of America in its present wording. In this connection, the view was expressed that the possibility of reissuing a patent, on which the proposal appeared to be based, was a special feature of the law of the United States of America and that the application of such a provision required the dating of claims. The principle contained in the proposal could be admitted in cases where a patent was reissued with broader claims, but the proposed provision would have to be narrowed down and made clearer. It was noted that intervening rights could also arise in other contexts, for example, where a patent was restored after having lapsed, where a defective translation is replaced, or in cases of *restitutio in integrum*. If provision were made for the case considered in the proposal of the United States of America, provisions would have to be included for other cases as well. Intervening rights were a special problem and should not be dealt with in the context of Article 19, but left to national legislation.

The Chairman stated that the proposal by the United States of America had not received sufficient support, but that a proposal could be submitted by that Delegation to the Diplomatic Conference.

The Delegation of Japan presented its proposal (contained in document HL/CE/VIII/17) for the inclusion of a new provision as paragraph (3)(a)(v). The proposal would deal with the case where, before the filing of a patent application on which a patent was later granted, a prior user had produced products which subsequently fell under the scope of that patent. Such a prior user had stopped using the invention before the date on which the patent application was filed but had stockpiled the resulting products. If those products were put on the market after the grant of the patent, they ought to be allowed to circulate freely in spite of the patent, because they had been produced at a time when no patent right was in existence or pending. The exception provided for prior users' rights did not seem to apply in

this case, because at the time of putting the relevant product on the market, the person would not be a 'user' of the invention.

The Delegations of Switzerland, the United States of America and Germany said that they were unable to support the proposal by the Delegation of Japan. It was stated that the proposed provision would create confusion with the prior users' rights provided for in draft Article 20, which would in practice cover the case envisaged in the Japanese proposal. A short interruption in a prior user's working of the invention would not affect the prior user's right. The proposal was not clear in respect of the case where the prior user did not act in good faith, nor did it take due consideration of the right of priority under the Paris Convention, which specifies that during the priority period no third party rights nor any right of personal possession may be acquired by a third party.

The Chairman stated that the proposal by the Delegation of Japan had not received sufficient support, but that a proposal could be submitted by that Delegation to the Diplomatic Conference.

Paragraph (3)(b). No comments were made on this provision. It was agreed that the text as contained in the Draft Treaty should be forwarded to the Diplomatic Conference.

Paragraph (4)(a). The Delegation of Brazil explained the proposal presented by a number of developing countries (contained in document HL/CE/VIII/22) for the deletion of the provision in the Draft Treaty concerning contributory infringement. A provision on contributory infringement was considered as going too far in limiting national legislation and jurisprudence in respect of the scope of patent rights. The developing countries presenting the proposal preferred that there be no limitation in the Treaty concerning this matter. Contributory infringement should be left to national law and court decisions, which could apply general principles of civil, procedural and criminal law.

The Delegation of the United Kingdom underlined the importance of a provision on contributory infringement, since cases of that kind of infringement were more and more frequent.

The Delegation of Italy presented its proposal (contained in document HL/CE/VIII/11) for an amended provision on contributory infringement in paragraph (4). The proposal added the words 'at least' in the introductory phrase of the provision, thereby making it a minimum standard in the Treaty. In addition, the words 'relating to an essential element of that invention' were inserted to qualify the means which, if supplied, could constitute contributory infringement.

The Delegation of the United States of America presented its proposal (contained in

document HL/CE/VIII/14) for an amended provision on contributory infringement. That proposal also inserted the words 'at least' to make it a minimum provision in the Treaty. The act of 'offering to supply' means for carrying out the invention was deleted because it went too far for what was intended to be a minimum standard. The words 'relating to a material element of the invention' had been inserted to qualify the means, the supply of which would constitute contributory infringement. The Delegation indicated, however, that the words 'a material element' could be replaced by the words 'an essential element' as proposed by the Delegation of Italy in respect of the same provision, because 'essential' had a narrower meaning than 'material' and seemed more appropriate for a minimum provision. The condition that the supplying of means resulted in actual infringement of a patent was added as part of the minimum provision. Countries would be free to provide for contributory infringement also in cases where there was no actual infringement.

The Committee of Experts analyzed the differences between the various texts dealing with contributory infringement. It was noted that, since the proposal of the United States of America to introduce a special provision on inducement had not been retained, the provision on contributory infringement might be drafted so as to be broad enough to cover inducement as well. It was suggested that the act of 'offering to supply' should be retained, since that would take care, in particular, of the case of mail-order sales and similar distribution systems which might otherwise fall outside the scope of the provision. It was also suggested that the requirement that contributory infringement result in actual infringement of the patent be deleted, since that limitation would make it harder to take action against persons distributing the means for carrying out the invention without waiting until the invention was actually worked by the persons acquiring those means. The ability to prevent third parties from offering to supply would facilitate action at the source of the chain of distribution. In many cases, such action would in fact constitute the only way to prevent contributory infringement, since the end consumers, supplied with the means for carrying out the invention, would be protected by the private-use exception foreseen in paragraph (3) of Article 19.

The Delegation of Japan submitted the following questions and comments in respect of the provision on contributory infringement contained in the Draft Treaty and in the proposal of Italy:

(i) Why are only the acts of supplying, or offering to supply, mentioned in the provision?

Why are the other acts mentioned in paragraph (1) of Article 19, not included? Could the patent owner prevent third parties from, for example, making the means or putting those means on the market?

(ii) Private and non-commercial acts should be excluded from the scope of contributory infringement. The word 'commercially' should therefore be inserted before the word 'supplying' in paragraph (4).

(iii) How could knowledge on the part of the alleged infringer be determined? It would seem preferable to adopt more objective criteria avoiding vague standards, such as 'obvious in the circumstances.'

(iv) Does the term 'intended,' appearing in the sixth line of the provision, imply that the person should have a concrete intention or a concrete project to produce the means, or what does that term otherwise add to the condition that the said means are useful for carrying out the invention?

(v) What is the scope of the concept 'staple,' as referred to in the provision to qualify commercial products, and what are the criteria for determining whether a commercial product is 'staple?'

(vi) The notion of 'inducement' should be deleted from the last sentence of the provision. Inducement should be dealt with in civil or criminal law, in particular, in the law of torts, but not in patent law. Moreover, since the provision was a minimum standard, broader protection could be obtained by a qualification of the last sentence.

(vii) How should the provision on contributory infringement apply to the case where the invention relates to the use of a product?

Those questions and comments were commented upon by the International Bureau as follows:

(i) Acts other than the acts of supplying and offering to supply the means for contributory infringement were not included in paragraph (4) because acts such as the mere putting on the market or making were not within the rationale of the provision. Contributory infringement consisted of the act of supplying or, depending on the definition used, offering to supply and did not extend to the mere making of means that could be used for carrying out the invention, which, on its own, might be considered to be an act too remote from an infringement to justify attributing liability. It was essential for the establishment of contributory infringement that the said means were supplied to another person not authorized to exploit the invention.

(ii) The insertion of the word 'commercially' to qualify the acts of supplying or offering to supply could be considered. The provision was

meant to be confined to acts done for commercial purposes, as was the case with the acts contained in paragraphs (1) and (2) of Article 19, which had to be read in conjunction with draft Article 19(3)(ii).

(iii) The application of the provision on contributory infringement required knowledge of the parties who supplied or offered to supply the means. This knowledge as such might be difficult to establish, but a notion of constructive knowledge could be applied. In the absence of proof of knowledge, only where it is obvious from the circumstances that the means were suitable and intended for carrying out the invention were the conditions of contributory infringement fulfilled. This would have to be proved in infringement proceedings before the courts. In this connection, the Treaty could not go beyond establishing general principles. Whether something was 'obvious in the circumstances' would have to be determined by a court on a case-by-case basis and in application of its own discretion and the usual rules of evidence and proof.

(iv) A contributory infringer can be considered as such only if he intended that those means supplied by him be used for carrying out the patented invention.

(v) The determination of what is to be considered 'staple' depends on the circumstances of each case and on what is considered to be staple in the context of the invention by the industrial circles concerned. A general definition could not be provided out of context. Staple goods are major commodities which are easily available and generally usable for different purposes.

(vi) The reference to inducement in the latter part of paragraph (4) is deemed to be appropriate in connection with the use of staple commercial products as a means for carrying out the invention. The supplying, or offering to supply, staple commercial products would not normally constitute contributory infringement, even where those products were suitable and intended for the carrying out of the invention. For the supply of the products in question, an additional qualifying element is required, namely, that there is inducement to use the staple products to infringe a patent. Inducement means that the contributory infringer actively and intentionally incites another person to make use of the invention and directly infringe the patent. The provision on contributory infringement would apply in respect of supplying means that are staple products only when the supply of such means was accompanied by inducement to infringe the patent.

(vii) Whether the supply of a product for which a new use was patented would constitute contributory infringement would depend on the

circumstances, such as the way in which the product was packaged (since, for example, the new use may be as a herbicide and the old use as a pharmaceutical) and the occupation or trade of the purchaser.

In conclusion, it was agreed that two texts of Article 19 would be submitted to the Diplomatic Conference on an equal footing, one with a provision on contributory infringement in paragraph (4) and the other without that provision. The text of the provision contained in paragraph (4) should take into account the proposal of the Delegation of Italy in document HL/CE/VIII/11. In that text, the words 'at least' should be moved, so that they appear before the words 'the right' in the second line of that paragraph.

Paragraph (4)(b). No comments were made in respect of this paragraph. It was decided that paragraph (4)(b) as contained in the Draft Treaty should be forwarded to the Diplomatic Conference."

Article 20: Prior User

In addition to the text of Article 20, as elaborated by the International Bureau, discussions were based on texts proposed by the Delegations of the Netherlands and Nigeria; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"(1) [Right of Prior User] Any Contracting Party may provide that a patent shall, notwithstanding Article 19, have no effect against any person (hereinafter referred to as 'the prior user') who in good faith before the filing date or, where priority is claimed, the priority date of the application on which the patent is granted and within the territory where the patent produces its effect was using the invention or was making effective and serious preparations for such use; any such person shall have the right, for the purposes of his business, to continue such use or to use the invention as envisaged in such preparations.

(2) [Successor in Title of the Prior User] The right of the prior user may only be transferred or devolve together with his enterprise or business, or with that part of his enterprise or business in which the use or preparations for use have been made."

[TEXT PROPOSED BY THE DELEGATION
OF THE NETHERLANDS]

"(1) A patent shall, notwithstanding Article 19, have no effect against any person who, in good faith, for the purpose of his business at or before the filing date or, where priority is claimed, the priority date of

the application on which the patent is granted and within the domain where the patent produces its effect, was using the invention or was making effective and serious preparations for such use; any such person shall have the right (-) to continue such use or to use the invention as envisaged in such preparations." (Document HL/CE/VIII/13 Rev., page 3)

[TEXT PROPOSED BY THE DELEGATION
OF NIGERIA]

"The following should be added to the last line of paragraph (1):

'(1) ... and, in respect of any resulting products, to do any other act mentioned in paragraphs (1) and (2) of Article 19.'" (Document HL/CE/VIII/20)

The portion of the report of the Committee of Experts concerning the discussion on Article 20 reads as follows:

"Paragraph (1). The Delegation of the Netherlands introduced its proposal (contained in document HL/CE/VIII/13 Rev.). It explained that the proposal would make the principle of prior users' rights mandatory for Contracting Parties, and not optional as provided for under draft paragraph (1). It would also introduce certain changes regarding the application and scope of the principle itself.

As regards the issue of whether the rights of prior users should be mandatory or optional, the Delegation of the Netherlands considered that a relationship or interdependence existed between prior users' rights and the first-to-file system, which required ensuring some protection for inventors who commenced use without filing for a patent and before another independent inventor filed for a patent, and between prior users' rights and the grace period. It pointed out that the grace period should only constitute an exception or defense against the possibility of certain limited disclosures destroying the novelty of an invention and should not accord any substantive rights.

The Delegations of Austria, Belgium, Czechoslovakia, Denmark, Finland, Germany, Ireland, Norway, Poland, Portugal, the Soviet Union, Spain, Sweden, Switzerland and the United Kingdom and the Representative of the EPO expressed their support for the mandatory nature of the prior users' rights provision as contained in the proposal by the Netherlands. The Delegation of France and the Representative of AIPPI also supported a mandatory provision but explained that, in a spirit of compromise, they could also accept an optional provision as contained in draft paragraph (1).

The Delegations of Canada, Japan and the United States of America and the Representatives of OAPI, ABA, AIPLA, FICPI, IPO, JPAA, NYPTC and PTIC expressed their support for an optional prior users' rights provision as contained in draft paragraph (1). It was pointed out that

each Contracting Party should have the right to decide whether or not to protect prior users in its own territory. Opposition was, in particular, expressed to an obligatory prior users' provision which would apply not only to independent inventors, but also to persons who commence using an invention after having derived information on the invention from a disclosure made by or emanating from the inventor during the grace period, thus significantly restricting the effect of any grace period for disclosures by the inventor.

The Chairman noted that the issue of the mandatory or optional nature of the provision on prior users should be left to the Diplomatic Conference.

(a) The Delegation of the Netherlands then explained the changes contained in the proposal by the Netherlands as regards the application and scope of draft paragraph (1).

(b) First, the proposal by the Netherlands would introduce the proviso 'for the purpose of his business,' as a condition for the coming into existence of the prior user's right, in connection with the use or the preparation for use which was the basis of the right.

(c) Second, the proposal by the Netherlands would recognize prior users' rights on the basis of use or preparations for such use 'at or before the filing date' (emphasis added).

(d) Third, the proposal by the Netherlands would change the term 'within the territory' to 'within the domain,' a broader concept intended also to encompass, for example, territorial waters, the continental shelf and airspace.

As regards the proviso 'for the purposes of his business,' no opposition was expressed on this part of the proposal by the Netherlands, and it was agreed, for clarity's sake, to introduce this proviso at the beginning of the provision, while at the same time also maintaining the proviso later in the provision as contained in draft paragraph (1).

The Delegations of Denmark, Hungary and the United States of America expressed their opposition to the inclusion of use *at* the filing date because they considered that use or preparations for such use should begin before and not on the date on which protection started and that it should continue, uninterrupted, up to the filing date. It was therefore agreed to retain draft paragraph (1) in this regard.

It was agreed to retain the term 'within the territory' as contained in draft paragraph (1) but to clarify in the Notes that 'territory' was meant in its widest sense so as to cover any and all places and areas where the patent had effect and was enforceable.

In response to an inquiry by the Delegation of Japan as to the intended meaning of the expres-

sion 'notwithstanding Article 19,' it was agreed to clarify in the Notes that this expression meant that the principle contained in draft paragraph (1) constituted a derogation from Article 19 ('Rights Conferred by the Patent'), but that it did not constitute the only such permissible derogation under the Draft Treaty. Reference was made to draft Article 19(3)(b), according to which provisions in conformity with the Paris Convention for the Protection of Industrial Property concerning compulsory licensing or patented devices on vessels, etc., would not be affected by the Treaty.

Paragraph (2). This provision was generally supported. In response to an inquiry by the Delegation of Japan as to whether the limitation contained in draft paragraph (2) also applied to heirs, reference was made to Note 20.09 which explains that draft paragraph (2) restricts the transferability of prior users' rights to those circumstances in which the transferee, including an heir, also acquires the enterprise or business, or that part thereof, in which the prior use, or preparations for such use, occurred."

Article 21: Extent of Protection and Interpretation of Claims

In addition to the text of Article 21 as elaborated by the International Bureau, discussions were based on texts proposed by the Delegations of France, Japan and the United States of America; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"(1) [Determination of the Extent of Protection] (a) *The extent of protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.*

(b) *In determining the extent of protection the claims shall neither be limited to the literal meaning of their wording nor considered as mere guidelines which would permit the protection to extend to what may have been contemplated without having been expressly claimed.*

(2) [Equivalents] (a) *Notwithstanding paragraph (1)(b), a claim shall be considered to cover not only all the elements as expressed in the claim but also equivalents.*

(b) *An element ('the equivalent element') shall be considered as being equivalent to an element as expressed in a claim if, at the time of any alleged infringement,*

(i) *the equivalent element performs, in regard to the invention, substantially the same function in substantially the same way and produces substan-*

tially the same result as the element as expressed in the claim, or

(ii) it is clear to a person skilled in the art that, in regard to the invention, the same result as that achieved by means of the element as expressed in the claim can be achieved by means of the equivalent element.

(3) [Prior Representations] Any representation, made by the applicant or the owner of the patent, explicitly or implicitly limiting the scope of the claims may be taken into account in determining the extent of protection.

(4) [Examples] If the patent contains examples of the embodiment of the invention or examples of the functions or results of the invention, the claims shall not be interpreted as limited to those examples; in particular, the mere fact that a product or process includes additional features not found in the examples disclosed in the patent, lacks features found in such examples or does not achieve every objective or possess every advantage cited or inherent in such examples shall not remove the product or process from the extent of protection conferred by the claims.

(5) [References to Drawings] Any reference to a drawing or part of a drawing in a claim shall be construed as illustrative only and shall not be construed as limiting the protection conferred by the patent to what the drawing or part thereof shows, unless the claim clearly indicates otherwise.

(6) [Abstract] The abstract of a patent shall not be taken into account for the purpose of determining the protection conferred by the patent."

[TEXT PROPOSED BY THE DELEGATION
OF FRANCE]

"(1) [Determination of the Extent of Protection] The extent of protection conferred by the patent shall be determined by the claims, which are to be interpreted in the light of the description and drawings.

(2) [Interpretation of Claims] For the purposes of paragraph (1), the claims shall be so interpreted as to combine fair protection for the owner of the patent with a reasonable degree of certainty for third parties. In particular, the claims should not be interpreted as being confined to their strict, literal wording. Neither should the claims be considered as mere guidelines allowing that the protection conferred by the patent extends to what, from a consideration of the description and drawings by a person skilled in the pertinent art, the owner of the patent has contemplated, but has not claimed.

(3) [Prior Statements] Any contracting party may provide that any statement made by the applicant or the owner of the patent during the prosecution of the application or in proceedings concerning the validity of the patent explicitly limiting the scope of the claims

may be taken into account in determining the extent of protection.

(4) [Equivalents] (a) In determining the extent of protection conferred by the patent, due account shall be taken of elements which, at the time of any alleged infringement, are equivalents to the elements as expressed in the claims.

(b) An element ('the equivalent element') shall be considered as being equivalent to an element as expressed in the claim if, in regard to the invention as claimed,

(i) it performs substantially the same function in substantially the same way and produces substantially the same result as the element as expressed in the claim, or

(ii) it performs substantially the same function and produces the same technical result, or

(iii) it is obvious to a person skilled in the art that the same result as that achieved by the element expressed in the claim can also be achieved by the equivalent element.

Each Contracting Party shall provide for at least one of the tests for equivalents referred to in subparagraphs (i) to (iii).

(5) [Examples] as (4) in HL/CE/VIII/3.

(6) [Reference Signs] Reference signs as provided for in Rule 2 of paragraph (4)(c) shall not be construed as limiting the claim.

(7) [Abstract] as (6) in HL/CE/VIII/3." (Document HL/CE/VIII/16 Rev., pages 1 and 2)

[TEXT PROPOSED BY THE DELEGATION
OF JAPAN]

"(2) [Equivalents] (a) In determining the extent of protection conferred by the patent, due account shall be taken of elements which are equivalents to the elements as expressed in the claims.

(b) An element ('the equivalent element') shall be considered as being equivalent to an element as expressed in a claim if (-)

(i) it performs substantially the same function in substantially the same way and produces substantially the same result as the element as expressed in the claim, or

(ii) it is clear to a person skilled in the art that the result achieved by means of the element as expressed in the claim can also be achieved by means of the equivalent element, or

(iii) it would have easily occurred to a person skilled in the art that it performs substantially the same function and produces substantially the same result.

Each Contracting Party shall provide for at least one of the tests for equivalents referred to in subparagraphs (i) to (iii)." (Document HL/CE/VIII/17, page 7)

[TEXT PROPOSED BY THE DELEGATION OF
THE UNITED STATES OF AMERICA]

"(1) [Determination of the Extent of Protection]

....

(b) For the purposes of subparagraph (a), the claims shall be so interpreted as to combine fair protection for the owner of the patent with a reasonable degree of certainty for third parties. In particular, the claims should not be interpreted as being confined to their strict, literal wording. Neither should the claims be considered as mere guidelines allowing that

the protection conferred by the patent extends to what, from a consideration of the description and drawings by a person skilled in the pertinent art, the owner of the patent has contemplated, but has not claimed.

....

(3) [*Prior Representations*] Any representation made by the applicant or the owner of the patent, explicitly or implicitly limiting the scope of the claims may be taken into account in determining the extent of protection. *Changes and modifications made in the claims in response to the citation of prior art shall be taken into account when determining the extent of protection.*

....” (Document HL/CE/VIII/14, page 9)

The portion of the report of the Committee of Experts concerning the discussion on Article 21 reads as follows:

“Paragraph (1)(a). The Delegation of Canada requested clarification that the deposit of a microorganism referred to in a patent application could be considered in the interpretation of a claim.

It was pointed out that draft Article 3(2)(c) and draft Rule 1(1)(iv) treated the deposit of biological material as part of the description and, as such, would be taken into consideration in the interpretation of claims in accordance with Article 21(1)(a).

Paragraph (1)(a) was approved without further discussion.

