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Notifications Concerning Treaties Administered by WIPO in the Field of Industrial Property

Convention Establishing the World Intellectual Property Organization and Certain Other Treaties Administered by WIPO

Declaration

SLOVENIA

The Government of Slovenia deposited, on June 12, 1992, a declaration to the effect that the following treaties continue to be applicable to the territory of Slovenia and that Slovenia accepts the obligations set forth in the said treaties in respect of its territory:

- the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967, and amended on October 2, 1979;
- the Paris Convention for the Protection of Industrial Property, of March 20, 1883, as revised at Stockholm on July 14, 1967, and amended on October 2, 1979;
- 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 Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, of June 15, 1957, as revised at Geneva on May 13, 1977, and amended on October 2, 1979;
- the Locarno Agreement Establishing an International Classification for Industrial Designs, signed on October 8, 1968, and amended on October 2, 1979;
- the Berne Convention for the Protection of Literary and Artistic Works, of September 9, 1886, as revised at Paris on July 24, 1971, and amended on October 2, 1979.

Slovenia will belong to class VII for the purpose of establishing its contribution towards the budget of the Paris Union.

WIPO Notification No. 157, Paris Notification No. 130, Madrid (Marks) Notification No. 49, Nice Notification No. 72, Locarno Notification No. 27, of June 30, 1992.

Hague Agreement

New Member of the Hague Union

ROMANIA

The Government of Romania deposited, on June 17, 1992, its instrument of accession to the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925, as revised at The Hague on November 28, 1960 ("the Hague Act (1960)"), and supplemented at Stockholm on July 14, 1967 ("Stockholm (Complementary) Act (1967)") and amended on October 2, 1979.

Romania has not heretofore been a member of the Union for the International Deposit of Industrial Designs ("Hague Union"), founded by the Hague Agreement.

The Hague Act (1960) will enter into force, in respect of Romania, on July 18, 1992. On that same date, Romania will become bound by Articles 1 to 7 of the Stockholm (Complementary) Act (1967) and will become a member of the Hague Union.

The Hague Notification No. 33, of June 18, 1991.

Budapest Treaty

Acquisition of the Status of International Depositary Authority

CZECHOSLOVAK COLLECTION OF MICROORGANISMS (CCM)

CZECHOSLOVAK COLLECTION OF YEASTS (CCY)

(Czechoslovakia)

The following written communication, addressed to the Director General of WIPO by the Government of Czechoslovakia under Article 7 of the Budapest Treaty on the International Recognition of the

Deposit of Microorganisms for the Purposes of Patent Procedure, was received on June 12, 1992, and is published by the International Bureau of WIPO pursuant to Article 7(2)(a) of the said Treaty:

The Permanent Mission of the Czech and Slovak Federal Republic to the United Nations Office and other International Organizations at Geneva presents its compliments to the World Intellectual Property Organization and has the honor to convey, pursuant to Article 7(1)(a) of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure of April 28, 1977, that the Government of the Czech and Slovak Federal Republic declares appointing the Czechoslovak Collection of Microorganisms (CCM) and the Czechoslovak Collection of Yeasts (CCY) to perform the functions of international depositary authorities. The relevant communications of the Government of the Czech and Slovak Federal Republic containing all the necessary information on the two international depositary authorities are enclosed herein.

CZECHOSLOVAK COLLECTION OF MICROORGANISMS (CCM)

1. Pursuant to Article 7(1)(a) of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the Government of the Czech and Slovak Federal Republic declares appointing the Czechoslovak Collection of Microorganisms (CCM, Československá sbírka mikroorganismů Masarykovy university) to perform the functions of an international depositary authority.

2. The said collection of microorganisms complies and will continue to comply with the requirements specified in Article 6(2) of the Treaty.

3. Name and Address of the Collection

Československá sbírka mikroorganismů Masarykovy university
ul. Tvrdého č. 14
602 00 Brno
Czechoslovakia

Tel.: (05) 33 72 31, 33 77 42

Fax: (05) 75 52 47.

4. Characteristics of CCM Pursuant to Article 6(2) of the Budapest Treaty

The Czechoslovak Collection of Microorganisms (CCM) was founded in 1964 as an indepen-

dent division of the Natural Science Faculty of Masaryk University with its own status. The Natural Science Faculty is an independent part of Masaryk University in Brno. It is a permanent authority whose task is to provide the highest education in natural science and to contribute to the development of scientific knowledge. The head of the collection is subordinated directly to the dean of the Natural Science Faculty. The activities of CCM cover the whole State. It cooperates with other Czechoslovak and foreign collections of microorganisms. It is a member of the World Federation of Culture Collections (WFCC, member No. 65) and of the European Culture Collections' Organization (ECCO).

Basic activities of CCM include depositing, storage and distribution of bacteria and filamentous fungi, which are used mainly in research, industrial application and training.

About 2,500 strains of bacteria and filamentous fungi are deposited with CCM at present. Of the total staff of 15 persons, six are university graduates (Doctor of Natural Science, Doctor of Veterinary Medicine, Candidate of Science). CCM occupies a total area of 320 m² and consists of seven microbiological laboratories, a laboratory for freeze-drying of cultures, a separate depository for cultures in lyophilized state and a room for depositing microorganisms in liquid nitrogen. The instrumental equipment of all laboratories allows standard level microbiological operations.

5. Microorganisms Accepted for Deposit with CCM

The bacteria (including actinomycetes) and the filamentous fungi accepted are those capable of long-term preservation without any substantial change of their initial properties.

Notice:

(a) Dangerous pathogens and species which can be hazardous to man and animals shall not be accepted.

(b) Microorganisms having special requirements for cultivation which CCM is not technically capable of carrying out shall not be accepted.

(c) Mixtures and cultures without scientific description as well as cultures which cannot be identified shall not be accepted.

(d) When depositing strains containing a plasmid, CCM shall require information on the plasmid and its host strain in respect to their properties and classification (i.e., group P1, P2, P3 or P4). CCM shall accept only plasmids and their host strains belonging to group P1.

6. Fees

	CSK
– For storage of a microorganism	12,000
– for a viability statement	400
– for furnishing samples of a microorganism	1,000

7. The official language of CCM is Czech. Correspondence can be made also in English and German.

8. Pursuant to Article 7(2)(b) of the Budapest Treaty, the status of international depositary authority shall be acquired by the Collection from the date of publication of the communication by the International Bureau.

CZECHOSLOVAK COLLECTION OF YEASTS (CCY)

1. Pursuant to Article 7(1)(a) of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, the Government of the Czech and Slovak Federal Republic declares appointing the Czechoslovak Collection of Yeasts (CCY, Československá sbírka kvasinek) to perform the functions of an international depositary authority.

2. The said collection of yeasts complies and will continue to comply with the requirements specified in Article 6(2) of the Budapest Treaty.

3. Name and Address of the Collection

Československá sbírka kvasinek při Chemickém ústavu Slovenské akademie věd
Dúbravská cesta 9
842 38 Bratislava
Czechoslovakia
Tel.: (07) 378 26 25
Fax: (07) 37 38 11.

4. Characteristics of the Collection Pursuant to Article 6(2) of the Budapest Treaty

CCY is an independent scientific department of the Chemical Institute of the Slovak Academy