Paragraph (1)(b). The Delegation of the United States of America introduced its proposal (contained in document HL/CE/VIII/14), stating that it provided, in full and complete terms, for a balance to be struck in the interpretation of claims between fair protection of the owner of a patent and reasonable certainty for third parties.

The Delegation of France stated that its proposal (contained in document HL/CE/VIII/16 Rev.) differed from that of the Delegation of the United States of America only in terms of drafting but not of substance. The Delegation stated that the first sentence of its proposal was to provide guidance to courts to interpret claims in a fair and equitable fashion in the interests of both the patent owner and third parties.

It was observed that both the proposals of the Delegations of France and the United States of America were based on the Protocol to Article 69 of the European Patent Convention and that draft Article 21(1)(b) included the essence of that Protocol, but in a more concise form than the proposal of the said Delegations.

The Representative of the EPO observed that the Protocol to Article 69 of the European Patent Convention was an integral part of that Convention; the proposal of the Delegation of France

should be amended in the second sentence by replacing the word ‘should’ with ‘shall.’

The proposals by the Delegation of France and the United States of America were supported by the Delegations of Germany and the Netherlands and by the Representative of AIPPI.

It was agreed that Article 21(1)(b) should be redrafted along the lines of the proposals by the Delegations of France and the United States of America.

Paragraph (2)(a). The Chairman observed that there were two proposals with respect to draft paragraph (2)(a), by the Delegation of France (in document HL/CE/VIII/16 Rev., in paragraph (4)(a) thereof), and by the Delegation of Japan (in document HL/CE/VIII/17).

The Delegations of Germany and the United Kingdom expressed preference for the proposal by the Delegation of France.

The Delegation of the United States of America and the Representatives of OAPI, AIPPI and AIPLA preferred draft Article 21(2)(a). The Delegation of the United States of America expressed uncertainty as to the meaning to be given to the requirement that ‘due account’ be taken of equivalents in the proposals of the Delegations of France and Japan.

It was observed that requiring that ‘due account’ be taken of equivalents meant that serious consideration must be given to equivalents but, in special circumstances, the equivalents might not be applicable.

The Representative of the EPO felt that draft Article 21(2)(a) was too rigid in requiring the automatic application of the doctrine of equivalents. This would not allow judges the freedom to assess the claimed invention as a whole and to conclude that the doctrine of equivalents was not applicable. The Representative observed that legal systems which provide for a doctrine of equivalents also establish limits on its application and that any requirement that it be applied automatically may not allow such limits.

The Chairman concluded that all delegations desired an obligation that the doctrine of equivalents be taken into account but that courts should have some flexibility to determine the circumstances under which it would be applied.

Paragraph (2)(b), first three lines. The Chairman pointed out that there were two proposals with respect to draft paragraph (2)(b), by the Delegation of France (in document HL/CE/VIII/16 Rev., in paragraph 4(a) thereof), and by the Delegation of Japan (in document HL/CE/VIII/17).

The Delegation of Japan observed that the proposal by the Delegation of France required equivalents to be assessed at the time of alleged

infringement. In this regard, the Delegation stated that its proposal would allow Contracting Parties to determine the time at which equivalents are to be assessed on a case-by-case basis. The Delegation stated that if the Notes to Article 21 clarify that such flexibility is contemplated, then it could accept either draft Article 21(2)(b) or the proposal by the Delegation of France (document HL/CE/VIII/16 Rev., in paragraph 4(a) thereof), which provided that equivalents were to be assessed at the time of any alleged infringement.

The Representative of JPA supported the proposal by the Delegation of Japan.

The Delegations of Germany and the United Kingdom expressed preference for the proposal by the Delegation of France. The Delegations were of the opinion that, if equivalents were assessed at the date of filing, the effect would be to annihilate doctrine of equivalents. The said Delegations stated that the Notes to draft Article 21(2)(b) should indicate that equivalents were to be assessed at the time of the start of the infringement.

The Representative of the EPO stated that draft Article 21(2)(b) and the proposal by the Delegation of France would allow sufficient flexibility in determining the time at which equivalents were to be assessed, so that, for example, where appropriate, the time of threatened infringement could be taken into account.

The Representatives of AIPPI and AIPLA underlined that the date of infringement should be taken into account for assessing equivalents and disagreed on that basis with the proposal by the Delegation of Japan.

The Representative of CIPA expressed reservations because the court-developed doctrine of equivalents extended protection in a way contrary to draft Article 17(3) and downgraded the drafting of claims correctly in accordance with draft Article 4.

The Representative of LES expressed the need for some flexibility in determining the time at which equivalents were to be assessed.

The Chairman concluded that the large majority of the delegations was in favor of an obligation to assess equivalents at the date of infringement but that there should be some flexibility in the application of this rule. Relevant explanations could be given in the Notes to draft Article 21(2)(b).

Paragraph (2)(b)(i) and (ii). In connection with items (i) and (ii) of draft paragraph (2)(b), the Chairman observed that there were three proposals regarding the tests to be applied in assessing equivalence, namely, draft Article 21(2)(b)(i) and (ii), the proposal by the Delegation of France (in document HL/CE/VIII/16 Rev.,

in paragraph (4)(b)(i), (ii), and (iii) thereof) and the proposal by the Delegation of Japan (in document HL/CE/VIII/17).

The Delegation of the United States of America stated that the doctrine of equivalents should be a mandatory requirement in the Treaty. The Delegation indicated that the tests for equivalence provided in draft Article 21(b)(i) and (ii) struck a proper balance between what is fair to a patent owner and to third parties. However, as proposed by the Delegation of France, each Contracting Party should have the option to apply only one of the two definitions.

The Delegation of Japan expressed dissatisfaction with the tests in draft Article 21(2)(b)(i) and (ii) because the test in item (i) would not take into consideration the obviousness of replacement of elements and the test in item (ii) would ignore the difference in the function, and indicated its preference for the one contained in item (iii) of its proposal.

The Delegation of Germany expressed the desire to define the doctrine of equivalents in the Treaty so that it would not be applied by the courts in an arbitrary way. The Delegation expressed a preference for the wording proposed by the Delegation of France in respect of paragraph (4)(b) of its proposal.

The Delegations of Canada, the United Kingdom, the United States of America and the Representatives of AIPPI and IPO supported draft Article 21(2)(b). The Delegation of the United States of America stated that the proposal by the Delegation of Japan in document HL/CE/VIII/17 concerning paragraph (2)(b)(iii) was not acceptable because it did not specify the time of infringement.

The Representative of OAPI expressed its desire for a general definition of equivalence, with its detailed application left to national law.

The Representative of AIPLA had no objections to establishing the tests for equivalence in such a way that each Contracting Party could choose which test to apply. The Representative stated that such tests should, however, find their origin in established jurisprudence where the doctrine of equivalents had been applied.

The Delegation of India preferred that the question of the doctrine of equivalents be left to national law.

The Delegation of Canada supported draft Article 21(2)(b) and the mandatory nature of both items (i) and (ii) of draft Article 21(2)(b), thus not allowing Contracting Parties to select only one of the definitions contained in those items.

The Delegation of the United Kingdom preferred leaving a choice to Contracting Parties to apply only one of the definitions contained in items (i) and (ii) of draft Article 21(2)(b).

The Director General proposed amending draft Article 21(2)(b) so that the opening would read along the following lines (underlined portions having been added to draft Article 21(2)(b)): 'An element ("the equivalent element") shall *generally* be considered as being equivalent to an element as expressed in a claim if, at the time of any alleged infringement, *either of the following tests is satisfied:....*' The Director General proposed adding the following sentence at the end of draft Article 21(2)(b), after items (i) and (ii): 'Any Contracting Party may, at the time of depositing its instrument of ratification of or accession to the Treaty, declare that it will not apply either the test in item (i) or the test in item (ii).'

The Delegation of the United States of America supported the proposal by the Director General, contained in the previous paragraph, except with respect to the insertion of the word 'generally' in the first line of draft Article 21(2)(b).

The Delegation of the United Kingdom was in favor of retaining the word 'generally' in the proposal, perhaps in square brackets. The Delegation expressed the view that the proposal should provide that equivalence would be found if 'at least' either of the two tests is satisfied.

The Delegation of France desired the inclusion of the test in item (ii) of its proposal for paragraph (4)(b), since it encompassed equivalents that may not be captured by the tests in subparagraphs (i) and (ii) of draft Article 21(2)(b).

The Delegation of Japan saw the proposal of the Director General as being a positive step, but reaffirmed its preference for the test in item (iii) of its proposal, which test was not provided for in draft Article 21(2)(b).

The Delegation of India and the Representative of MPI favored the proposal by the Director General, but without the possibility for Contracting Parties of selecting only one of the tests in items (i) and (ii) of draft Article 21(2)(b).

The Delegations of Germany, the Netherlands and Switzerland and the Representatives of ABA, AIPLA, CIPA, CNIPA, EPI and NYPTC supported the proposal by the Director General of WIPO. The Delegations of the Netherlands and Switzerland stated that the word 'generally' was superfluous if the phrase 'at least' was included in draft Article 21(2)(b).

The Chairman concluded that draft Article 21(2)(b), as amended by the proposal of the Director General of WIPO, contained in paragraph 168, above, was generally supported.

Paragraph (3). The Chairman observed that there were two proposed amendments to draft Article 21(3), by the Delegation of the United States of America (in document HL/CE/VIII/14)

and by the Delegation of France (in document HL/CE/VIII/16 Rev.).

The Delegation of the United States of America stated that its proposal was to add a sentence to draft paragraph (3), to make it mandatory for changes and modifications made in claims in response to the citation of prior art to be taken into account when determining the extent of protection.

The proposal by the Delegation of the United States of America was supported by the Delegations of Canada, Romania and Switzerland and the Representative of NYPTC.

The proposal of the Delegation of the United States of America was opposed by the Delegation of France due to its mandatory nature.

The Delegation of France introduced its proposal for the amendment of Article 21(3) (contained in document HL/CE/VIII/16 Rev.). First, it was proposed to make the provision facultative to Contracting Parties. In this regard, the Delegation explained that the legal system in its country, with respect to the interpretation of claims, would prevent it from accepting the provision as a mandatory one. Second, it was proposed to make the provision applicable to statements made 'during the prosecution of the application or in proceedings concerning the validity of the patent....' Third, it was proposed to limit the provisions to statements explicitly made, rather than to statements implicitly or explicitly made.

The Delegations of the United Kingdom, Germany, Romania and Switzerland and the Representative of FICPI supported the proposal by the Delegation of France with respect to the deletion of the reference to implicit statements.

The Delegation of the United Kingdom supported the proposal by the Delegation of France to limit the statements considered to those made during prosecution of an application on proceedings on the validity of the patent and opposed the proposal by the Delegation of France to make the provision optional to Contracting Parties.

The Delegation of Canada supported the text of draft Article 21(3) and added that they could support the last sentence of the proposal by the United States of America.

The Director General proposed deleting reference to explicit or implicit representations in draft Article 21(3) and replacing it with the concept that due account must be taken of any representations made by an applicant or patent owner.

The Delegation of Japan expressed reluctance to accept an amendment to draft Article 21(3) which would change the word 'may' to 'shall,' thus making it mandatory. The Delegation considered that prior representations need not be taken into consideration unless they were expressly invoked.

The Delegation of France also reserved its position concerning the mandatory character of draft Article 21(3).

The Chairman, noting the reservations expressed by the Delegation of France (in paragraph 186, above) and the Delegation of Japan (in paragraph 185, above), concluded that draft Article 21(3), as amended by the proposal of the Director General in paragraph 184, above, and the proposal of the Delegation of the United States of America contained in document HL/CE/VIII/14, should be the basis for a revised draft of the said provision.

Paragraph (4). The Delegation of Japan suggested inserting the word 'valid' prior to the word 'claims' in the third line. This proposal was intended to address cases where the existence of prior art may necessitate the interpretation of a claim as limited to a specific example to preserve its validity. As an alternative to amending Article 21 as proposed, the Delegation proposed adding, to the Notes to Article 21, a statement according to which paragraph (4) deals only with the normal case where validity is not called into question.

It was recalled that the provision in draft Article 21(4) was considered applicable only to valid claims. Consequently, it was not seen as necessary to add the word 'valid' prior to 'claims' in the third line.

The Delegation of the United States of America observed that courts would be free to limit the scope of claims if so required by the prior art, but that such a limitation did not constitute a general rule that limited claims to specific examples.

The Chairman, noting the positions of the Delegation of Japan (in paragraph 188, above) and the Delegation of the United States of America (in paragraph 190, above), concluded that paragraph (4) was approved.

Paragraph (5). The Delegation of France introduced its proposal (contained in document HL/CE/VIII/16 Rev., in paragraph (6) thereof) for the deletion of the provisions of paragraph (5) and providing that 'reference signs as provided for in Rule 2 paragraph (4)(c) shall not be construed as limiting the claim.' The Delegation stated that its proposal was intended to be more concise than draft Article 21(5) by considering reference *signs* rather than references (in general), contained in the claims, to drawings or parts of drawings.

It was pointed out that the proposal by the Delegation of France would require some re-drafting to avoid an Article in the Treaty referring to a Rule.

The Delegations of Germany and the United Kingdom supported, in principle, the proposal of the Delegation of France.

The Delegations of China and Hungary and the Representative of OAPI supported draft Article 21(5).

The Representative of the EPO suggested that the provisions of the proposal by the Delegation of France should be placed in the Rules. The Representative observed that it was sometimes necessary to refer to drawings in claims and, in such cases, the reference was part of the claim and should be considered in interpreting it, a practice that could be prohibited by Article 21(5).

The Chairman concluded that there was support for the proposal by the Delegation of France and that consideration could be given to placing a provision based on that proposal in the Rules.

Paragraph (6). Paragraph (6) was approved without discussion."

Article 22: Term of Patent

In addition to the text of Article 22, as elaborated by the International Bureau, discussions were based on texts proposed by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People's Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, Uruguay and Zaire and by the Delegations of Austria, Japan and the Netherlands; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"Alternative A

(1) [Minimum Duration of Protection] *The protection conferred by a patent shall not end before the expiration of a period of 20 years counted from the filing date of the application on which the patent is granted.*¹

(2) [Circumstances in Which Duration May Be Counted from the Filing Date of Another Application] *Where the patent is granted on an application for a patent of addition, on an application claiming internal priority, on an application for continuation or continuation-in-part, or on a divisional application, the period referred to in paragraph (1) may be counted from the filing date of the said application or from the filing date of the application that is invoked in the said application.*

¹ The final provisions (see document HL/CE/VIII/4) will contain a provision permitting Contracting Parties, under certain conditions, to make reservations in respect of this norm.

Alternative B

[No Article 22]"

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MEXICO, MOROCCO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"There should be no Article on the Term of Patent." (Document HL/CE/VIII/22, page 6)

[TEXT PROPOSED BY THE DELEGATION OF AUSTRIA]

"(1) [Minimum Term] *The Patent shall be granted for a term of at least 20 years.*

(2) [Calculation of Term] *The term of the patent shall be counted from the filing date of the application on which the patent is granted. Where the patent is granted on an application for patent of addition, on an application for continuation or continuation-in-part, or on a divisional application, the term of such patent shall be counted from the filing date of the earlier application that is invoked in the said application.*" (Document HL/CE/VIII/6)

[TEXT PROPOSED BY THE DELEGATION OF JAPAN]

"(-) The patent term, shall be 20 years from the following date:

- (i) the filing date of the application; or
- (ii) where other applications are invoked in the said application, the filing date of the earliest filed of the invoked applications which is not the priority date of the said application.

A Contracting Party may provide for an extension of the patent term provided that it is not unduly long, where and to the extent that the patented invention is deterred from exploitation by the government's regulatory review.

[(2) deleted.] (Document HL/CE/VIII/17, page 8)

[TEXT PROPOSED BY THE DELEGATION OF THE NETHERLANDS]

"The proposal as contained in document HL/CE/VIII/13 is withdrawn, provided that somewhere in the Treaty it is stated that these provisions do not apply to petty patents." (Document HL/CE/VIII/13 Rev., page 4)

The portion of the report of the Committee of Experts concerning the discussion on Article 22 reads as follows:

"General. The Delegation of Indonesia introduced the proposal presented by a number of developing countries (contained in document HL/CE/VIII/22) with regard to a possible provision concerning the term of patents. Under that proposal there would be no Article in the Treaty dealing with the term of patents. In introducing

the proposal, the Delegation expressed the developing countries' firm commitment to a comprehensive and workable patent system which may be effectively enforced. However, there were many factors such as socio-economic problems and the level of their capabilities, that had to be taken into account when dealing with technology. Matters relating to the term of patents came within the above notions. Developing countries should not commit themselves to provisions that they were not able to afford. The fact that various countries currently provided far different terms of patent, as was shown in WIPO's document HL/CE/VIII/INF/2, was relevant in this context. Harmonization was considered important, but developing countries were not ready at this stage to touch upon the term of protection for patents.

The proposal that the Treaty should not include a provision on the term of patents was supported by the Delegations of Tunisia, Senegal, Swaziland, India, Chile, Brazil, Algeria, the Democratic People's Republic of Korea, Ghana, Cameroon, Guinea, China and the Philippines, and by the Representatives of OAPI and ALIFAR. It was explained that the developing countries had thoroughly considered the question of the term of patents and discussed several options, but ultimately had arrived at the conclusion that it was not possible to harmonize the term of patents. They had found that a single, uniform, across-the-board term of duration for patents was unreasonable, because the fields of technology and the use to which that technology could be put called for a differentiation as regards the term of patents. There did not seem to be any fundamental logic in the term of 20 years stipulated in the Draft Treaty, particularly in view of the variety of fields and speed of evolution of technology. Since the reaping of rewards through the patent took place in a shorter time frame, it seemed equitable to provide for a shorter term of patent. The level of development of a country was relevant to this matter. A term of protection which was too long was considered to have an adverse effect on the development of certain countries. Transitional rules or phase-in provisions would not afford a valid solution in this respect, because the conditions for accepting a longer term of protection might not have been achieved at the end of the transitional period. On the other hand, if those conditions were to be met, developing countries would, of their own accord, extend the term of protection provided in their own laws. Developing countries therefore wished to preserve their freedom to set the duration of patents in accordance with their specific needs and in a manner which would reconcile adequate patent protection with national scientific and technological development goals.

The Delegation of Australia stated that it was in favor of fixing a minimum term; however, if that term was excessive, such as a minimum term of 20 years, it would prefer not to have a provision in the Treaty.

The inclusion in the Treaty of a provision on a minimum term of 20 years was supported by the Delegations of Switzerland, the United States of America, Sweden, Austria, Canada, Germany, Finland, Spain, Japan, Ireland, France, the Soviet Union, the Republic of Korea, Poland, Czechoslovakia, Hungary, the United Kingdom, Romania, Denmark, the Netherlands and Belgium, and by the Representatives of NYPTC, AMPPI and IPO. It was stated that one of the most important and essential features of a patent system was that it was capable of providing an adequate reward for investment in research and development. The term of patents had to be set in relation to that objective, and an adequate minimum term for the duration of patents was therefore necessary in the Treaty. It was noted further that, as a principle, it could not be said that a country party to the future Treaty would adequately protect inventions if it could reduce the term of patent protection to nought, because in such a case that country would in effect have no patent system at all.

It was agreed that, as regards the subject matter of the term of protection, the basic proposal to be submitted to the Diplomatic Conference would provide, alternatively, for a provision on the term of patents and for no such provision.

Paragraph (1). The Delegation of Austria presented its proposal (contained in document HL/CE/VIII/6) to amend the text of draft Article 22. The proposal provided that patents would be granted for a term of at least 20 years, which would allow Contracting Parties to provide for a longer term if they so wished. The term of the patent would have to be computed from the filing date of the application on which the patent is granted. This would mean that in the cases where an international or internal priority is claimed, the priority date would not be taken into account. The only cases in which the term of a patent would be computed from a date other than the filing date would be those where the patent was granted on an application for a patent of addition, an application for continuation or continuation-in-part, or a divisional application, in which cases the term would be counted from the earliest application invoked in those applications. The date from which the term was to be computed would be mandatory and not optional as was provided in the Draft Treaty.

The proposal by Austria was supported by the Delegations of France, the United States of

America, Germany, New Zealand, the United Kingdom, Ireland, Switzerland, Romania, Belgium and Canada, and the Representatives of AIPPI, AIPLA (for whom the proposal by Japan referred to in paragraph 207, below, was also acceptable), ABA, IPO, CIPA and UNICE. The Delegation of New Zealand proposed, however, that the minimum term should be reduced to 15 years.

The Delegation of the Netherlands explained its proposal (contained in document HL/CE/VIII/13 Rev.) to withdraw its earlier proposal to amend draft Article 22 (contained in document HL/CE/VIII/13). That earlier proposal was withdrawn in favor of the proposal presented by Austria on the term of patents contained in document HL/CE/VIII/6. The earlier proposal had been presented with a view to clarifying the text of draft Article 22 in such a way that the minimum duration of 20 years would not have to be applied by Contracting States in respect of petty patents and similar titles of protection. The Delegation of the Netherlands understood that appropriate language would be introduced in the Notes to the provisions of the Treaty containing definitions to make it clear that the Treaty would not apply to petty patents and similar titles of protection for inventions. It was on this understanding that the Delegation of the Netherlands was prepared to withdraw its proposal in respect of draft Article 22.

The Delegation of Japan presented its proposal (contained in document HL/CE/VIII/17) to amend draft Article 22 in two respects, namely, to provide that the term of 20 years was not a minimum but a mandatory standard term which could only be extended for the specific reason of delay in the exploitation of the invention for a substantial period of time due to mandatory government regulatory review procedures, and to provide that the term was to be computed from the filing date of the application in all cases, except where the application invoked other earlier applications, in which case the term was to be computed from the filing date of the earliest invoked application which was not a priority application.

The proposal by Japan was supported by the Delegation of the Republic of Korea and the Representatives of APAA, JPAA and JPA. They expressed preference for a fixed term of duration because an unduly long term of duration for patents could cause undesirable situations in international trade.

The Delegation of the United States of America stated that the grounds on which the term of patents could be extended under the proposal by Japan were too narrow. That proposal did not take into account other situations which

could arise in addition to the clearance of patented products in government procedures, such as, for example, the case where applications were maintained in secrecy until security provisions were met and the information could be published, or the case of undue delays in court proceedings which had an adverse effect on the ability of the patent holder to obtain the rewards which the patent system was intended to provide.

The Delegation of Australia suggested that Article 22 should establish a minimum term and a maximum term. Such minimum term could be 15 years and such maximum term could be 20 years.

The Representative of LES suggested that paragraph (1) of draft Article 22 be worded as follows: 'The term of a patent shall be at least 20 years.' He explained that the expression 'term of a patent' was an expression that was known to all persons familiar with patents and that was understood to mean the total number of years that a patent may last if certain conditions regulated in the relevant legislation were met, in particular, the payment of maintenance fees, and if the patent was not revoked or surrendered, or ceased to exist for other reasons concerning the particular patent in question.

It was agreed that draft Paragraph (1) of Article 22 should be redrafted along the lines of the proposal by Austria and the text suggested by LES.

Paragraph (2). The question was discussed whether a different treatment should be provided for in respect of applications based on an internal priority and applications for continuation or continuation-in-part. The Delegation of the United States of America stated that such distinction would be unfair and would force countries to establish a system of internal priority in order to benefit from the more advantageous treatment given to internal priority applications. That, however, would tend to make application procedures more complicated for no apparent justifying reason. The concerns of that Delegation were shared by the Representative of PTIC.

Other delegations expressed their preference for an understanding in the sense that an internal priority would be assimilated to an international priority, with the effect that the term of a patent granted on an application claiming an internal priority would not be computed from the priority date but from the date of filing of the application.

The Representative of AIPLA suggested that one way of achieving a simple system for computing the term of patents would be to set the duration of protection at 21 years counted from the earliest priority date. Such solution would take care of all the situations mentioned in the different proposals under consideration, as well as

the particular case of re-registration patents, with a high degree of simplicity.

The Delegation of the United Kingdom said that continuation and continuation-in-part applications could be given the same treatment as applications with internal priority to the extent that such continuation applications were filed within 12 months from the first filing date. It was known, however, that in practice such continuation or continuation-in-part applications were often filed more than 12 months after the first application.

The Delegation of Canada stated that the proposal by Austria was too restrictive in that it is specific to certain types of applications. It thus supported the proposal by Japan for draft paragraph (2).

In conclusion, it was agreed that paragraph (2) of Article 22 to be forwarded to the Diplomatic Conference should be redrafted taking into account the proposals made in this respect, in particular the proposal by Japan (contained in document HL/CE/VIII/17) according to which the starting date for the term of the patent would be the earliest filing date of any application invoked in the later application except that, when the application invoked was a priority application (whether for an internal priority or an international priority), the starting date would not be the date of filing of the priority application.

Article 23: Enforcement of Rights

In addition to the text of Article 23, as elaborated by the International Bureau, the discussions were based on texts proposed by the Delegations of Germany, Israel and the United Kingdom; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"(1) [Rights Conferred by the Patent] (a) Each Contracting Party shall provide for an injunction to restrain the performance or the likely performance, without the authorization of the owner of the patent, of any of the acts referred to in Article 19(1), (2) and (4).

(b) Each Contracting Party shall provide for full damages for the prejudice caused to the owner of the patent in consequence of the performance, without his authorization, of any of the acts referred to in Article 19(1), (2) and (4).

(c) Any Contracting Party shall be free to provide for measures in addition to those specified in subparagraphs (a) and (b) in respect of the performance or the likely performance, without the authorization of the owner of the patent, of any of the acts referred to in Article 19(1), (2) and (4).

(2) [Rights Conferred by the Publication of the Application] (a) *Subject to the other provisions of this paragraph, each Contracting Party shall provide for [Alternative A: full damages] [Alternative B: reasonable compensation] for the prejudice caused to the applicant in consequence of the performance, without his authorization, of any of the acts referred to in Article 19(1), (2) and (4) in relation to any invention, claimed in a published application, as if a patent had been granted for that invention, provided that such [Alternative A: full damages] [Alternative B: reasonable compensation] shall only be awarded against a person if it is shown that, at the time of the performance of any of the said acts,*

(i) *he had actual knowledge that the invention that he was using was the subject matter of a published pending application, or*

(ii) *he had received written notice that the invention that he was using was the subject matter of a published pending application, such application being identified in the said notice by its serial number.*

(b) *Any Contracting Party shall be free to provide for measures in addition to that specified in subparagraph (a) in respect of the performance or the likely performance, without the authorization of the applicant, of any of the acts referred to in subparagraph (a).*

(c) *Any Contracting Party shall be free to provide that a decision to award the measure referred to in subparagraph (a) may not be made until after the grant of a patent on the published application.*

(d) *In making any decision to award the measure referred to in subparagraph (a) or any other measure referred to in subparagraph (b), the extent of protection conferred by the published application shall be determined by such claims appearing in the patent granted on that application as appeared also in the application as published."*

[TEXT PROPOSED BY THE DELEGATION
OF GERMANY]

"(1) [Remedies in Case of Infringement of the Patent]

(a) *Each Contracting Party shall provide for the right of the owner of the patent to enjoin the performance or the likely performance of any of the acts referred to in Article 19(1), (2) and (4).*

(b) *Each Contracting Party shall provide for the right of the owner of the patent to claim from any person who is liable under national law for the performance of any of the acts referred to in Article 19(1), (2) and (4), damages adequate to compensate for the prejudice caused to him in consequence of such performance.*

(c) *Any Contracting Party shall be free to provide for measures in addition to those specified in subpara-*

graphs (a) and (b) in respect of the performance or the likely performance of any of the acts referred to in Article 19(1), (2) and (4).

(2) [Rights Conferred by the Application after Publication]

(a) *Subject to the other provisions of this paragraph, each Contracting Party shall provide for at least the right of the applicant to claim compensation reasonable in the circumstances from any person who has used the subject matter claimed in his published application in circumstances where that person would be liable under national law for the performance of any of the acts referred to in Article 19(1), (2) and (4).*

(b) *Any Contracting Party shall be free to provide for measures in addition to that specified in subparagraph (a) in respect of the use of the subject matter claimed in a published application under the circumstances referred to in subparagraph (a).*

(c) *Any Contracting Party shall be free to provide that a decision to award compensation or measures referred to in subparagraphs (a) or (b) may not be made until after the grant of a patent on the published application.*

(d) *For the purposes of paragraph (2), the extent of protection conferred by the application shall be determined by the claims contained in the publication referred to in Article 15. However, the claims in the patent as granted on that application or amended in revocation proceedings under Article 18 shall retroactively determine the extent of protection conferred by the application where they confer a more limited protection." (Document HL/CE/VIII/12, pages 4 and 5)*

[TEXT PROPOSED BY THE DELEGATION
OF ISRAEL]

"(2) [Rights Conferred by the Publication of the Application] (a) *Subject of the other provisions of this paragraph, each Contracting Party shall provide for adequate compensation for the prejudice caused to the applicant in consequence of the performance, without his authorization, of any of the acts referred to in Article 19(1), (2) and (4) in relation to any invention claimed in a published application, to the same extent as if a patent had been granted for that invention and taking into account the circumstance under which such acts were performed, provided that such adequate compensation shall be by way of full damages as would be awarded to the owner of a granted patent in the person who performed said acts,"*

(i) [as in document HL/CE/VIII/3]

(ii) [as in document HL/CE/VIII/3]

(b) [as in document HL/CE/VIII/3]

Add the following paragraphs:

"(c) *Any decision to award the adequate compensation referred to in subparagraph (a) shall, depending on the circumstances, be made after the grant of a patent on the published application or before such grant, if it is shown that the grant of a patent is sufficiently probable.*

(d) *If the patent granted on the published application does not contain any claim conferring protection against the authorized use referred to in subparagraph (a), the adequate compensation referred to in subparagraph (a) shall not be awarded or, if already paid by any decision referred to in subparagraph (c), shall be reimbursed.*

(e) *The rights conferred by the published application, referred to in subparagraphs (a) and (b), shall*

not fall under the statute of limitations earlier than one year after the grant of a patent on the published application or one year after the termination of revocation proceedings referred to in Article 18, whichever the later." (Document HL/CE/VIII/25)

[TEXT PROPOSED BY THE DELEGATION OF
THE UNITED KINGDOM]

"(1)(b) ... at least in circumstances where it can be shown that a third party performing the unauthorized acts was aware of the patent." (Document HL/CE/VIII/10, page 12)

The portion of the report of the Committee of Experts concerning the discussion of Article 23 reads as follows:

"Paragraph (1). The Delegation of the United Kingdom introduced the proposal by the United Kingdom (contained in document HL/CE/VIII/10). It explained that the proposal was intended to limit the far-reaching effects of paragraph (1)(b). However, in light of the more comprehensive proposal by Germany (see next paragraph), it was ready to discuss paragraph (1) on the basis of that proposal.

The Delegation of Germany introduced the proposal by Germany (contained in document HL/CE/VIII/12). It explained that: as regards paragraph (1)(a), the proposal consisted mainly of drafting changes; as regards paragraph (1)(b), first, the proposal would change the measure of damages from 'full damages' to 'damages adequate to compensate for the prejudice caused,' as a minimum right which was not intended to prevent any Contracting Party from providing for additional damages such as treble or punitive damages, and, second, it would relegate the question of liability to national law (e.g., whether actual or constructive knowledge or negligence was required); and as regards paragraph (1)(c), the proposal was the same as draft paragraph (1)(c).

The Delegation of the United Kingdom considered that, at least as a minimum rule, knowledge of the grant of a patent should be a condition for establishing liability under paragraph (1), although what degree of knowledge should be required could be left to national law. As regards the drafting of paragraph (1)(a), it suggested that the provision be revised so as to read, 'the right of the owner of the patent to make a claim for an injunction.' However, after further discussions and a suggestion by the Director General to qualify the term 'adequate damages' by the expression 'under the circumstances,' the Delegation was ready to accept the proposal by Germany if it incorporated the suggested language, with the understanding, which could be explained in the Notes, that national law could require that such

circumstances include knowledge of the existence of the patent by the defendant.

The Delegation of France expressed its preference for the proposal by Germany concerning draft paragraph (1)(a) and (b) and proposed that the words 'to have access to legal remedies' should be inserted after the word 'patent' in paragraph (1)(a) of the said proposal.

The Delegation of the United States of America expressed its support for the proposal by Germany as regards paragraph (1)(a) and (b), but considered that the reference to liability under national law in paragraph (1)(b) should be deleted.

The Delegation of Canada expressed its support for draft paragraph (1)(a) and (b), although it had some doubts about the meaning and scope of the term 'full' damages and would therefore prefer the term 'reasonable' or 'adequate' damages.

The Delegation of Japan expressed its support for the proposal by Germany, especially for the concept of 'adequate' damages, as it considered that the patent owner should have a right to be compensated for losses incurred by him but not necessarily to a return of the profits gained by the defendant, as could be implied by the term 'full' damages.

The Delegation of Romania expressed its preference for draft paragraph (1)(a), subject to a suggested drafting change. As regards paragraph (1)(b), it preferred the concept of 'adequate,' as opposed to 'full' damages, as contained in the proposal by Germany, and agreed that a link should exist between liability and knowledge of the existence of a patent.

The Representative of the EPO agreed with the Delegations of Germany and the United Kingdom that paragraph (1)(b) should not require 'full damages' and that Contracting Parties should be free to regulate the question of liability on the basis of their general rules of tort law, which usually require some proof of intent or at least of negligence in order to establish liability. This did not mean that actual knowledge had to be required; it should be possible for any national law to recognize a presumption of knowledge on the basis of the publication of granted patents. Relevant explanations could be given in the Notes.

The Representative of MPI agreed with the Delegation of the United Kingdom and the Representative of the EPO that some degree of knowledge should be required as a minimum standard for establishing liability. However, this should not necessarily mean actual knowledge, as such a rule would not provide sufficient protection for the patentee. Any person who was aware, and also any person who should have been aware, of the

existence of the patent should be liable under paragraph (1).

The Representative of ABA wished to see the criteria of 'reasonableness' introduced into paragraph (1)(b), by adding after 'damages adequate to compensate for the prejudice caused...', the proviso 'but not less than a reasonable royalty.' He also expressed serious concern about requiring knowledge for establishing liability. He feared that this might eventually be interpreted as requiring actual knowledge, a situation which, in his opinion, would not be acceptable.

The Representative of NYPTC pointed out that, under the laws of the United States of America, an injunction was not available against the Government or a government contractor and therefore asked that at least the Notes mention that such an exception would be allowed under paragraph (1)(a).

The Representative of PTIC expressed his concern that the proposal by Germany, as now drafted, did not permit a licensee to request an injunction. He was also concerned by the language of 'damages adequate to compensate for the prejudice,' since Canadian courts usually interpreted such a standard as giving right only to the very bare minimum compensation. All losses sustained by the patentee as a result of an infringement should be recoverable under paragraph (1)(b).

The Representative of IPO shared the concerns expressed by the Representative of PTIC. In particular, he considered that the patent owner should not necessarily be an indispensable party in all actions brought on a patent, as might be implied both by draft paragraph (1) and the proposal by Germany.

The Delegation of Germany explained that both draft paragraph (1) and the proposal by Germany were intended to establish a minimum standard, leaving Contracting Parties free to accord rights to other persons such as licensees. In view of the differences between and the complexities of the various national laws in this regard (e.g., German law distinguished between the rights of exclusive and non-exclusive licensees in this respect), it was of the opinion that this question would be difficult to harmonize and therefore should remain open under the Draft Treaty.

The Representative of FICPI supported the statements made by the Representatives of the EPO and MPI. Only a person who was aware or should have been aware of the existence of a patent should be liable for damages.

The Representative of AIPLA agreed with the Representative of PTIC. He considered the text of draft paragraph (1)(b) to be clear on the point that compensation had to be provided for losses

incurred, and not for gains earned by the defendant. Like the Representative of ABA, he was also concerned about what degree of knowledge could eventually be required if a knowledge requirement were introduced into the provision.

The Representative of AIPPI expressed his support for the proposal by Germany.

In conclusion, the Chairman noted that the wording of draft paragraph (1)(a) should be revised so as to read along the lines of 'the right of the owner of the patent to make a claim for an injunction....' As regards paragraph (1)(b), it was generally agreed that the term 'full' damages should be replaced by an expression such as damages 'adequate under the circumstances' and that the reference to national law should be deleted. It was also generally agreed that the text of draft paragraph (1)(c) should remain in essentially the same form as prepared by the International Bureau.

Paragraph (2)(a). The Delegation of Germany introduced the proposal by Germany (contained in document HL/CE/VIII/12). It explained that the proposal incorporated the concept of 'reasonable' compensation contained in Alternative B of draft paragraph (2)(a), as a minimum standard, with a reference to national law for purposes of establishing liability, which meant that notice, knowledge or negligence could be required by any national law, as already discussed with respect to paragraph (1) dealing with the rights conferred by a granted patent.

The Delegation of the United States of America could support the proposal by Germany as regards the standard of 'compensation reasonable in the circumstances,' but had the same reservations about the reference to liability under national law, as already expressed with respect to paragraph (1).

The Delegations of Australia, Austria, Canada, Czechoslovakia, Denmark, Finland, France, the Netherlands, Poland, Portugal, the Republic of Korea, Romania, the Soviet Union, Switzerland and the United Kingdom expressed their preference for the proposal by Germany, in particular as regards the concept of 'reasonable' compensation.

The Delegation of Japan expressed its preference for draft paragraph (2)(a), with Alternative B, but, in a spirit of compromise, could also accept the proposal by Germany. It considered that this provision should balance the interests of the applicant and the public, and that, since published applications usually had not yet been examined, third parties should not be subject to an overly heavy measure of damages. In its opinion, recovery on the basis of publication should be restricted only to a certain amount of pecuniary compensation similar to a license

royalty, and, therefore, it preferred the concept of 'reasonable compensation' as opposed to 'full damages.'

The Delegations of India and Tunisia and the Representative of OAPI preferred draft paragraph (2)(a), with Alternative B, but, in a spirit of compromise, could also accept the proposal by Germany.

The Representatives of ABA, AIPLA, AIPPI, IPO, JPAA and NYPTC expressed their support for draft paragraph (2)(a), with the Representatives of AIPPI and NYPTC indicating their support for Alternative A, and the Representatives of IPO and JPAA indicating their preference for Alternative B. The Representatives of ABA and AIPLA considered it important that actual knowledge or written notice be required in the case of published applications, as provided for in items (i) and (ii). However, the Representative of IPO wished to see item (i) deleted.

The Representatives of ALIFAR, CIPA, CNIPA and FICPI expressed their support for the proposal by Germany, but the Representative of FICPI was of the opinion that an imitator who had received notice should be liable to pay full damages. The Representative of CIPA, CNIPA and EPI referred to the problem (raised by the Delegation of the Netherlands in connection with draft Article 19(3)(a)(i) of the act of infringement after publication under draft Article 15, such as use of a product, when the first act of infringement in respect of that product, namely sale, occurred before such publication or notice.

It was concluded that, in spite of some differences between the delegations and the representatives of non-governmental organizations, a majority supported the concept of 'reasonable' or 'adequate' compensation, that the drafting of paragraph (2)(a) in the proposal of Germany (document HL/CE/VIII/12) should be taken into account, but that the reference to liability under national law in that proposal should be deleted.

Paragraph (2)(b). The Delegation of Germany introduced the proposal by Germany (contained in document HL/CE/VIII/12). It explained that the proposal did not differ from draft paragraph (2)(b) in substance but tried to achieve some drafting consistency. However, on the understanding that the proposal by Germany for paragraph (2)(a), which was qualified by the proviso 'at least,' was accepted, there may no longer be a need for a subparagraph (b).

The Chairman concluded that, on the understanding that subparagraph (a) would be a minimum provision (as indicated by the words 'at least'), subparagraph (b) could be deleted.

Paragraph (2)(c). The Delegation of Germany introduced the proposal by Germany (contained in

document HL/CE/VIII/12), by explaining that its proposal for subparagraph (c) was intended to align the terminology of that subparagraph on the terminology of subparagraphs (a) and (b), but that a reference to subparagraph (b) would not be required if that subparagraph was to be deleted.

The Delegation of the United Kingdom expressed its preference for carrying the principle of the proposal by Germany even further by also allowing Contracting Parties to provide that any action to recover compensation under subparagraphs (a) and (b) (or subparagraph (a), if subparagraph (b) was to be deleted) could not be initiated until after the grant of the patent. This position was supported by the Delegations of Canada and the United States of America.

The Representative of AIPPI disagreed with this position, stating that the possibility of initiating proceedings before grant should be mandatory on Contracting Parties, especially if one took into account that in many countries the right to initiate an action can be lost on the basis of the statute of limitations by the time the patent is granted. He also suggested that, when it is possible to initiate an action before grant and such action is initiated, there should be a possibility of accelerating the patent granting procedure.

The Delegations of India, Portugal, the Soviet Union, the United States of America and the United Kingdom and the Representatives of AIPLA, IPO and NYPTC were opposed to such a mandatory provision as suggested by the Representative of AIPPI.

The Delegations of Canada, China, Denmark and Japan, on the other hand, could accept such a mandatory provision, provided a decision could not be rendered until after grant.

The Delegations of Romania and Switzerland expressed their support for the position of AIPPI.

The Delegations of Senegal and Tunisia expressed their support for draft paragraph (2)(c).

The Representatives of the EPO and of MPI supported the principle of accelerating patent granting proceedings when an action had been filed under paragraph (2), but the Representative of MPI expressed some hesitations about making the possibility of initiating proceedings before the grant of the patent mandatory. It was asked whether the problem could not be solved by suspending the statute of limitations in cases where an action could not be initiated before grant. The Representative of AIPPI indicated that such an alternative solution would also be acceptable.

The Delegations of Denmark, France and the United Kingdom stated that they could accept the solution of suspending the statute of limitations when there was a risk of the right to bring action

being barred before the grant of the patent. The Delegation of France, however, explained that it could only support such a solution in those cases where an action could not be initiated under national law but not where this was possible and the applicant chose not to initiate any action.

The Delegations of Denmark and the United Kingdom indicated that they could accept a provision requiring an acceleration of the patent granting procedure when an action was filed under paragraph (2). The Delegation of Japan said that its national law had already provided for such an accelerated procedure.

The Delegation of Portugal was not opposed to the principle of accelerating the patent granting procedure but did not wish to see such a provision in the Draft Treaty.

As a solution for the problems raised by the Representative of AIPPI, while, at the same time, taking into account the concerns raised by some delegations and organizations, the Delegation of Switzerland proposed a new text for paragraph (2)(c), which would read along the following lines: 'Any Contracting Party shall be free to provide that an action may not be initiated or a decision may not be made until after the grant of the patent, provided this does not in any way cause prejudice to the holder of the patent right, in particular as regards the statute of limitations.' Such a provision would establish the general rule that Contracting Parties are free to regulate these questions, while at the same time it would protect patent owners' rights, but without entering into unnecessary details.

The Delegation of the United States of America stated that it could accept the text proposed by the Delegation of Switzerland, except for the last phrase, 'in particular as regards the statute of limitations.' Although it believed that some flexibility should exist to safeguard patent owners' rights, it was also concerned that patent owners not be allowed to unduly delay filing any possible action. It had no objection to the possibility of accelerating the patent granting procedure in cases of potential infringement.

The Delegation of Canada reserved its position on the text proposed by the Delegation of Switzerland.

The Representatives of OAPI and of AIPPI, MPI, IPO and FICPI expressed their support for the text proposed by the Delegation of Switzerland.

The Delegation of France expressed its doubts about the text proposed by the Delegation of Switzerland, in particular as regards the proviso that prejudice should not 'in any way' be caused to the patent holder. It considered that such a standard was overly broad and that providing for a suspension of the statute of limitations would be a simpler and safer solution.

The Delegation of India stated that it could accept the first part of the text proposed by the Delegation of Switzerland but shared the concerns raised by the Delegation of France as regards the second part.

The Delegation of Portugal indicated that it could accept the solution of suspending the statute of limitations, proposed by the Delegation of France, but it could also accept the text proposed by Switzerland if the terms 'in any way' and 'in particular' were deleted.

In conclusion, the Chairman noted that, although agreement seemed to exist on the first part of the text proposed by the Delegation of Switzerland but not on the proviso in the second part, delegations would need further time to study the proposed language, and therefore the question would have to be resolved at the Diplomatic Conference. Other possible solutions discussed, such as the possibility of accelerating the patent granting procedure when an action had been filed under paragraph (2) and of suspending the statute of limitations, should also be taken into account, at least in the Notes.

Paragraph (2)(d). The Delegation of Germany introduced the proposal by Germany (contained in document HL/CE/VIII/12). It explained that the proposal tried to depart from the restrictive approach suggested by the wording of draft paragraph (2)(d), which seemed to require that, for purposes of obtaining provisional protection under subparagraph (a), the claims must appear in exactly the same form in the published application and in the patent as granted, without allowing any differences between them. The proposal by Germany would make the scope of the claims, and not their form, decisive by providing that the scope of provisional protection could not go beyond the scope of the claims as they appeared in the published application and in the granted patent, whichever was narrower, that is to say, covering only the overlapping parts. Protection of any matter claimed in the patent as granted, which went beyond the scope of the claims in the published application, would be effective only as of the date of the grant of the patent.

The Delegation of the United States of America expressed its preference for draft paragraph (2)(d). It recognized that some slight differences between the claims in the published application and in the granted patent should be allowed. However, it was concerned that the proposal by Germany would open the door to accepting retroactive protection for matter contained in overly broad claims which had not given fair and sufficient notice to the public at the time of publication as to the possible scope of protection to be granted. Applicants should be

entitled to provisional protection only where substantial similarity exists between the claims in the published application and the granted patent.

The Delegation of Japan expressed its support for the proposal by Germany, as it was of the opinion that the scope of provisional protection should be determined by the scope of the overlapping parts of the claims in the published application and in the granted patent.

The Delegations of Canada, Hungary and Switzerland expressed their preference for the proposal by Germany, as they found the wording of draft paragraph (2)(d) ambiguous and therefore leaving room for misunderstanding.

The Delegation of the United Kingdom, although expressing some reservations about the drafting of the proposal by Germany, agreed with the principle contained therein. In reply to the concerns expressed by the Delegation of the United States of America about overly broad claims in the published application not giving fair and sufficient notice to third parties, it explained that the text of paragraph (2)(a) as contained in the proposal by Germany provided for 'compensation reasonable in the circumstances.' This meant that the court should examine the entire 'circumstances,' including the claims as published and what, if any, fair notice they could have given as to the scope of protection to be granted, in order to determine what constitutes 'reasonable' compensation in any given case. This could be explained in the Notes.

The Representatives of AIPPI, MPI, LES, CNIPA, CIPA, EPI and PTIC expressed their support for the proposal by Germany. Some of them, however, indicated reservations about the last part of the proposal, which refers to amendments as a result of revocation proceedings under Article 18, and suggested that this part be revised or deleted.

The Representatives of AIPLA, ABA, CASRIP, NYPTC and IPO recognized that draft paragraph (2)(d) was too restrictive but found the proposal by Germany too broad. They preferred some compromise solution between the two approaches, which would balance the interests of both the public and applicants, by providing, for example, that the scope of the claims be 'substantially' the same in the published application and in the granted patent.

In conclusion, the Chairman noted that a clear majority supported, if not the drafting, certainly the principle set down in the proposal by Germany, subject to the deletion of the reference to amendments as a result of administrative revocation proceedings under Article 18. It was understood that, for purposes of paragraph (2)(d), the scope of the claims as they appeared in the granted patent on the date of the court's decision

would be decisive, and this could be clarified in the Notes."

Article 24: Reversal of Burden of Proof

In addition to the text of Article 24, as elaborated by the International Bureau, discussions were based on texts proposed, respectively by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People's Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, Uruguay and Zaire and by the Delegations of Germany and the United States of America; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"Alternative A

(1) [Reversal of Burden of Proof in Infringement Proceedings] *For the purposes of proceedings in respect of the violation of the rights of the owner of the patent referred to in Article 19(1), where the subject matter of the patent is a process for obtaining a product, any identical product shall, in the absence of proof to the contrary and at least in the case where the product is new, be deemed to have been obtained by the patented process.*

(2) [Manufacturing and Business Secrets] *In requiring the production of evidence, the authority before which the proceedings referred to in paragraph (1)(a) take place shall take into account the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets.*

Alternative B

[No Article 24]"

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MEXICO, MOROCCO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"There should be no Article on the Reversal of Burden of Proof." (Document HL/CE/VIII/22, page 6)

[TEXT PROPOSED BY THE DELEGATION OF GERMANY]

"If the subject-matter of a patent is a process for obtaining a new product, the same product when produced by any other party shall, in the absence of

proof to the contrary, be deemed to have been obtained by the patented process.

In the adduction of proof to the contrary, the legitimate interests of the defendant in protecting his manufacturing and business secrets shall be taken into account." (Document HL/CE/VIII/27, page 2)

[TEXT PROPOSED BY THE DELEGATION OF THE UNITED STATES OF AMERICA]

“Alternative A

(1) [*Reversal of the Burden of Proof in Infringement Proceedings*] For the purposes of proceedings in respect of the violation of the rights of the owner of the patent referred to in Article 19(2), where the subject matter of a patent is a process for obtaining a product, *Contracting Parties shall provide that the burden of establishing that an alleged infringing product was not made by the process shall be on the alleged infringer in at least one of the following situations:*

(i) *the product is new, or*

(ii) *a substantial likelihood exists that the product was made by the process and the owner of the patent has been unable through reasonable efforts to determine the process actually used.*

....” (Document HL/CE/VIII/14, page 10)

The portion of the report of the Committee of Experts concerning the discussion of Article 24 reads as follows:

“The Delegation of the United States of America introduced its proposal (contained in document HL/CE/VIII/14), stating that it provided for mandatory reversal of the burden of proof at least where the product obtained by the patented process was new or where, regardless of the newness of the resulting product, there was a substantial likelihood that the product was made by the patented process and the patent owner had been unable to determine the process actually used by the alleged infringer. According to the proposal, Contracting Parties would have to provide in their national law that at least one of the alternatives to reversing the burden of proof be available to holders of process patents.

The Delegation of Germany presented its proposal (contained in document HL/CE/VIII/27), indicating that it was intended to limit the provision on reversal of the burden of proof only to the case where the product obtained by the patented process was new, excluding from the applicability of this special rule cases where the product was ‘known.’ For such cases, general principles applied, for example, the principle of *prima facie* evidence.

The Delegation of Cameroon, speaking on behalf of a number of developing countries, introduced the proposal (contained in document HL/CE/VIII/22) to delete draft Article 24. It pointed out that the principle that the plaintiff had to prove his allegations was a long-established principle of civil and penal law and that the

reversal of the burden of proof created an unacceptable exception to this rule and a discrimination against the defendant.

The Delegations of Switzerland, Japan, France, Portugal, Spain, the United Kingdom, Denmark, Austria, the Soviet Union, the Republic of Korea, the Netherlands, Poland, Australia, Belgium and Finland and the Representative of UEPPI expressed their preference for the proposal by Germany. With different qualifications, they stressed the importance that the automatic applicability of the reversal of the burden of proof should be limited only to new products obtained by the patented process.

The Delegations of Japan, France, Portugal and Denmark pointed out that they could also agree with the text of draft paragraph (1).

The Delegation of Portugal suggested that the words ‘for the purposes of proceedings in respect of the violation of the rights of the owner of the patent’ in draft paragraph (1) should be included in the proposal by Germany.

The Delegation of Norway recalled that the Committee of Experts had, in earlier meetings, agreed that the reversal of the burden of proof should not modify the established rule that innocence of the defendant was presumed until proof to the contrary was presented and asked whether, under the proposals by Germany and the United States of America, respectively, the reversal of the burden of proof would apply to the final decision of the judge in a case where both parties had produced conflicting evidence.

In reply to the point raised by the Delegation of Norway, the Delegation of Germany indicated that the judge should decide which was the most convincing evidence and would have recourse to the reversal of the burden of proof if neither of the two were convincing.

The Delegation of the United States of America pointed out that the judge would have to weigh the evidence presented and, if he was convinced that a substantial likelihood existed that the product was produced by the patented process and that the patent owner had made reasonable efforts to enquire about the process actually used by the alleged infringer, he would apply the rule that the burden of establishing that the alleged infringing product was not made by the patented process should be on the alleged infringer.

The Delegations of Czechoslovakia, Canada and Ireland supported the text of draft paragraph (1). The Delegation of Canada said that it could also agree with the proposal by the United States of America.

The Delegation of Norway stated that its first preference was for the text of the International Bureau, but that in the choice between the texts proposed by the United States of America and

Germany, it would greatly prefer the former. The Representatives of AIPLA, AIPPI, NYPTC, UNICE, CIPA, PTIC and LES supported the proposal by the Delegation of the United States of America.

The Representative of AIPPI pointed out that, in his view, the proposal by the United States of America should be broadened, giving the patentee the possibility of using the two options provided in the proposal. A similar view was expressed by the Representative of MPI. The Representative of UNICE stressed the importance of the possibility of shifting the burden of proof where the subject matter of a patent was a process for obtaining a product, and pointed out that the proposal by Germany should be completed with the option provided in item (ii) of the proposal by the United States of America. This view was shared by the Representatives of LES and CIPA.

The Delegations of Senegal, Indonesia, Ghana, Guinea, India, Algeria, Swaziland, the Democratic People's Republic of Korea, China and the Representatives of OAPI and ALIFAR supported the proposal in document HL/CE/VIII/22 to delete draft Article 24.

The Delegation of Indonesia acknowledged the importance of the rule on the reversal of the burden of proof, but pointed out that, in countries without appropriate anti-monopoly legislation, the application of this rule could be used to eliminate competitors from the market, with negative repercussions on the socio-economic structure of the country.

The Delegation of India pointed out that, even if the proposals by Germany and the United States of America improved the text of draft Article 24, it preferred that the said draft Article be deleted. Firstly, the introduction of the notion of the reversal of the burden of proof sought to overturn and reverse long-accepted principles of jurisprudence, of civil and criminal law, of the rules of evidence before courts, the principle of legal presumption and of natural justice. Secondly, this rule created a paradox in the harmonization process, a paradox which essentially sought to ask those countries in a majority to align or harmonize their legal systems in a fundamental way with the system followed by a minority of countries. Thirdly, in substance, there was a major problem as regards the adverse effects of reversing the burden of proof in respect of infringement proceedings regarding process patents. This would virtually nullify the benefits of granting a process patent for the countries concerned. The basic rationale behind a process patent was that the same product could be manufactured by totally new and different processes, thus encouraging the growth of competitive technologies or processes for arriving at the same

product. The Delegation further indicated that draft Article 24 would block those advantages and inhibit innovation rather than assure the security of the process patents granted. Furthermore, the legal proceedings involving alleged infringement would be unfairly weighted against the defendant and in favor of the plaintiff, who would not even be required to make out a *prima facie* case. The existence of draft paragraph (2), which provided that due account should be taken of the legitimate interests of the alleged infringer in not disclosing his manufacturing and business secrets, did not constitute a guarantee in this respect. Therefore, the legitimate rights of both the plaintiff and the defendant would best be protected by the system of freedom of proof, where the plaintiff would first lend evidence on his *prima facie* case of infringement, after which the defendant would be called upon to lend evidence in his defense.

The Delegation of Swaziland said that the rule on the reversal of the burden of proof constituted a drawback with respect to the generally established practice that the defendant was held guilty only when this was proved by the plaintiff.

The Representative of OAPI indicated that process patents were granted under the Bangui Agreement of 1977 Relating to the Creation of an African Intellectual Property Organization, and supported the arguments put forward in favor of the deletion of draft Article 24.

The Delegation of Germany clarified that its proposal was not in conflict with the principle of the freedom of the judge to assess the proof of the alleged infringement of the process patent in the absence of proof to the contrary. Under the German proposal, the patentee had the full responsibility of presenting proof that he was the owner of a valid process patent, that the product obtained by the process was new and that it was infringed.

The Chairman proposed that draft Article 24 should be presented at the Diplomatic Conference to include three alternatives: one should be based on the proposal of Germany; one should be based on the proposal of the United States of America; and one should state that the Treaty should contain no provision corresponding to draft Article 24.

The Delegation of the United States of America indicated that it could accept, as a suitable compromise, the proposal by the Chairman that draft Article 24 should include, under Alternative A, as two subalternatives, the proposal by Germany and that by its country. Furthermore, the Delegation pointed to the uncertainties concerning the interpretation of the newness of the product in question, in particular whether it meant novelty in the technical sense or in a commercial or market sense. It stated that, in the field of chemistry, for

example, even where the product resulting from a patented process was new in a 'technical' sense, it was not unlikely that a skilled chemist could come up in a short period of time with alternative processes for obtaining an identical product and, therefore, even when the product was technically new, there should be no necessary presumption that it had been produced by the patented process. In a situation where the product was new in a 'marketing' sense, it could well be that there were already several patented processes that had been used to obtain an identical product. Indeed, in most situations, there were probably at least two processes available to those skilled in the art for producing the identical product. In such cases, the burden of proof should not necessarily shift to the potential infringer, since it was already known that multiple processes existed for obtaining that same product. In this respect, the proposal of the United States of America in item (ii) simply provided that, among the choices that were available, there should be a substantial likelihood that the process described in the patent was the one that had been actually used by the potential infringer. The patent owner should at least ask the alleged infringer whether the process being used would infringe that particular patent or not. This seemed a very reasonable approach to a very difficult matter. The reversal of the burden of proof was a very important procedural advantage to the patentee which should be available in appropriate circumstances. However, the fact that the product might be new, either in the technical or in the marketing sense, did not necessarily justify that the burden of proof should be shifted.

The Representative of AIPLA pointed out that the rule of the reversal of the burden of proof, as presented in the proposal by the United States of America, was an indirect means of protecting the patented process from which the product was produced. The fact that the product was new was irrelevant to the basic question whether the patented process was infringed or not. Many important inventions were made by producing old products with new processes. For example, new recombinant techniques were used to make insulin in a far more pure composition and at a lower cost. Referring to the proposal by Germany, the Representative of AIPLA stated that a more effective test than that of the newness of the product should be adopted to justify the shifting of the burden of proof.

The Delegation of Germany stated that the remarks by the Delegation of the United States of America and the Representative of AIPLA clearly indicated the differences between the two proposals. Item (ii) of the proposal by the United States of America did not guarantee the automatic reversal of the burden of proof in all cases where

the product produced by the patented process was new. It appeared, therefore, that the position of the owner of a patented process would not be substantially strengthened if item (ii) in the proposal by the United States of America was incorporated in the proposal by Germany.

The Delegation of the United States of America clarified that the choice between the options in subparagraphs (i) and (ii) of its proposal was to be made by the national legislator and not by the patent owner.

The Representative of LES, while supporting the proposal by the Chairman for a new presentation to the Diplomatic Conference of draft Article 24, stressed the need for equitable and effective protection to be afforded to process patents and indicated that the proposal by the United States of America, in its item (ii), constituted a real attempt to recognize the difficulties arising in the protection of patents.

The Delegation of Switzerland supported the proposal by the Chairman for a new presentation to the Diplomatic Conference of draft Article 24.

The Chairman concluded that draft Article 24 should be presented as indicated in paragraph 293, above."

Article X: Obligations of the Right Holder

The discussions of the Committee of Experts on Article X were based on a text proposed by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People's Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, Uruguay and Zaire; this text read as follows:

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MEXICO, MOROCCO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"(1) The owner of the patent shall have at least the following obligations in addition to any other provided for in this Treaty:

(i) to disclose the invention in a clear and complete manner to permit a person possessing average skill in and knowledge of the art to put the invention into practice and in particular to indicate the best mode for carrying out the invention;

(ii) to provide information and supporting documents concerning corresponding foreign applications and grants;

(iii) to work the patented invention in the territory of the Contracting States granting it within the time limits fixed by national law;

(iv) to pay periodical fees as prescribed by national law;

(v) in respect of license contracts and contracts assigning patents, to refrain from engaging in abusive, restrictive or anticompetitive practices adversely affecting the transfer of technology.

(2) The applicant or holder of a patent shall comply with any other obligations established in the national law of the State in which the patent was granted in connection with the exercise of the rights conferred by the patent and with the exploitation of the patented invention." (Document HL/CE/VIII/22, page 7)

The portion of the report of the Committee of Experts concerning the discussion of Article X reads as follows:

"*General.* (a) The Delegation of Ghana introduced a proposal (contained in document HL/CE/VIII/22), presented by a number of developing countries, for a new Article on the obligations of the right holder. The Delegation explained that the purpose of the proposal was to establish a balance between the privileges and rights of the right holder and his obligations to the public. The provisions of the Draft Treaty had, so far, only considered the rights conferred on the owner of a patent, and it was time to indicate what the owner of the patent could do for society. It was a generally accepted principle that rights are accompanied by responsibilities and obligations, and it was only fair that, if the Committee of Experts had gone to great trouble to ensure rights not only for the owner of a product patent but also for the owner of a process patent to the extent of overturning the normal rules of evidence by the establishment of the rule of the reversal of the burden of proof in the Draft Treaty in favor of the owner of the process patent, then one should ensure that the obligations of the right holder are also enshrined in the Draft Treaty. The Delegation explained that the proposed Article was drafted as a minimum requirement.

(b) The Delegation stated that the first obligation in paragraph (1) related to disclosure, which was a generally accepted obligation on the right holder. The second was the obligation to provide information and supporting documents concerning corresponding foreign applications and grants. The third obligation related to the working of the patented invention in the country of grant. This obligation was important for the technological development of developing countries. In this regard, the Delegation stated that the experience of developing countries had shown that patent owners preferred to import patented products into those countries instead of working their inventions in those countries. This had caused much hardship to developing countries and had not fostered their development. The fourth obligation

concerned the payment of periodical fees. The fifth obligation related to refraining from engaging in abusive, restrictive or anti-competitive practices in license contracts and contracts assigning patents. Paragraph (2) of the said Article would permit other obligations to be established in the national law of the State for which the patent was granted.

(c) The Delegation pointed out to the Committee of Experts that the proponents of the proposed Article considered it to be so vital, that it should be submitted to the Diplomatic Conference.

The text of proposed Article X in document HL/CE/VIII/22 was supported by the Delegations of Senegal, Algeria, Indonesia, Mexico, Libya and Brazil and the Representative of ALIFAR.

The Delegations of Switzerland, France, the United Kingdom, the United States of America, Japan, Germany and Finland and the Representatives of MPI and AIPPI opposed the inclusion of Article X in the Draft Treaty, for the following reasons: during the first part of the current session of the Committee of Experts, a proposal by the Delegation of the United States of America concerning loss of rights (draft Article 9*bis*) had not been accepted by the Committee because the list of subjects to be included in the Draft Treaty was closed; the contents of item (i) of paragraph (1) had already been dealt with and their proper place was in Article 3 of the Draft Treaty and Rule 1 of the Draft Regulations; a mandatory obligation to indicate the best mode for carrying out the invention was not acceptable; with regard to item (iv) of paragraph (1), the question of fees had already been discussed by the Committee of Experts, which had decided not to attempt harmonization in respect of fees; the Draft Treaty dealt with substantive patent law and would be a special agreement under Article 19 of the Paris Convention; consequently, the regulation of the exercise of the rights of the owner of a patent, which belonged to competition law, should not be inserted in the Draft Treaty; the proposal had been submitted very late and contained some proposals that were self-evident and others that had nothing to do with patent law harmonization and could, more appropriately, be considered under antitrust and competition law.

The Delegations of Canada, Australia, Belgium, Austria and Sweden also opposed the inclusion of the proposed Article in the Draft Treaty.

The Delegation of India expressed its support for the text of proposed Article X and, in responding to the arguments presented by those Delegations that were opposed to the said Article, maintained that it was not correct to say that the proposal had been submitted too late. The Delegation

tion recalled that the Group of Developing Countries had earlier indicated that its proposals would be submitted after the Consultative Meeting of Developing Countries which was held in June 1990. As regards the argument that some of the provisions contained in the said Article were self-evident and others were already in the Draft Treaty, the Delegation stated that the Group of Developing Countries was willing to discuss those aspects of the proposal. The proposed provisions did not relate to antitrust and competition law but related to the abuse of patent rights. The question of anti-competitive practices or restrictive business practices was closely related to and in fact often constituted abuse of patent rights by right holders and therefore was germane to the Draft Treaty and it was recognized to be such in the laws of most countries. The Group of Developing Countries had agreed to certain Articles being submitted to the Diplomatic Conference despite the fact that they did not agree with the provisions contained in those Articles. Similarly, those Delegations that did not agree with the contents of the proposed new Article should agree to it being submitted to the Diplomatic Conference. The Delegation suggested that the proposed new Article could go to the Diplomatic Conference as one alternative together with another alternative that would provide that there would be no provision in the Draft Treaty on obligations of the right holder.

The Delegation of India clarified that the Article was couched in such a way as to make it mandatory for right holders to carry out certain obligations that may be provided for by Contracting Parties.

The Delegations of Cameroon, Nigeria, Guinea, Peru and Swaziland and the Representative of OAPI also supported the proposed new Article, in particular, for the following reasons: developing countries were desirous of preventing the conclusion of license contracts, which often involved the payment of funds abroad, where such contracts were not in the interests of the country concerned, for example, where a contract contained a requirement that raw materials which were available locally be imported into the country of exploitation; most of the provisions sought to be introduced by proposed Article X were already contained in the national laws of some developing countries.

The Chairman concluded that, since views remained divided about the proposal for a new Article X, the provisions of the said proposed Article should be discussed by the Committee point by point.

Paragraph (1)(i). The Delegation of the Netherlands expressed surprise at the fact that the

'*chapeau*' of paragraph (1) of proposed Article X contained the wording 'shall have at least the following obligations,' thereby making the obligations listed in the said paragraph mandatory for all Contracting Parties. The Delegation stated that it would have expected the proposal to contain wording to the effect that Contracting Parties were 'free to provide' for such obligations and asked for what reason it had been made mandatory.

It was pointed out that Article 3 of the Draft Treaty contained the same requirement as the one contained in the first part of item (i) of paragraph (1) of proposed Article X, but expressed in a more concise manner. Further the second part of the item conflicted with the provisions of Rule 1(1)(vi) of the Draft Regulations which, following extensive discussions, provided for a requirement to indicate the best mode for carrying out the invention as an optional provision that Contracting Parties were free to include in their legislation if they so wished. In addition, the words 'owner of the patent' appearing in paragraph (1) of the proposed Article, should, with respect to item (i), be replaced by the word 'applicant.' It was also pointed out that in the French text of draft Article X, the words 'at least,' which appear in the first line of paragraph (1) in the English text, had been omitted.

The Delegations of Japan and Germany stressed the fact that the requirement of disclosure and the best mode requirement had already been discussed and expressed the view that a debate on those requirements should not be reopened.

The Delegation of India stated that it had taken due note of the fact that the disclosure requirement was contained in the present text of Article 3 of the Draft Treaty. However, the Delegation suggested that the obligation should be listed separately in the Draft Treaty. The Delegation of Ghana suggested that the obligation be repeated separately in the Draft Treaty for emphasis.

Paragraph (1)(ii). The Delegation of the United Kingdom stated that it would have no objection to such an obligation provided that it was not mandatory for all Contracting Parties to require such information to be furnished by applicants. This position was supported by the Delegations of Japan and Switzerland. The Delegations of the United States of America and Canada expressed similar views.

The Delegations of India, Brazil and Ghana, in reply to a question posed by the Chairman, stated that they would accept the obligation contained in item (ii) being interpreted as an obligation on the applicant or on a Contracting Party to provide the information, and documentation, if requested.

The Delegation of the United Kingdom drew attention to the expense that the provision of such documentation could involve, particularly where as many as 20 or 30 parallel applications had been filed. This could place a heavy burden on industrial property offices with regard to certification of documentation. In the Delegation's view, if the proposal was to proceed, the Committee of Experts should avoid imposing unnecessary expense and difficulties on industrial property offices. In this connection, it was pointed out by the Chairman that the obligation to furnish documentation would not operate in respect of all foreign applications and grants.

Paragraph (1)(iii). The Delegation of Ghana, in response to a question posed by the Chairman regarding the words 'the time limits fixed by national law' appearing in this item of paragraph (1) of the proposed Article, stated that those time limits would be in accordance with the time limits contained in the Paris Convention and with the other conditions imposed by the said Convention. The Delegation recalled that the obligation to work patented inventions was contained in the WIPO Model Law for Developing Countries on Inventions.

The Delegation of the United States of America expressed the view that the subject should be discussed within the context of the revision of the Paris Convention and should not be discussed within the framework of the Draft Treaty. It suggested that the matter be deferred for discussion in the appropriate forum. The Delegations of Japan and Canada expressed their agreement with this view.

The Delegation of India stated that whilst it was heartened to hear of the revision of the Paris Convention and looked forward to the resumption of the exercise, it felt that the harmonization process had already encompassed many of the issues that were under discussion within the revision of the Paris Convention. In its view, there should be no artificial line, based on convenience, drawn between those subjects that can and those that cannot be included in the Draft Treaty.

The Representative of AIPLA stated that the proposed provision was out of step with the provisions of the Paris Convention. He maintained that the said Convention imposed no obligation on the owner of a patent to work the patented invention. The Convention only contains provisions regarding measures that may be taken in the event of non-working and provided for the issuance of compulsory licenses under certain circumstances and subject to certain conditions. None of the provisions of the Convention imposed an obligation to work. The provisions of the Convention only related to the consequences

of non-working. The Representative of AIPPI agreed with this view.

The Delegation of the United Kingdom stated that the insertion of the proposed provision as an obligation would impose an arduous task on patent owners to work their inventions in all countries in which the said inventions were patented. The Delegation stated that the provision should be optional. The Delegation of Switzerland expressed similar views.

The Delegation of the Republic of Korea supported the proposed provision which in its view emphasized the role of the patent system in encouraging the development of industry. The provision would also ensure a balance between the interests of the patent owner and the interests of the public. The Representative of ALIFAR also supported the proposed provision and stated that the obligation to work a patented invention is implicit in the Paris Convention and should be stated in the Draft Treaty.

The Delegation of India, in supporting the proposed provision, stated that the words 'where national laws so provide' could be included in the items in paragraph (1).

Paragraph (1)(iv). The Delegation of India explained that the obligation contained in this item would be an obligation on the owner of a patent where the legislation of the country in which the patent was granted contained such an obligation.

The Representative of OAPI stated that under the Bangui Agreement establishing that Organization, fees were also required to be paid for extensions of the patent term after the tenth year. In addition, fees were payable under that Agreement for the restoration of lapsed patents.

The Delegation of the United Kingdom expressed the view that the payment of fees was a condition for the grant of a patent and for the maintenance of a granted patent. It felt that there was no need to regulate the payment of fees in the Draft Treaty. Although the Delegation had no problem with the concept of the proposed provision, it felt that there was no need to mention it specifically in the Treaty. Similar views were expressed by the Delegations of Japan and the United States of America.

The Representative of AIPLA stated that in its view there was no obligation to pay fees. If the owner of a patent failed to pay required maintenance fees, the patent would lapse. The Representative felt that the proposed provision would need substantial redrafting.

The Representative of CIPA added that it should be clarified that the fees required can also be paid on behalf of the applicant or the owner of the patent.

The Delegation of India, supporting the inclusion of the obligation to pay fees stated that there were several instances where the Draft Treaty had reaffirmed established principles.

Paragraph (1)(v). The Delegation of Ghana explained that the proposal recognized that there was a linkage between patents and technology transfer agreements and license contracts. Developing countries, which were not in a position to conduct negotiations in this area on an equal footing with industrialized countries, felt the need to regulate such contracts and agreements. The Delegation cited an example from its country where there existed a body entrusted with the task of vetting and approving license contracts and said that in the course of the discussions of the Committee of Experts it had become clearer that technology recipients in developing countries were in need of assistance in the negotiation of technology transfer agreements in order to ensure that such agreements were free from restrictive business practices or other abusive terms. It stated that the WIPO Model Law for Developing Countries on Inventions contained provisions regarding terms in license contracts which impose unjustified restrictions on the licensee. The Delegation strongly urged the Committee of Experts to submit the proposed provision to the Diplomatic Conference.

The Delegations of Germany, Japan, France, the United Kingdom, the United States of America and Canada and the Representatives of AIPPI and UNICE strongly opposed the inclusion of this provision in the Draft Treaty, because it went beyond the scope of the Draft Treaty and the mandate of the Committee of Experts and was more appropriate for antitrust legislation. The provision dealt, in three lines, with a matter that could be the subject of a whole new treaty. Different countries had different approaches to the question of regulation of license contracts. The wording of the provision was vague and made it impracticable.

The Delegation of India, supporting the inclusion of the obligation contained in item (v), said that the link between patents and license contracts and technology transfer agreements had been widely accepted. In response to a question posed by the Delegation of Germany as to whether the proposed provision should be optional, the Delegation explained that it was the intention of the Group of Developing Countries that had sponsored and supported the proposal that the obligation would exist only where the legislation of a Contracting Party contained such an obligation. It was not the intention to oblige all Contracting Parties to provide for such an obligation but, instead, to oblige all right holders to comply with

given requirements in this regard. With regard to the argument that the present Committee of Experts was not the proper forum to discuss the subject of license contracts, the Delegation maintained that a subject of this importance should not be forced to go 'forum-shopping' since, in other fora, developing countries had been told that there were other fora that were appropriate for discussions on the subject.

The Delegation of Tunisia and the Representative of OAPI expressed their support for the proposal.

Paragraph (2). The Delegation of Ghana explained that the additional obligations envisaged in paragraph (2) of the proposal would be subject to the other provisions of the Draft Treaty, the provisions of the Paris Convention and the obligations contained in any other international treaty by which the Contracting Party was bound. The Delegation confirmed that this clarification could be inserted in the text of the proposal.

The Delegations of Japan and the United Kingdom expressed the view that the provision was too wide and was redundant. They suggested that the provision be deleted.

The Delegations of the Netherlands, Spain, Canada, the United States of America, France, Germany, Ireland, Switzerland and Austria agreed with this view.

Conclusion. It was concluded that there should be two main alternatives for Article X, each on an equal footing. The first alternative would read as follows:

'Obligations of the Right Holder

(1) The owner of a patent shall have at least the following obligations in addition to any other provided for in this Treaty:

(i) to disclose the invention in a manner sufficiently clear and complete for the invention to be carried out by a person skilled in the art; the description shall set forth at least one mode for carrying out the invention claimed; this shall be done in terms of examples, where appropriate, and with reference to the drawings, if any; however, any Contracting Party may provide that the description set forth the best mode for carrying out the invention known to the inventor at the filing date or, where priority is claimed, priority date of the application;

(ii) to provide such information and supporting documents in his possession as is requested by the competent Office concerning corresponding foreign applications and grants;

(iii) to work the patented invention in the territory of the Contracting State for which it is

granted within the time limits as provided by national law;

(iv) to pay, or cause to be paid, such fees as prescribed by national law in relation to the application and the maintenance of the patent granted on it;

(v) in respect of license contracts and contracts assigning patents, to refrain from engaging in abusive, restrictive or anticompetitive practices adversely affecting the transfer of technology.

(2) The applicant or holder of a patent shall comply with any other obligations established in the national law of the State in which the patent was granted in connection with the acquisition and the exercise of the rights conferred by the patent and with the exploitation of the patented invention.'

It was also decided that there should be an internal alternative to paragraph (1)(v) appearing in the text set out in the preceding paragraph. That internal alternative for paragraph (1)(v) should read as follows: 'Any Contracting Party may make it an obligation of the owner of a patent not to resort to anti-competitive, abusive or restrictive practices in relation to his patent.'

The second alternative for Article X should state that the Treaty should contain no provision corresponding to the proposed Article on obligations of the right holder."

Article Y: Remedial Measures Under National Legislation

The discussions of the Committee of Experts on Article Y were based on a text proposed by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People's Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, Uruguay and Zaire; this text read as follows:

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MOROCCO, MEXICO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"(1) Any Contracting State is free to provide appropriate measures to ensure compliance with the obligations referred to in the Article entitled 'Obligations of the Right Holder,' and for measures to remedy non-compliance with such obligations, including the grant of non-voluntary licenses and the revocation or forfeiture of the patent.

(2) A non-voluntary license under paragraph (1) shall be refused if the owner of the patent proves, to the satisfaction of the national authorities competent to grant non-voluntary licenses, that there are circumstances which justify the non-working or insufficient working of the patented invention.

(3) Any Contracting State is free to provide, at any time, on grounds of public interest, national security, nutrition, health, or the development of other vital sectors of national economy, for the grant of non-voluntary licenses or for the exploitation of the patented invention by the government of that country or by third persons authorized by it." (Document HL/CE/VIII/22, page 8)

The portion of the report of the Committee of Experts concerning the discussion of Article Y reads as follows:

"(a) The Delegation of Ghana introduced a proposal (contained in document HL/CE/VIII/22), presented by a number of developing countries, for a new Article on remedial measures under national legislation. The Delegation explained that, if obligations were spelt out in the Draft Treaty, it was necessary to provide for measures that could be applied to ensure compliance with those obligations. The Delegation referred to Article 19(3)(b) of the Draft Treaty and Article 5A of the Paris Convention and maintained that the proposed Article re-stated provisions that were contained in the Paris Convention. The proposed Article was drafted as an optional provision and was felt by the Delegation to be a necessary adjunct to Article X and a *sine qua non* of the philosophy of rights and obligations.

(b) The Delegation stated that the first paragraph of the proposed Article related to non-voluntary licenses, the second paragraph related to circumstances under which non-voluntary licenses may not be issued and the third paragraph related to the exploitation of patented inventions in the public interest.

(c) The Delegation urged the Committee of Experts to endorse the submission of the proposed Article to the Diplomatic Conference.

The text of proposed Article Y in document HL/CE/VIII/22 was supported by the Delegations of Senegal, Cameroon, Guinea, Algeria, Indonesia, Swaziland, Tunisia and Nigeria. The Representative of ALIFAR also expressed the view that the Draft Treaty should contain a provision on remedial measures.

The Delegations of the United States of America, the United Kingdom, Japan, Canada, Switzerland, Germany, New Zealand, France, Australia and Czechoslovakia opposed the inclusion of Article Y in the Draft Treaty, for reasons which included the following: if the intent of the Article was only to confirm what was already provided for in the Paris Convention, then its

necessity was questionable; as the Draft Treaty would be a special agreement under Article 19 of the Paris Convention, it was necessary that its provisions conform to the provisions of the said Convention; some provisions in the proposed Article were broader than the provisions of the Paris Convention and would consequently conflict with the said provisions; it was not necessary to include the proposed draft Article in the Draft Treaty since it was obvious that States were free to take measures to ensure compliance with conditions attached to the exercise of the rights conferred by the grant of a patent; the revision of the Paris Convention was being dealt with in another forum and, if there was a need for any change in the provisions of that Convention, it was a matter to be dealt with in that forum; the Paris Convention established some time limits with regard to the grant of compulsory licenses, and those time limits did not feature in the proposed Draft Article which, in any event, did not contain all the limitations imposed by the Paris Convention; it was not useful to repeat the text of a parent Convention in the text of a subordinate Treaty.

The Delegation of India expressed its support for the text of proposed Article Y and, in responding to the arguments presented by those delegations that were opposed to the said Article, maintained that there was no conflict between the proposed Article and the Paris Convention and that there were two aspects of the Article. First, the Article reaffirmed fundamental principles of the Paris Convention, for example, those contained in Article 5A thereof, and, secondly, it dealt with an area in which the Paris Convention was silent, namely, exploitation of patented inventions in the public interest. The Delegation maintained that an objection cannot validly be raised against an Article which repeats what is already in the Paris Convention and, in addition, supplements the provisions of that Convention.

The Delegation of Brazil expressed the view that some delegations were not being consistent in the sense that they objected to the provisions of the proposed draft Article for the reason that those provisions went beyond the provisions of the Paris Convention. At the same time, the Delegation maintained, those delegations were willing to discuss such subjects as fields of technology, duration of patents and reversal of the burden of proof, all of which were not dealt with by the Paris Convention.

Conclusion. After summarizing the discussions on Article Y, the Chairman concluded that two alternatives should be presented to the Diplomatic Conference with respect to proposed Article Y: one should be the text contained in document HL/CE/VIII/22 and the other should state that the

Treaty should contain no provision corresponding to proposed Article Y."

Article 25: Assembly

In addition to the text of Article 25, as elaborated by the International Bureau, discussions were based on texts proposed by the Delegation of Italy and in a Note by the International Bureau; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"(1) [Composition] (a) The Union shall have an Assembly consisting of the Contracting Parties.

(b) Each Contracting Party shall be represented by one delegate, who may be assisted by alternate delegates, advisors and experts.

(c) The expenses of each delegation shall be borne by the Contracting Party that has appointed the delegation.

(2) [Tasks] (a) The Assembly shall:

(i) deal with all matters concerning the maintenance and development of the Union and the implementation of this Treaty;

(ii) adopt, where it considers it desirable, guidelines for the implementation of provisions of this Treaty or the Regulations under this Treaty;

(iii) exercise such rights and perform such tasks as are specifically conferred upon it or assigned to it under this Treaty;

(iv) give directions to the Director General concerning the preparations for any conference referred to in Article 29 or Article 30 and decide the convocation of any such conference;

(v) review and approve the reports and activities of the Director General concerning the Union, and give him all necessary instructions concerning matters within the competence of the Union;

(vi) establish such committees and working groups as it deems appropriate to achieve the objectives of the Union;

(vii) determine which States and intergovernmental organizations, other than Contracting Parties, and which non-governmental organizations shall be admitted to its meetings as observers;

(viii) take any other appropriate action designed to further the objectives of the Union and perform such other functions as are appropriate under this Treaty.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its deci-

sions after having heard the advice of the Coordination Committee of the Organization.

(3) [Representation] *A delegate may represent, and vote in the name of, one Contracting Party only.*

(4) [Voting] (a) *Each Contracting Party shall have one vote.*

(b) *However, no Contracting Party shall have the right to vote on questions concerning matters in respect of which it has made a declaration under Article 33 or a notification under Article 34(2) or (3).*

(5) [Quorum] (a) *One-half of the Contracting Parties shall constitute a quorum, provided that, for the purposes of determining whether there is a quorum in respect of any question concerning any matter on which a declaration under Article 33 or a notification under Article 34(2) or (3) has been made, any Contracting Party not having the right to vote on that question shall not be counted.*

(b) *In the absence of the quorum, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the quorum and the required majority are attained through voting by correspondence.*

(6) [Majorities] (a) *Subject to paragraph (9)(b) of this Article and to Articles 27(2) and (3) and 28(4), the decisions of the Assembly shall require a majority of the votes cast.*

(b) *Abstentions shall not be considered as votes.*

(7) [Sessions] (a) *The Assembly shall meet once in every second calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.*

(b) *The Assembly shall meet in extraordinary session upon convocation by the Director General, either at the request of one-fourth of the Contracting Parties or on the Director General's own initiative.*

(8) [Rules of Procedure] *The Assembly shall adopt its own rules of procedure.*

(9) [Guidelines] (a) *In the case of conflict between the guidelines referred to in paragraph (2)(a)(ii) and the provisions of this Treaty or the Regulations under this Treaty, the latter shall prevail.*

(b) *The adoption by the Assembly of the said guidelines shall require three-fourths of the votes cast."*

[TEXT PROPOSED BY THE DELEGATION OF ITALY]

"(4)(a) Each contracting party that is a State, shall have one vote.

(aa) Each contracting party that is an intergovernmental organization within the meaning of Article 31(1)(ii) shall have a number of votes equal to the number of its Members that are Parties to this Treaty. When the intergovernmental organization exercises its voting right, it does so in place of its Member States; the intergovernmental organization shall not exercise its right to vote if any of its Member States participates in the vote." (Document HL/CE/VIII/29, page 2)

[TEXT PROPOSED IN THE NOTE BY THE INTERNATIONAL BUREAU]

"(3) [Representation] *A delegate may represent one Contracting Party only.*

(4) [Voting] (a) *Subject to subparagraph (e), each Contracting Party that is a State shall have one vote and shall vote only in its own name.*

(b) *Any intergovernmental organization within the meaning of Article 31(1)(ii) that is a Contracting Party may exercise the right to vote of its member States that are Contracting Parties. The intergovernmental organization may not, in a given vote, exercise the right to vote of any of its member States if any of them participates in the vote.*

(c) *Any intergovernmental organization within the meaning of Article 31(1)(iii) that is a Contracting Party may exercise the right to vote of its member States that are Contracting Parties if each of those States has notified in writing the Director General to that effect. The intergovernmental organization may not, in a given vote, exercise the right to vote of any of its member States if any of them participates in the vote.*

(d) *The right to vote of a State that is a Contracting Party may not, in a given vote, be exercised by more than one intergovernmental organization.*

(e) *No Contracting Party shall have the right to vote on questions concerning matters in respect of which it has made a declaration under Article 33." (Document HL/CE/VIII/30)*

The portion of the report of the Committee of Experts concerning the discussions of Article 25 reads as follows:

"Paragraph (1). The Delegation of the Soviet Union proposed that draft paragraph (c) should, instead of saying that the expenses must be borne by the governments, simply state that the Union would not bear the expenses connected with the participation of any delegation of a Contracting Party in the work of the Assembly. There was no objection to this proposal.

The Delegation of Senegal proposed that the possibility should exist for the Assembly to request WIPO to provide financial assistance for

The Delegations of Italy and Ireland supported the proposal made by the Delegation of the United Kingdom.

delegations of developing countries that were Contracting Parties. The proposal by the Delegation of Senegal was supported by the Delegation of Ghana.

The Delegation of Cameroon, supporting the proposal by the Delegation of Senegal, also proposed that an additional paragraph be inserted in the text so as to enable the Assembly to request any organization or body to provide such financial assistance. The proposal by the Delegation of Cameroon was supported by the Delegation of Ghana.

It was pointed out that the Washington Treaty on Intellectual Property in Respect of Integrated Circuits, in its Article 9(1)(d), provided that the Assembly (established by the said Treaty) may ask WIPO to grant financial assistance to facilitate the participation of developing countries in its meetings.

The Delegations of France, Germany, Italy and Canada were against including a provision of the kind contained in the Washington Treaty in the present Draft Treaty, because the said provision had been accepted in Washington as an exception to the general rule.

The Chairman concluded that the proposal by the Delegation of the Soviet Union had been accepted and that the proposals made by the Delegations of Senegal and Cameroon had not received sufficient support for them to be submitted to the Diplomatic Conference. Those delegations in favor of the latter proposals could present a written proposal on the matter to the Diplomatic Conference. It should be explained in the Notes that the text of draft paragraph (1), with the amendment proposed by the Delegation of the Soviet Union and accepted, would not prevent the Assembly from requesting financial assistance from any source, including from WIPO.

Paragraph (2). The Delegation of the United Kingdom proposed that the Assembly should be empowered to alter, by a unanimous vote, any time limit provided for in the Treaty. If this were to be the case, the time periods could be altered without resorting to a Diplomatic Conference. This would have the advantage that, on the basis of the experience gained in the implementation of the provisions of the Treaty, the time periods could more easily be altered.

It was pointed out that there was a precedent in this respect in the Patent Cooperation Treaty and that, if the proposal were accepted, modifications of the time limits would be made by the Assembly, provided that no Contracting Party voted against any such modification.

The Delegation of Japan reserved its position on the proposal made by the Delegation of the United Kingdom.

The Chairman concluded that a provision along the lines of the proposal made by the Delegation of the United Kingdom should be added in Article 25.

Paragraph (3). The revised text prepared by the International Bureau as a consequence of the discussions on paragraph (4) and contained in document HL/CE/VIII/30 was approved without discussion.

Paragraph (4). The Delegation of Italy introduced its proposal (contained in document HL/CE/VIII/29) for paragraph (4)(a) to be replaced by a text containing two subparagraphs. The Delegation stated that the proposal was a logical consequence of other proposals it had made in respect of the administrative provisions of the Draft Treaty. The proposal was a repetition of the 'Community clause' that was contained in other treaties. If the European Communities were admitted as a Contracting Party under the provisions of Article 31(1)(ii), there could be the possibility of the European Communities having a vote additional to the votes of their Member States. Since this would not be appropriate, the proposal was worded in such a way as to exclude such possibility.

The Delegation of the United States of America stated that, whilst it was sympathetic with the intent of the proposal, it caused its Delegation much concern since the proposal did not meet the objective sought to be achieved. In the Delegation's view, if a State were to be a member of two intergovernmental organizations, the situation could arise in which that State could have two votes. A State could be a member of an organization that could be admitted as a Contracting Party under Article 31(1)(ii) and also be a member of another intergovernmental organization admitted as a Contracting Party under the provisions of Article 31(1)(iii).

The Delegation of Japan stated that it could, at this stage, support neither the text of draft paragraph (4)(a) nor the text contained in the proposal by the Delegation of Italy.

The Delegations of Brazil, New Zealand, Canada and Australia also expressed concern on the question of possible double votes.

The Delegation of the Soviet Union said that it was in favor of the possibility for a Contracting State to exercise its right to vote through an intergovernmental organization to which it belonged, and that the problem of double voting could be solved by an appropriate wording.

The Delegation of Peru stated that it preferred the wording of the Draft Treaty.

The Delegation of Italy, responding to those Delegations that did not support its proposal, expressed the view that the example cited by the Delegation of the United States of America was hypothetical. It maintained that the spirit of its proposal was clear, namely, that there should be no additional votes for Contracting States where their votes were exercised, on their behalf, by an intergovernmental organization. If a different wording could be found that would achieve the intended result, the Delegation would not be opposed to it. The Delegation explained that there were certain kinds of matters that fell within the competence of the European Communities and others that fell within the competence of its Member States and there were also matters in respect of which those competences overlapped or were mixed. On the first kind of matters, the European Communities would vote and none of its members that were Contracting Parties would vote. The Delegation stressed the fact that it was only referring to intergovernmental organizations referred to in the provisions of draft Article 31(1)(ii) (in the Draft Treaty referred to as 'supranational authorities,' a term to be replaced by the more neutral term 'intergovernmental organizations') and not to intergovernmental organizations referred to in draft Article 31(1)(iii). The system of voting suggested in its proposal was not new and had been adopted in other fora.

The Delegations of the United Kingdom and Germany supported the proposal by the Delegation of Italy.

The Representative of the EC explained that, in Community law, the European Communities were gradually replacing their Member States in certain areas and those States had no choice where any given matter fell within the exclusive competence of the European Communities. In regard to such a matter, the European Communities should have an autonomous right to vote and not one derived from its Member States. In conclusion, the Representative supported the proposal by the Delegation of Italy.

The Delegation of Cameroon stated that it agreed that OAPI would be able to vote on its behalf.

The Delegation of the United Kingdom proposed that any intergovernmental organization covered by draft Article 31(1)(iii) should be able to exercise the voting rights of its members only if such members notified the Director General that they authorized the intergovernmental organization to do so. The provision, accordingly prepared by the International Bureau, is contained in document HL/CE/VIII/30.

Subparagraph (a) (as contained in document HL/CE/VIII/30). The Representative of the EC stated that its Delegation was not satisfied with

the subparagraph, to the extent that it did not ensure an autonomous right to vote to the European Communities.

It was pointed out that any member delegation could submit to the Diplomatic Conference what it considered to be an improved text.

It was agreed that the text of the International Bureau should be submitted to the Diplomatic Conference.

Subparagraphs (b) and (c) (as contained in document HL/CE/VIII/30). It was agreed that the second sentence of draft subparagraphs (b) and (c) should be amended to read 'The intergovernmental organization shall not, in a given vote, exercise the right to vote if any of its member States participates in the vote or expressly abstains.'

The Delegation of Cameroon said that, very often, developing countries, due to financial constraints, were unable to send delegations to participate in meetings of organizations of which they were members. As a member State of OAPI, Cameroon, like other member States, desired that OAPI be able to exercise the votes of its member States, on their behalf, whether some or all of such members were present or absent at the time of the voting.

This proposal was supported by several delegations, whereas other delegations opposed it, arguing that an intergovernmental organization should be entitled to exercise the right to vote only of those of its member States whose delegations were present at the time of voting.

In conclusion, it was decided that the text of the first sentence of draft subparagraph (c) as contained in document HL/CE/VIII/30, to be submitted to the Diplomatic Conference, should contain, within square brackets, after the expression 'member States,' the words 'present or absent,' and that the Notes should indicate that the insertion of those words reflected the expressed desire of the OAPI countries.

On a proposal made by the Delegation of Italy, it was decided that the text of the first sentence of draft subparagraph (b) would contain the same bracketed words.

Subparagraph (d) (as contained in document HL/CE/VIII/30). In response to clarifications sought by the Delegation of Italy and observations made by the Representative of the EC in respect of the drafting of subparagraph (d), it was pointed out that the Rules of Procedure of the Assembly would, once there were two intergovernmental organizations that were party to the Treaty and had overlapping memberships, provide for the modalities of the implementation of draft subparagraph (d).

It was agreed that the text of draft subparagraph (d), as contained in document

HL/CE/VIII/30, should be submitted to the Diplomatic Conference.

Subparagraph (e) (as contained in document HL/CE/VIII/30). The Delegation of India, referring to a statement made by the Delegation of the Democratic People's Republic of Korea, on behalf of the Group of Developing Countries, in connection with draft Article 33 concerning reservations, emphasized that the making of a reservation by a Contracting Party should not preclude that Contracting Party from being able to exercise its right to vote on matters in respect of which it had made the reservation.

The Delegation of Brazil reserved its position on subparagraph (e).

It was agreed that the text of draft subparagraph (e), as contained in document HL/CE/VIII/30, should be submitted to the Diplomatic Conference.

Paragraph (5). In the light of decisions taken by the Committee of Experts with respect to the text of draft paragraph (4), it was agreed that subparagraph (a) should be amended to read 'One half of the Contracting Parties that have the right to vote....' and that the reference to Article 34 would need to be modified.

Paragraph (6) was approved without discussion.

Paragraph (7) was approved without discussion.

Paragraph (8) was approved without discussion.

Paragraph (9) was approved without discussion.

The Delegation of Spain expressed reservations on draft Article 25 as well as on draft Articles 31(1), 32 and 34, on the understanding that their inclusion in the Draft Treaty could be interpreted as an acceptance of evolving potential competences, which certain intergovernmental organizations could take on in the future, and which at present pertained exclusively to their respective member States."

Article 26: International Bureau

The discussions were based on the text of Article 26 as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

"(1) [Tasks] The International Bureau shall:

(i) perform the administrative tasks concerning the Union, as well as any tasks specifically assigned to it by the Assembly;

(ii) provide the secretariat of the conferences referred to in Articles 29 and 30, of the Assembly, of the committees and working groups established by the Assembly, and of any other meeting convened by the Director General under the aegis of the Union.

(2) [Director General] The Director General shall be the chief executive of the Union and shall represent the Union.

(3) [Meetings Other than Sessions of the Assembly] The Director General shall convene any committee and working group established by the Assembly and all other meetings dealing with matters of concern to the Union.

(4) [Role of the International Bureau in the Assembly and Other Meetings] (a) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly, the committees and working groups established by the Assembly, and any other meetings convened by the Director General under the aegis of the Union.

(b) The Director General or a staff member designated by him shall be ex officio secretary of the Assembly, and of the committees, working groups and other meetings referred to in subparagraph (a).

(5) [Conferences] (a) The Director General shall, in accordance with the directions of the Assembly, make the preparations for any conference referred to in Article 29 or Article 30.

(b) The Director General may consult with intergovernmental and international and national non-governmental organizations concerning the said preparations.

(c) The Director General and staff members designated by him shall take part, without the right to vote, in the discussions at any conference referred to in subparagraph (a).

(d) The Director General or a staff member designated by him shall be ex officio secretary of any conference referred to in subparagraph (a)."

The portion of the report of the Committee of Experts concerning the discussion of Article 26 reads as follows:

"The draft Article was approved without discussion."

Article 27: Regulations

The discussions were based on the text of Article 27 as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Content] *The Regulations annexed to this Treaty provide rules concerning*

(i) *matters which this Treaty expressly provides are to be ‘prescribed’;*

(ii) *further or supplementary details concerning, or any details useful in the implementation of, the provisions of this Treaty;*

(iii) *any administrative requirements, matters or procedures.*

(2) [Amending the Regulations] (a) *The Assembly may amend the Regulations and shall determine the conditions for the entry into force of each amendment.*

(b) *Subject to the provisions of paragraph (3), amendments shall require three-fourths of the votes cast.*

(3) [Requirement of Unanimity] (a) *The Regulations may specify rules which may be amended only by unanimous consent.*

(b) *Exclusion, for the future, of any rules designated as requiring unanimous consent for amendment from such requirement shall require unanimous consent.*

(c) *Inclusion, for the future, of the requirement of unanimous consent for the amendment of any rule shall require unanimous consent.*

(4) [Conflict Between the Treaty and the Regulations] *In the case of conflict between the provisions of this Treaty and those of the Regulations, the former shall prevail.”*

The portion of the report of the Committee of Experts concerning the discussion of Article 27 reads as follows:

“*Paragraph (1).* Pursuant to a proposal made by the Delegation of Norway, it was agreed that the words ‘further or supplementary details concerning, or’ should be deleted from item (ii).

With that modification, draft paragraph (1) was approved.

Paragraph (2). The Delegation of Germany reserved its position on draft paragraph (2)(b).

The said draft paragraph was approved.

Paragraph (3) was approved without discussion.

Paragraph (4) was approved without discussion.”

Rule 8: Requirement of Unanimity for Amending Certain Rules

The discussions were based on the text of Rule 8 as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“*Amendment of the following provisions of these Regulations shall require that no Contracting Party having the right to vote in the Assembly vote against the proposed amendment:*

(i) *Rule 1(1)(vi) (Content of Description –mode for carrying out the invention),*

(ii) *Rule 2(3) (Form of Claim).”*

The portion of the report of the Committee of Experts concerning the discussions of Rule 8 reads as follows:

“The Delegation of Japan said that no decision could be taken on the contents of the Rule until the contents of the Treaty as a whole had been determined. Consequently, it reserved its position on the Rule in question.

It was agreed that the text of the draft Rule be submitted to the Diplomatic Conference.”

Article 28: Settlement of Disputes

The discussions were based on the text of Article 28, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Consultations] (a) *Where any dispute arises concerning the interpretation or implementation of this Treaty, a Contracting Party may bring the matter to the attention of another Contracting Party and request the latter to enter into consultations with it.*

(b) *The Contracting Party so requested shall provide promptly an adequate opportunity for the requested consultations.*

(c) *The Contracting Parties engaged in consultations shall attempt to reach, within a reasonable period of time, a mutually satisfactory solution of the dispute.*

(2) [Other Means of Settlement] *If a mutually satisfactory solution is not reached within a reasonable period of time through the consultations referred to in paragraph (1), the parties to the dispute may agree to resort to other means designed to lead to an amicable settlement of their dispute, such as good offices, conciliation, mediation and arbitration.*

(3) [Panel] (a) *The Assembly shall adopt rules for the establishment of a body of experts, any candidate having to be presented by a Contracting Party. It shall adopt rules concerning the manner of selecting the members of each panel, each panel having three members, none of which shall, unless the parties to the dispute agree otherwise, be from either party to the*

dispute. The Assembly shall also adopt rules for the conduct of the panel proceedings, including provisions to safeguard the confidentiality of the proceedings and of any material designated as confidential by any participant in the proceedings. Each panel shall give full opportunity to the parties to the dispute and any other interested Contracting Parties to present to it their views.

(b) If the dispute is not satisfactorily settled through the consultations referred to in paragraph (1), or if the means referred to in paragraph (2) are not resorted to, or do not lead to an amicable settlement within a reasonable period of time, the Assembly, at the written request of either of the parties to the dispute, shall appoint members of a panel to examine the matter.

(c) The terms of reference of the panel shall be agreed upon by the parties to the dispute. However, if such agreement is not achieved within three months from the date the Assembly appointed the members of the panel, the Assembly shall itself set the terms of reference of the panel after having consulted the parties to the dispute and the members of the panel.

(d) If both parties to the dispute so request, the panel shall stop its proceedings.

(e) Unless the parties to the dispute reach an agreement between themselves prior to the panel's concluding its proceedings, the panel shall promptly prepare the draft of a written report containing a statement of the facts of the case and containing recommendations for the resolution of the dispute and provide it to the parties to the dispute for their review. The parties to the dispute shall have a reasonable period of time, whose length shall be fixed by the panel, to submit any comments on the report to the panel, unless they agree to a longer time in their attempts to reach a mutually satisfactory resolution to their dispute.

(f) The panel shall take into account the comments and shall promptly transmit its final report to the Assembly, which report shall be accompanied by the written comments, if any, of the parties to the dispute.

(4) [Recommendation by the Assembly] *The Assembly shall give the report of the panel prompt consideration. The Assembly shall make recommendations to the parties to the dispute, based upon its interpretation of this Treaty and the report of the panel. Any recommendation by the Assembly shall require consensus among the members of the Assembly other than the parties to the dispute.*"

The portion of the report of the Committee of Experts concerning the discussion on Article 28 reads as follows:

"General. The Delegations of Japan and the United States of America expressed general support for the inclusion of a provision on the settlement of disputes in the Treaty, but reserved their positions on the content of such a provision, pending the outcome of discussions in this regard that were going on in other fora. In this regard, reference was made to the work by the WIPO Committee of Experts on the Settlement of Intellectual Property Disputes Between States (hereinafter referred to as the 'WIPO Committee on Settlement of Disputes') and in the work by GATT.

The Delegation of the United Kingdom questioned the need for a separate provision on the settlement of disputes in the Treaty in light of the ongoing work of the WIPO Committee on Settlement of Disputes to develop a general treaty thereon.

It was pointed out that the outcome of discussions in other fora on provisions relating to the settlement of intellectual property disputes between States was uncertain and that the general treaty under discussion in the WIPO Committee on Settlement of Disputes was not yet a reality. Moreover, there may not be an identity between Contracting Parties to the Treaty and Contracting Parties to the said general treaty. Accordingly, it was felt that a dispute settlement provision in the Treaty would be desirable in order to provide a certain and common dispute resolution mechanism for Contracting Parties.

The Delegation of India supported the retention of a provision on the settlement of disputes in the Treaty, citing the desirability of a 'treaty-specific' dispute resolution mechanism, in addition to an 'umbrella' dispute resolution mechanism as contemplated by the WIPO Committee on Settlement of Disputes.

The Delegations of Canada, Germany, the Soviet Union, Tunisia, Cameroon, Sweden, India, the Netherlands and Ghana supported the retention of a provision on the settlement of disputes in the Treaty.

Paragraph (1). The Delegation of Cameroon questioned the efficacy of the consultation procedure if specific time limits for the completion of the procedure were not provided for.

It was observed that the WIPO Committee on Settlement of Disputes had considered the provision in the future general treaty of specific time limits and that one could envisage incorporating such time limits in the Basic Proposal.

It was agreed that draft paragraph (1) should be forwarded to the Diplomatic Conference; subject to what is envisaged in the previous paragraph of this report.

Paragraph (2). No comments were made on this draft paragraph. It was agreed that this draft

paragraph should be forwarded to the Diplomatic Conference without modification.

Paragraph (3). The Delegation of Canada proposed amending draft subparagraphs (b) and (c) to provide that the Director General, rather than the Assembly, appoint the panel. This proposal was supported by the Delegations of the Soviet Union and India.

It was agreed that draft paragraph (3) should be forwarded to the Diplomatic Conference with the amendment of draft subparagraphs (b) and (c) as proposed by the Delegation of Canada.

Paragraph (4). The Delegation of India, referring to the last sentence of draft paragraph (4), questioned whether the members of the Assembly establishing the consensus should exclude the parties to the dispute as provided in the said sentence.

It was agreed that draft paragraph (4) should be forwarded to the Diplomatic Conference without modification.”

Article 29: Revision of the Treaty

The discussions were based on the text of Article 29, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“This Treaty may be revised by a conference of the Contracting Parties.”

The portion of the report of the Committee of Experts concerning the discussion of Article 29 reads as follows:

“The draft Article was approved without discussion.”

Article 30: Protocols

The discussions were based on the text of Article 30, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“For the purposes of further developing the harmonization of patent laws, protocols may be adopted by a conference of the Contracting Parties, provided that the provisions of any such protocol shall not contravene the provisions of this Treaty. Only Contracting Parties may become party to any such protocol.”

The portion of the report of the Committee of Experts concerning the discussion of Article 30 reads as follows:

“The draft Article was approved without discussion.”

Article 31: Becoming Party to the Treaty

In addition to the text of Article 31, as elaborated by the International Bureau, the discussions were based on a text proposed by the Delegation of Italy and a Note of the International Bureau; these texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Eligibility] The following may become party to this Treaty:

(i) any State which is a party to the Paris Convention for the Protection of Industrial Property and in respect of which patents may be obtained either through the State’s own Office or through the Office of another Contracting Party;

(ii) any supranational authority which does not maintain an Office but which has established norms dealing with matters covered by this Treaty and binding all the States that constitute the said authority, provided that all those States are party to this Treaty;

(iii) any intergovernmental organization which maintains an Office granting patents with effect in more than one State, provided that all of its member States are party to the Paris Convention for the Protection of Industrial Property.

(2) [Signature; Deposit of Instrument] To become party to this Treaty, the State, the supranational authority or the intergovernmental organization shall:

(i) sign this Treaty and deposit an instrument of ratification, or

(ii) deposit an instrument of accession.

(3) [Condition as to Effect of Instrument] (a) Any instrument of ratification or accession (hereinafter referred to as ‘instrument’) may be accompanied by a declaration making it a condition to its being considered as deposited that the instrument of one State or one intergovernmental organization, or the instruments of two States, or the instruments of one State and one intergovernmental organization, specified by name and eligible to become party to this Treaty according to paragraph (1)(a)(i) or (iii), is or are also deposited. The instrument containing such a declaration shall be considered to have been deposited on the day on which the condition indicated in the declaration is fulfilled. However,

when the deposit of an instrument specified in the declaration is, itself, accompanied by a declaration of the said kind, that instrument shall be considered as deposited on the day on which the condition specified in the latter declaration is fulfilled.

(b) Any declaration made under paragraph (a) may be withdrawn, in its entirety or in part, at any time. Any such withdrawal shall become effective on the date on which the notification of withdrawal is received by the Director General."

[TEXT PROPOSED BY THE DELEGATION
OF ITALY]

"(1)(ii) Any intergovernmental organization which has competence in respect of matters governed by this Treaty and which has established norms dealing with matters covered by this Treaty and binding all the States that constitute the said organization,¹

¹ In all other Articles of the Treaty, the term 'supranational authority' should be replaced by 'intergovernmental organization.'"

(Document HL/CE/VIII/29, page 2)

[TEXT PROPOSED IN THE NOTE OF
THE INTERNATIONAL BUREAU]

"(1)(ii) any intergovernmental organization competent in matters governed by this Treaty which has established, on such matters, norms that affect the national law of the States constituting the said organization and are binding on all those States, provided that all those States are party to the Paris Convention;¹

¹ Throughout the Treaty, replace the expression 'supranational authority' with 'intergovernmental organization.'"

(Document HL/CE/VIII/30, page 2)

The portion of the report of the Committee of Experts concerning the discussion of Article 31 reads as follows:

"Paragraph (1)(i). The Delegation of Brazil requested clarification on whether the Paris Convention provided for the possibility of any supranational authority becoming party to it.

It was pointed out that, at present, the Paris Convention was open only to States.

Paragraph (1)(i) was approved without further discussion.

Paragraph (1)(ii). The Delegation of Italy introduced its proposal (contained in document HL/CE/VIII/29), stating that the main change with regard to draft paragraph (1)(ii) concerned the replacement of the term 'supranational authority' by 'intergovernmental organization,' the latter better reflecting the nature of the European Communities and similar entities which were meant in that provision.

It was pointed out that the proposal of the Delegation of Italy did not affect in any way the eligibility of intergovernmental organizations mentioned in draft paragraph (1)(iii), in particular OAPI, which had not itself established norms binding its member States but granted titles of protection while the legislative competence remained with its member States.

The Delegations of Canada, Japan, New Zealand, Norway, Spain and the United States of America reserved their position in respect of paragraph (1)(ii) of Article 31. It was stated that the question of entities such as those considered in Article 31(1)(ii) becoming party to the Treaty had important political implications and should, therefore, be deferred for consideration at the Diplomatic Conference itself.

The Delegation of the United States of America stated that the proposal of the Delegation of Italy did not specify whether the member States of an intergovernmental organization becoming party to the Treaty were all supposed to be party to the Paris Convention and to the Treaty, which the Delegation considered to be an issue of great importance.

The Delegation of Italy clarified that it was an inherent condition that such an intergovernmental organization consisted of States party to the Paris Convention. If it was felt to be necessary to spell this out in the text of the provision, it would not object to such an amendment. As to the requirement that all its members should be party to the Treaty in order that an intergovernmental organization could qualify for membership in the Treaty, the Delegation recalled that it was the normal practice in the European Communities to adhere in such a manner to treaties, but no express legal basis existed to that effect. The Delegation further expressed itself against deferring the problem to the Diplomatic Conference recalling that at the Washington Conference in 1989 the same question had led to one-and-a-half days' discussion. The Delegation further suggested that the positive experience and respective provisions adopted at the Diplomatic Conferences in Washington and Madrid in 1989 should be taken into account when dealing with the problem of participation of the European Communities in the Treaty.

The Representative of the European Communities supported the proposal by the Delegation of Italy and stressed the importance for the European Communities of being able to accede to the Treaty since this was in the interest of the international community. Once the European Communities had adhered to a treaty, they assumed responsibility on behalf of their member States. If the eventual accession of the European Communities was made subordinate to prior accession to

the Treaty of all their member States, that could unreasonably delay the accession of the European Communities to the Treaty and adversely affect the harmonization process.

The Delegation of France, while supporting the proposal of the Delegation of Italy, proposed that a clarification in respect of the norms established by the intergovernmental organization be introduced. Such norms on matters covered by the Treaty should affect the national legislation of the member States and be binding on all of them.

The Delegations of Belgium, Cameroon, Denmark, Germany, Ireland, the Netherlands and the United Kingdom and the Representative of OAPI supported the proposal of the Delegation of Italy and the additional idea proposed by the Delegation of France.

The Delegations of Canada and the United States of America raised the question of voting rights, indicating that the situation should be avoided where an intergovernmental organization as specified in the proposal of the Delegation of Italy had voting rights in addition to its member States.

The Delegation of New Zealand raised the question of who was supposed to decide if an intergovernmental organization was competent in respect of matters governed by the Treaty and could, therefore, qualify for membership in the Treaty.

The Delegation of Italy stated that the question of voting rights would be dealt with in draft Article 25. It was not the intention of the member States of the European Communities to proliferate voting rights or to get additional votes in the Assembly. It further clarified that, by virtue of draft Article 34(2), the list of the member States of an intergovernmental organization and those provisions of the Draft Treaty with which the norms of that organization did not deal, would be known to the other Contracting Parties.

The International Bureau prepared, on the basis of the proposal by the Delegation of Italy and the various comments made thereon, a redraft of paragraph (1)(ii) and presented it in document HL/CE/VIII/30. That redraft was approved by the Committee of Experts.

The Chairman concluded that draft paragraph (1)(ii) should be forwarded to the Diplomatic Conference in the version contained in document HL/CE/VIII/30.

Paragraph (1)(iii). The Delegations of Cameroon, Hungary, New Zealand, Senegal and the Soviet Union and the Representative of OAPI supported draft paragraph (1)(iii). The Delegations of China, Japan and the United States of America also supported it, but subject to an acceptable solution of the question of voting rights in draft Article 25.

The Delegation of New Zealand raised the question of a possible confusion with respect to paragraphs (1)(ii) and (1)(iii), as both would use the term 'intergovernmental organization,' if the proposal by the Delegation of Italy were adopted.

It was pointed out that paragraphs (1)(ii) and (1)(iii) dealt with different types of organizations, the first type having legislative competence, while the second type had competence of a more administrative nature.

The Delegation of Canada proposed to add to draft paragraph (1)(iii) that all member States of an intergovernmental organization should be party not only to the Paris Convention but also to the Treaty.

It was pointed out that such an additional requirement appeared to be unnecessary in the context of the Treaty. It was desirable to facilitate accession to the Treaty for the intergovernmental organizations referred to in paragraph (1)(iii), which maintained an office responsible for the granting of patents. Those intergovernmental organizations would be able to fulfill only certain obligations under the Treaty, but they would fulfill them irrespective of whether their member States were Contracting Parties. Furthermore, if their ratification of, or accession to, the Treaty depended on the adherence of all their member States, this could considerably delay the active participation of those organizations in the Treaty.

The Chairman concluded that draft paragraph (1)(iii) should be forwarded to the Diplomatic Conference as contained in the Draft Treaty.

Paragraph (2) was approved, it being understood that the reference to supranational authorities would be deleted.

Paragraph (3) was approved without discussion.

The Delegation of Spain recalled its reservations on draft Articles 25, 31, 32 and 34 and expressed the wish that those provisions should appear between square brackets in the Basic Proposal. The Chairman said that such a wish could not be fulfilled. The Delegation stated that it would be prepared to withdraw its reservation to draft Article 31(1) if draft Article 25(4)(b), (c) and (d) and the corresponding provisions in draft Articles 32 and 34 were deleted."

Article 32: Entry into Force of the Treaty

In addition to the text of Article 32, as elaborated by the International Bureau, discussions were based on a text proposed by the Delegation of Italy; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Entry into Force] *This Treaty shall enter into force three months after eight States or intergovernmental organizations have deposited their instruments of ratification or accession (hereinafter referred to as ‘instrument’), provided that at least four of those States or intergovernmental organizations each has an Office that, according to the most recent annual statistics published by the International Bureau, granted more than 5,000 patents in the year covered by the said statistics.*

(2) [Entities Not Covered by the Entry into Force] (a) *Any State or intergovernmental organization not covered by paragraph (1) shall become bound by this Treaty three months after the date on which it has deposited its instrument, unless a later date has been indicated in the instrument. In the latter case, this Treaty shall enter into force with respect to the said State or intergovernmental organization on the date thus indicated.*

(b) *This Treaty shall enter into force with respect to any supranational authority which has deposited its instrument on the later of the following two dates:*

(i) *the date on which this Treaty enters into force in accordance with paragraph (1);*

(ii) *the date which is three months later than the date on which the instrument is deposited.”*

[TEXT PROPOSED BY THE DELEGATION
OF ITALY]

“(1) This Treaty shall enter into force three months after eight States or intergovernmental organizations have deposited their instruments of ratification or accession (hereinafter referred to as ‘instrument’), provided that at least four of those States or intergovernmental organizations have, according to the most recent annual statistics published by the International Bureau, granted more than 5,000 patents each in the year covered by the said statistics.” (Document HL/CE/VIII/29, page 3)

The portion of the report of the Committee of Experts concerning the discussion of Article 32 reads as follows:

“There was a detailed discussion on the question whether the proviso of paragraph (1) (‘provided that at least four of those States or intergovernmental organizations each has an Office that, according to the most recent annual statistics published by the International Bureau, granted more than 5,000 patents in the year covered by the said statistics’) should be maintained or deleted. The Delegations of Norway, Canada, the United Kingdom and the United States of America favored the maintenance of the proviso. Other delegations objected to its maintenance. The Director General stated that the

proviso should be deleted since the nature of the Treaty was different from that of the Patent Cooperation Treaty (PCT), where a similar provision existed: the PCT, to be meaningful in practice, required a minimum volume of use, whereas the present Treaty had no such aspect. After further discussions, it was decided that the proviso should not appear in the Basic Proposal.

Paragraph (2). The International Bureau indicated that, in order to harmonize the wording of the first and second sentences of draft paragraph (2)(a), the second sentence should read: ‘In the latter case, the said State or intergovernmental organization shall become bound by this Treaty on the date thus indicated.’ This amendment appeared already in the French and Spanish versions of the Draft Treaty.

It was agreed to delete draft paragraph (2)(b) and to forward paragraph (2) with the amendment referred to in the preceding paragraph to the Diplomatic Conference.”

Article 33: Reservations

In addition to the text of Article 33, as elaborated by the International Bureau, discussions were based on texts proposed by the Delegations of Algeria, Argentina, Brazil, Cameroon, China, Cuba, the Democratic People’s Republic of Korea, Egypt, Ghana, Indonesia, Kenya, Libya, Madagascar, Mexico, Morocco, Nigeria, Romania, Syria, Trinidad and Tobago, Tunisia, the United Republic of Tanzania, Uruguay and Zaire; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Possibility of Making Reservations] (a) *Any instrument of ratification of, or accession to, this Treaty that is deposited not later than the end of the eighth calendar year after the year in which this Treaty has been adopted may be accompanied by a declaration making reservations to this Treaty as provided for in paragraphs (2) to (6).*

(b) *No reservations to this Treaty other than the reservations allowed under paragraphs (2) to (6) are permitted.*

(2) [Fields of Technology]¹ (a) *Any State or intergovernmental organization may declare that, notwithstanding the provisions of Article 10, patents will not be granted by its Office in the fields of technology specified in its declaration, provided that such a declaration may only specify those fields of technology which, at the time of making the declaration, are fields for which that State or intergovernmental organization provides for the exclusion of the grant of patents.*

(b) Any declaration made under subparagraph (a) by a developing country or by an intergovernmental organization all the members of which are developing countries shall lose its effect at the end of the fifteenth calendar year after the year in which this Treaty has been adopted. Any declaration made under subparagraph (a) by any other State or intergovernmental organization shall lose its effect at the end of the tenth calendar year after the year in which this Treaty has been adopted.

(3) [Pre-Grant Opposition] (a) Any State or intergovernmental organization which, at the time of making the declaration, provides for the possibility of pre-grant opposition referred to in Article 18(2), may declare that it will not apply that provision. If, at the same time, it does not provide for the possibility of administrative revocation referred to in Article 18(2), it may declare, in the same declaration, that it will not apply that provision.

(b) Any declaration made under subparagraph (a) shall lose its effect at the end of the tenth calendar year after the year in which this Treaty has been adopted.

(4) [Certain Rights Conferred by Process Patents]² (a) Any State which is a developing country or any intergovernmental organization all the members of which are developing countries and which, at the time of making the declaration, does not provide for the right referred to in Article 19(2)(ii) may declare that it will not apply that provision.

(b) Any declaration made under subparagraph (a) shall lose its effect at the end of the fifteenth calendar year after the year in which the Treaty has been adopted.

(5) [Term of Patent]³ (a) Any State or intergovernmental organization which, at the time of making the declaration, provides that the protection conferred by a patent shall end before the expiration of the 20-year period referred to in Article 22(1) may declare that it will not apply that provision.

(b) Any declaration made under subparagraph (a) by a developing country or by an intergovernmental organization all the members of which are developing countries shall lose its effect at the end of the fifteenth calendar year after the year in which the Treaty has been adopted. Any declaration made under subparagraph (a) by any other State or intergovernmental organization shall lose its effect at the end of the tenth calendar year after the year in which the Treaty has been adopted.

(6) [Reversal of Burden of Proof]³ (a) Any State which is a developing country or any inter-

governmental organization all the members of which are developing countries and which, at the time of making the declaration, does not provide for the reversal of the burden of proof referred to in Article 24 may declare that it will not apply that provision.

(b) Any declaration made under subparagraph (a) shall lose its effect at the end of the fifteenth calendar year after the year in which the Treaty has been adopted.

¹ If Alternative A of Article 10 is not adopted, this paragraph will be omitted from Article 33.

² If Alternative A of Article 19 is not adopted, this paragraph will be omitted from Article 33.

³ If Alternative A of the Article to which the reservation applies is not adopted, this paragraph will be omitted from Article 33."

[TEXT PROPOSED BY THE DELEGATIONS OF ALGERIA, ARGENTINA, BRAZIL, CAMEROON, CHINA, CUBA, THE DEMOCRATIC PEOPLE'S REPUBLIC OF KOREA, EGYPT, GHANA, INDONESIA, KENYA, LIBYA, MADAGASCAR, MEXICO, MOROCCO, NIGERIA, ROMANIA, SYRIA, TRINIDAD AND TOBAGO, TUNISIA, THE UNITED REPUBLIC OF TANZANIA, URUGUAY AND ZAIRE]

"There should be no Article on Reservations."
(Document HL/CE/VIII/22, page 6)

The portion of the report of the Committee of Experts concerning the discussion of Article 33 reads as follows:

"General. The Delegation of the Democratic People's Republic of Korea introduced the proposal presented by a number of developing countries (contained in document HL/CE/VIII/22) with regard to a provision on reservations in the Treaty. According to that proposal there should be no article on reservations as provided in the Draft Treaty. The Delegation indicated that the developing countries presenting it were aware that the entire issue of reservations was to be decided at the Diplomatic Conference which would adopt the Treaty. They had, however, found it necessary to indicate at this time that they did not favor a provision on reservations which would constrain or limit the rights of Contracting Parties to enter reservations. Although the text contained in the Draft Treaty envisaged certain conditional flexibility in favor of developing countries making reservations, temporary reservations were not a satisfactory solution for those countries. The concerns of developing countries should be directly addressed in the substantive and procedural provisions of the Treaty, and not in terms of conditional reservations. The harmonization exercise should fully take into consideration the special needs and interests of developing countries, and harmonization should not be attempted in respect of provisions which might go against

the technological and industrial development of those countries. The text of draft Article 33 was unacceptable because it did not allow developing countries to exercise any degree of flexibility in the light of their own national development strategies and their economic development requirements. The developing countries also wished to preserve their freedom to enter reservations on any aspect of the Treaty since harmonization was a complex exercise and all States might not be in a position to adhere to and implement all obligations under the Treaty. Such freedom was available under the Vienna Convention on the Law of Treaties, which permitted States to enter reservations on any article of a treaty for any period of time. Moreover, the developing countries were unable to accept the provision contained in draft Article 25(4)(b), which provided that a Contracting Party did not have the right to vote on questions concerning any matter on which it had made a reservation under Article 33. The right to vote in the Assembly should not be affected by the reservations entered by any Contracting Party with regard to any provision of the Treaty. The rights of Contracting Parties should be equal under the Treaty regardless of the reservations made in that respect. Since draft Article 25(4)(b) and draft Article 25(5)(a), which concern the quorum requirement, were interrelated it was proposed that draft Article 25(5)(a) be amended, deleting from the second line the portion starting with the word 'provided,' through to the end of that paragraph.

The proposal contained in document HL/CE/VIII/22 was supported by the Delegations of Cameroon, Ghana, Guinea, Indonesia, Swaziland, Nigeria, Brazil, India, Peru and China.

The Delegation of Swaziland added that the unrestricted right of a State to make reservations to any treaty that it wished to be party to was well established in international law and should not be interfered with by the introduction of Article 33 as proposed. That Article would limit the right of States in the interest of early harmonization by providing a rigid time frame within which the reservations would have to be made. Such provision seemed to be based on the assumption that developing countries would, by the end of the 15th year after the entry into force of the Treaty, have developed sufficiently to be able to maintain or implement a patent system which developed countries would at that time be able to maintain with great ease. Such assumption was not correct since not all developing countries developed at the same speed and, in fact, some countries might even suffer from stagnation or retrogression for some period of time. Therefore, setting a time limit on the right to make reservations was neither realistic nor fair.

It was pointed out that Article 19 of the Vienna Convention on the Law of Treaties should be considered in determining the effects of the Treaty being silent in respect of reservations. According to Article 19 of the said Convention, a State was allowed to formulate a reservation to a provision in a treaty unless the reservation was prohibited by the treaty or the treaty provided that only other specified reservations could be made and that the freedom of a State to formulate a reservation in cases other than the two aforementioned cases was limited by the requirement that the reservation must not be incompatible with the object and purpose of the relevant treaty. It was noted that, since the object and purpose of the Treaty under consideration was to harmonize the patent laws of the member countries, any reservation in respect of one of the substantive provisions contained in that Treaty could be interpreted as being incompatible with the object and purpose of the Treaty, and therefore invalid. The absence of a provision on reservations in the Treaty would, therefore, not mean that countries would have unlimited freedom to make reservations in respect of any of the provisions contained in the Treaty.

The Delegation of Brazil stated that the question of excluding a provision on reservations in the Treaty related to the possibility for countries to assume obligations under the Treaty, and to allow flexibility for those countries in that respect. The assumption of obligations under a treaty should not be constrained upon countries by time limits but should be the result of willingness of the countries concerned to assume such obligations. The inclusion of a provision on reservations could have the effect of influencing the outcome of the discussions on the subjects referred to in draft Article 33.

The Delegation of India stated that flexibility in respect of the possibility of making reservations was needed because harmonization on certain matters would not in fact be possible. Developing countries wanted to leave the doors open for the possibility of making reservations. Draft Article 33 posed constraints in respect of subject matter and the time frame for entering and maintaining reservations. There might be other provisions in addition to those contemplated in draft Article 33 on which countries may wish to enter reservations. Therefore, the possibility of making reservations should be more wide ranging.

The Delegation of the United States of America stated that no reservations should be allowed under the Treaty. A provision to this effect should be contained in Article 33. Countries should consider the obligations established by the Treaty and consider their capability to meet such obligations. When a country was

prepared to comply with all its Treaty obligations then, and only then, should it adhere.

The Delegations of Japan, the United Kingdom, Germany, Czechoslovakia, France, Canada, the Soviet Union, the Republic of Korea, Poland, Australia, Italy, New Zealand, Hungary, Sweden, Austria, Norway, the Netherlands, Switzerland and Finland, while expressing the view that reservations should not be possible, declared that, if necessary, they could accept a provision containing certain reservations on the basis of draft Article 33. An article on reservations would allow a larger number of countries to join the Treaty, since it would provide leeway for countries that had to change their laws to avail themselves of the facility provided by the article on reservations. Several delegations expressed, however, their concern that it might be too early to know what provisions of the Treaty should be open to reservations, and it might be preferable to wait until all the contents of the Treaty were settled in the Diplomatic Conference. In this respect, the contents of any article on reservations would depend on the outcome of the Treaty and, in particular, on what provisions ultimately remained in the text. In any event, the possibility of entering reservations could not be absolute and general. Reservations would have to be punctual and limited in scope.

The question was raised whether the wish of developing countries not to be constrained by time limits in respect of reservations would be satisfied if those time limits were deleted from Article 33 as far as developing countries were concerned. The Delegation of India stated that such a solution could be given further consideration. Developing countries did not wish to be constrained by time limits because they were not in a position to assure that they would have achieved development within a time span of 10 or 15 years. Such time limits should at least not apply to developing countries. The Delegation of Brazil added that developing countries felt strongly about flexibility in this connection. Reservations should, at the most, be confined to subparagraphs (a) of paragraphs (2) to (6) of draft Article 33. In this connection, the Delegation of Brazil proposed that the Treaty could provide that countries making reservations could, if they so wished, indicate when entering the reservation that the reservation was made for a specified period of time.

Paragraph (1). No comments were made in respect of this paragraph.

Paragraph (2). The Delegation of Italy proposed replacing the words ‘by its Office’ contained in paragraph (2)(a) by the words ‘the

Office competent for that purpose by virtue of national or regional provisions,’ or other words to that effect. It explained that the amendment was necessary because there were at present several regional agreements which provided for a regional office to grant patents on behalf of, and with effect in, a group of countries.

The Delegation of India stated that, without prejudice to its support for the proposal contained in document HL/CE/VIII/22, if a provision allowing for reservations along the lines of paragraph (2) were to be included in the Treaty, paragraph (2)(b) should be deleted. The same applied in respect of paragraphs (3)(b), (4)(b), (5)(b) and (6)(b). Those paragraphs established a time frame in respect of reservations, which was unacceptable for developing countries. The position of India was supported by the Delegation of Brazil.

Paragraph (3). With respect to reservations on the provision which prohibited pre-grant opposition, the question was raised as to the position of developing countries, since the possibility of entering such reservations had not been requested by developing countries. The Delegation of India stated that developing countries—like other countries—would need flexibility in order to adjust to a system that excludes pre-grant opposition. Switching from a pre-grant opposition to a post-grant opposition system would entail costs and require sufficient time. Countries could not afford to switch over from one system to the other within a short period of time. It was therefore preferable to delete any reference to a time limit in paragraph (3) as well, at least in respect of developing countries.

Paragraphs (4), (5) and (6). No comments were made in respect of these paragraphs in addition to those indicated in the preceding paragraphs.

In conclusion, it was agreed that Article 33 should be forwarded to the Diplomatic Conference containing two alternatives. One alternative would be based on Article 33 as contained in the Draft Treaty, with an amendment along the lines of that proposed in respect of paragraph (2) by the Delegation of Italy. The other alternative should reflect the proposal made by a number of developing countries that there should be no provision in the Treaty dealing with reservations.”

Article 34: Special Exceptions

In addition to the text of Article 34, as elaborated by the International Bureau, discussions were based on a text proposed by the Delegation of Italy; those texts read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [States] (a) Any State in respect of which patents may be obtained only through the Office of another Contracting Party shall notify this fact and shall identify such Contracting Party.

(b) Any change in the fact notified by a State under subparagraph (a) shall be promptly notified by such State.

(2) [Supranational Authorities] (a) Any supranational authority shall notify the list of the States that constitute it and, if its norms do not deal with some of the matters covered by Articles 3 to 24, shall notify this fact and shall, among the provisions of the said Articles, identify those provisions with which its norms do not deal. The latter provisions shall not bind the supranational authority.

(b) If the norms of the supranational authority later deal with any matter concerning which the supranational authority has made a notification under subparagraph (a), the supranational authority shall be bound by the corresponding provisions of this Treaty and shall promptly notify the relevant changes in its norms.

(3) [Intergovernmental Organizations] (a) Any intergovernmental organization whose norms do not deal with any of the matters covered by Articles 19 to 24¹ shall notify this fact and shall, among the provisions of the said Articles, identify those provisions with which its norms do not deal. The latter provisions shall not bind the intergovernmental organization.

(b) If the norms of the intergovernmental organization later deal with any matter concerning which the intergovernmental organization has made a notification under subparagraph (a), the intergovernmental organization shall be bound by the corresponding provisions of this Treaty and shall promptly notify the relevant changes in its norms.

(4) [Notifications] (a) Any notification under paragraphs (1)(a), (2)(a) or (3)(a) shall accompany the instrument of ratification or accession.

(b) Any change under paragraphs (1)(b), (2)(b) or (3)(b) shall be notified in a declaration deposited with the Director General.

¹ If Alternative A of any of Articles 19, 22 or 24 is not adopted, the reference to such Article will be omitted from the present provision.”

[TEXT PROPOSED BY THE DELEGATION
OF ITALY]

“(2)(a) any intergovernmental organization referred to in Article 31(1)(ii) shall notify the list of the States that constitute it and, if its norms deal with only some of the matters covered by Articles 3 to 24, shall notify this fact and shall, among the provisions of the said Articles, identify those provisions with which its norms

deal. The other provisions shall not bind the intergovernmental organization.

(b) if the norms of the intergovernmental organization referred to in Article 31(1)(ii) later deal with any matter concerning which the intergovernmental organization has not made a notification under subparagraph (a), the intergovernmental organization shall be bound by the corresponding provisions of this Treaty and shall promptly notify the relevant changes in its norms.” (Document HL/CE/VIII/29, page 3)

The portion of the report of the Committee of Experts concerning the discussion of Article 34 reads as follows:

“Paragraph (1). No comments were made on this draft paragraph. It was agreed that this draft paragraph should be forwarded to the Diplomatic Conference without modification.

Paragraph (2). The Delegation of Italy introduced its proposal (contained in document HL/CE/VIII/29). It stated that the proposed text intended to make the provisions of draft subparagraphs (a) and (b) consistent with the changes agreed in respect of draft Article 31(1)(ii), replacing the term ‘supranational authority’ by ‘intergovernmental organization.’

The Representative of the European Communities supported the proposal of the Delegation of Italy characterizing it also as changing the provisions of draft subparagraphs (a) and (b) from a negative one (requiring an intergovernmental organization to state matters covered by draft Articles 3 to 24 with which its norms do *not* deal) to a positive one (requiring an intergovernmental organization to state matters covered by draft Articles 3 to 24 with which its norms deal). She underlined that the European Communities could bind their Member States even where the latter were not party to the Treaty.

It was agreed that draft paragraph (2) should be forwarded to the Diplomatic Conference with the amendment proposed by the Delegation of Italy.

Paragraph (3). The Delegation of Italy proposed adding a requirement to paragraph (3) that intergovernmental organizations must notify the list of the States that constitute it, as required in draft paragraph (2).

It was agreed that draft paragraph (3) should be forwarded to the Diplomatic Conference with the amendment proposed by the Delegation of Italy.

Paragraph (4). The Delegation of Canada proposed inserting the word ‘promptly’ after ‘notified’ in draft subparagraph (b).

It was agreed that draft paragraph (4) should be forwarded to the Diplomatic Conference with the amendment proposed by the Delegation of Canada.”

Article 35: Denunciation of the Treaty

Discussions were based on the text of Article 35, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Notification] *Any Contracting Party may denounce this Treaty by notification addressed to the Director General.*

(2) [Effective Date] *Denunciation shall take effect one year from the date on which the Director General has received the notification. It shall not affect the application of this Treaty to any application pending or any patent in force in respect of the denouncing Contracting Party at the time of the expiration of the said one-year period.*”

The portion of the report of the Committee of Experts concerning the discussion of Article 35 reads as follows:

“No observations were made on this draft Article.

It was agreed that this draft Article should be forwarded to the Diplomatic Conference without modification.”

Article 36: Languages of the Treaty; Signature

Discussions were based on the text of Article 36, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“(1) [Original Texts; Official Texts] (a) *This Treaty shall be signed in a single original in the English, Arabic, Chinese, French, Russian and Spanish languages, all texts being equally authentic.*

(b) *Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.*

(2) [Time Limit for Signature] *This Treaty shall remain open for signature at the headquarters of the Organization for one year after its adoption.*”

The portion of the report of the Committee of Experts concerning the discussion of Article 36 reads as follows:

“No observations were made on this draft Article.

It was agreed that this draft Article should be forwarded to the Diplomatic Conference without modification.”

Article 37: Depositary

Discussions were based on the text of Article 37, as elaborated by the International Bureau; this text read as follows:

[TEXT ELABORATED BY THE INTERNATIONAL BUREAU]

“*The Director General shall be the depositary of this Treaty.*”

The portion of the report of the Committee of Experts concerning the discussion on Article 37 reads as follows:

“No observations were made on this draft Article.

It was agreed that this draft Article should be forwarded to the Diplomatic Conference without modification.

The Delegation of Romania declared that, since the conclusion of the first part of the eighth session of the Committee of Experts, during which document HL/CE/VIII/22, cosponsored by its country, was issued, a draft patent law had been prepared in its country containing solutions which were in line with the Draft Treaty. Consequently, concerning the position of its country, only declarations made by the Delegation during the second part of the eighth session should be retained.”

LIST OF PARTICIPANTS**

I. States

Algeria: H. Yahia-Cherif. **Australia:** P. Smith; G. Baker; D. Chester. **Austria:** H. Knittel. **Belgium:** G. de Cuyper. **Brazil:** A.R. de Holanda Cavalcanti; P. Tarrago; M. Pinto Coelho. **Cameroon:** G. Towo Atangana; M.-L. Dzietham; J.O. Tigbo. **Canada:** J.H.A. Gariépy; M. Rosenberg; M. Leesti; J. Butler; B. Couchman; E.W. Bown; R.F. Andriago. **China:** Qiao Dexi. **Côte d'Ivoire:** N.A. N'Takpe. **Czechoslovakia:** M. Hujerová. **Democratic People's Republic of Korea:** Yu Song Nam; Hyen Chun Hwa; Hwang Myong Hui. **Denmark:** L.D. Østerborg; H.J. Jensen; A. Bach. **Finland:** M. Enäjärvi; R.P.J. Paaermaa; E. Häkli; E.T. Mantere; E. Nuorlahti-Solarmo. **France:** M. Guerrini; J. Divoy. **Germany:** D. Schennen; H. Bardehle. **Ghana:** J.D. Essuman; Y. Ekar. **Guinea:** C.A. Loua. **Hungary:** I. Iványi; G. Szemző. **Indonesia:** B. Kesowo; S. Adiwintot; K.P. Handriyo; E.D. Husin. **Iran (Islamic Republic**

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

of): M.H. Moayedoddin; M. Mokhtari-Amin; H. Rezaie Heravi Mogaddam; H.R. Amini. **Ireland:** S. Fitzpatrick; B. O'Farrell. **Israel:** R. Walden. **Italy:** M.G. Fortini. **Japan:** S. Uematsu; N. Sasaki; S. Uemura; K. Ukai. S. Takakura. **Kenya:** N. Cheluget. **Libya:** H. Habibi; S. Shaheen. **Madagascar:** M.F. Narove. **Mexico:** A. Fuchs. **Netherlands:** W. Neervoort; W. Van Der Eyk. **New Zealand:** K.B. Popplewell; A.F. Wierzbicki. **Nigeria:** D.A. Enwereuzoh. **Norway:** K.H. Reinskou; P.T. Lossius. **Philippines:** D. Meñez-Rosal. **Poland:** G. Lachowicz. **Portugal:** J. Mota Maia; R.A. Costa de Morais Serrão; I. Afonso; A.Q. Ferreira. **Republic of Korea:** J.-K. Kim; S.-H. Maeng. **Romania:** V. Erhan; L. Bulgar; V. Pordea. **Senegal:** A.M. Dieng; M.B. Ly. **Soviet Union:** L. Komarov; V.M. Ouchakov; A.D. Korchaguine; D.V. Knyazhinsky. **Spain:** P. Barrios; J. Gómez Montero; C. E. Velasco. **Sweden:** R. Halvorsen; B. Sandberg; B. Davidsson. **Switzerland:** J.-L. Comte; P. Messerli; H.-E. Laederach; F.A. Jenny. **Tunisia:** A. Azaiez. **United Kingdom:** A. Sugden; B.G. Harden; A.C. Waters. **United States of America:** C.E. Van Horn; L.J. Schroeder. **Viet Nam:** T.L. Nguyen.

II. Observer States

Chile: P. Romero. **India:** L. Puri. **Peru:** R. Saif de Preperier. **Swaziland:** B.R. Mkwanazi; S.H. Zwane.

III. Intergovernmental Organizations

United Nations (UN): R. Dhanjee. **General Agreement on Tariffs and Trade (GATT):** M.C. Geuze. **African Intellectual Property Organization (OAPI):** I. Salia. **Commission of the European Communities (CEC):** B. Schwab; S. Jessel; D. Vanderghynst; L.M.C. Fonseca Ferrão. **European Patent Office (EPO):** U. Schatz; G. Kolle; I. Koch; E. Alfonso von Laun.

IV. Non-Governmental Organizations

American Bar Association (ABA): B.R. Pravel; W.J. Brunet; M.N. Meller; S. Helfgott. **American Intellectual Property Law Association (AIPLA):** W.S. Thompson; N.J. Linck; M.J. Pantuliano; M.A. Ryan. **Asian Patent Attorneys Association (APAA):** I. Shamoto; Y. Inoue. **Asociación mexicana para la protección de la propiedad industrial A.C. (AMPPI):** R. Beltrán Fortuny. **Center for Advanced Study and Research on Intellectual Property (CASRIP):** A. Tramosch. **Chartered Institute of Patent Agents (CIPA):** R.C. Petersen; J.U. Neukom. **Committee of National Institutes of Patent Agents (CNIPA):** R.C. Petersen; J. Beier; G. Schmitt-Nilson. **European**

Federation of Pharmaceutical Industries' Associations (EFPIA): P. Leardini. **Federal Chamber of Patent Attorneys (FCPA):** J. Beier; G. Schmitt-Nilson. **Federation of German Industry (BDI):** H.-J. Schulze-Steinen. **Institute of Professional Representatives Before the European Patent Office (EPI):** R.C. Petersen. **Intellectual Property Owners, Inc. (IPO):** R.E. Myrick; D.M. Sell. **International Association for the Protection of Industrial Property (AIPPI):** M. Santarelli; K. Takami. **International Chamber of Commerce (ICC):** R.F. Fawcett; D. Shetka. **International Federation of Industrial Property Attorneys (FICPI):** J. Beier; G. Schmitt-Nilson. **International Federation of Pharmaceutical Manufacturers Associations (IFPMA):** H.-J. Schulze-Steinen. **Japan Patent Association (JPA):** Y. Wada; M. Tohei. **Latin American Association of Pharmaceutical Industries (ALIFAR):** M.N. Levis. **Licensing Executives Society (LES):** R.S. Crespi. **Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI):** J. Pagenberg. **New York Patent, Trademark and Copyright Law Association, Inc. (NYPTC):** W.J. Brunet; M.N. Meller; S. Helfgott. **Patent and Trademark Institute of Canada (PTIC):** R.E. Mitchell. **Patent Attorneys Association of Japan (JPAA):** F. Sasajima; K. Kawamura; A. Okawa. **Trade Marks, Patents and Designs Federation (TMPDF):** R.F. Fawcett; J.L. Beton. **Union of European Practitioners in Industrial Property (UEPIP):** H.-E. Böhmer. **Union of Industrial and Employers' Confederations of Europe (UNICE):** J.L. Beton.

V. Bureau

Chairman: J.-L. Comte (Switzerland). *Vice-Chairmen:* M.A. Abdullah (Ghana); A.D. Korchaguine (Soviet Union). *Secretary:* L. Baeumer (WIPO).

VI. International Bureau of WIPO

A. Bogsch (*Director General*); A. Schäfers (*Deputy Director General*); F. Curchod (*Director, Office of the Director General*); F. Gurry (*Special Assistant, Office of the Director General*); L. Baeumer (*Director, Industrial Property Division*); J. Quashiedun (*Director, Developing Countries (Industrial Property) Division*); A. Iardi (*Senior Legal Officer, Industrial Property Law Section, Industrial Property Division*); O. Espinosa (*Senior Legal Officer, Industrial Property Law Section*); H. Lom (*Senior Legal Officer, Developing Countries (Industrial Property) Division*); W. Starein (*Senior Program Officer, Developing Countries (Industrial Property) Division*); S. Zotine (*Legal Officer, Industrial Property (Special Projects) Division*); B. Ibos (*Legal Officer, Industrial Property (Special Projects) Division*); R. Wilder (*Legal Officer, Industrial Property Division*).

New Items

MALTA

Comptroller of Industrial Property

We have been informed that Mr. Lawrence Coppini has been appointed Comptroller of Industrial Property.

MONGOLIA

Director, National Office of Patents and Marks

We have been informed that Mr. M.D. Demberel has been appointed Director of the National Office of Patents and Marks.

Calendar of Meetings

WIPO Meetings

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

1991

February 27 and 28 (Geneva)

Assembly of the Union for the International Registration of Audiovisual Works (FRT Union)

The Assembly will hold its first (extraordinary) session and decide on questions relating to the commencement of operations of the International Film Register.

Invitations: States party to the Treaty on the International Registration of Audiovisual Works (Film Register Treaty) and, as observers, States which have signed the Treaty and certain organizations.

March 11 to 15 (Geneva)

PCT Committee for Administrative and Legal Matters (Fourth Session, Second Part)

The Committee will continue to examine proposals for amending the Regulations under the Patent Cooperation Treaty (PCT), in particular in connection with the procedure under Chapter II of the PCT.

Invitations: Members of the Committee (States party to the PCT and the European Patent Office) and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.

**March 25 to 27
(Stanford University,
Stanford (California))**

WIPO Worldwide Symposium on the Intellectual Property Aspects of Artificial Intelligence

The Symposium will examine the various categories of artificial intelligence ("artificial intelligence" is an expression commonly used to designate those kinds of computer systems that display certain capabilities associated with human intelligence, such as perception, understanding, learning, reasoning and problem-solving) and their main fields of application from the viewpoint of their possible intellectual property implications.

Invitations: The Symposium will be open to all. A registration fee of 150 US dollars will be payable. No registration fee will be required for participants designated by governments and invited organizations, or for faculty members and students designated by Stanford University.

April 8 to 12 (Geneva)

Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs

The Committee will study possibilities of improving the system of international deposit of industrial designs under the Hague Agreement.

Invitations: States members of the Hague Union and, as observers, States members of the Paris Union not members of the Hague Union and certain organizations.

April 15 to 18 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Ninth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1989) and make recommendations on the future orientation of the said Program.

Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

May 21 to 27 (Geneva)

Working Group on the Application of the Madrid Protocol of 1989 (Third Session)

The Working Group will continue to study Regulations for the implementation of the Madrid Protocol.

Invitations: States members of the Madrid Union, States having signed or acceded to the Protocol, the European Communities and, as observers, other States members of the Paris Union expressing their interest in participating in the Working Group in such capacity and certain non-governmental organizations.

- June 3 to 28 (The Hague)** **Diplomatic Conference for the Conclusion of a Treaty Supplementing the Paris Convention as Far as Patents Are Concerned**
- The Diplomatic Conference will negotiate and adopt a treaty supplementing the Paris Convention as far as patents are concerned (patent law treaty).
Invitations: States members of the Paris Union, the European Patent Organisation and the Organisation africaine de la propriété intellectuelle and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- June 19 to 21 (Paris)** **Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Intergovernmental Committee (Ordinary Session)** (convened jointly with ILO and Unesco)
- The Committee will review the status of the international protection of neighboring rights under the Rome Convention.
Invitations: States members of the Intergovernmental Committee and, as observers, other States members of the United Nations and certain organizations.
- July 1 to 4 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fourteenth Session)**
- The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May/June 1989) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.
- July 8 to 12 (Geneva)** **PCT Assembly (Extraordinary Session)**
- The Assembly will hold an extraordinary session to adopt amendments to the Regulations under the Patent Cooperation Treaty.
Invitations: States members of the PCT Union and, as observers, States members of the Paris Union not members of the PCT Union and certain organizations.
- September 23 to October 2 (Geneva)** **Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Second Series of Meetings)**
- All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary session every two years in odd-numbered years. In the 1991 sessions, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1990, and consider and adopt the draft program and budget for the 1992-93 biennium.
Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States members of the United Nations and certain organizations.
- November 11 to 15 (Geneva)** **Committee of Experts on the Harmonization of Laws for the Protection of Marks (Third Session)**
- The Committee will continue to examine draft treaty provisions on the harmonization of laws for the protection of marks.
Invitations: States members of the Paris Union, the European Communities and, as observers, States members of WIPO not members of the Paris Union and certain organizations.
- December 2 to 5 (Geneva)** **Committee of Experts on the International Protection of Indications of Source and Appellations of Origin (Second Session)**
- The Committee will examine a preliminary draft of a treaty on the international protection of indications of source and appellations of origin.
Invitations: States members of the Paris Union and, as observers, certain organizations.

UPOV Meetings

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

1991

- March 4 to 19 (Geneva)** **Diplomatic Conference for the Revision of the UPOV Convention**
- Invitations:* Member States of UPOV and, without the right to vote, States members of the United Nations not members of UPOV as well as, as observers, certain organizations.

- March 18 (Geneva)** **Consultative Committee (Forty-Third Session)**
The Committee will consider in particular the policy of UPOV in its relations with developing countries.
Invitations: Member States of UPOV.
- October 21 and 22 (Geneva)** **Administrative and Legal Committee**
Invitations: Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.
- October 23 (Geneva)** **Consultative Committee (Forty-Fourth Session)**
The Committee will prepare the twenty-fifth ordinary session of the Council.
Invitations: Member States of UPOV.
- October 24 and 25 (Geneva)** **Council (Twenty-Fifth Ordinary Session)**
The Council will examine the reports on the activities of UPOV in 1990 and the first part of 1991 and approve the program and budget for the 1992-93 biennium.
Invitations: Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.

Other Meetings Concerned with Industrial Property

1991

- September 15 to 20 (Lucerne) International Association for the Protection of Industrial Property (AIPPI): Council of Presidents
- September 30 to October 4 (Harrogate) International Federation of Industrial Property Attorneys (FICPI): Congress

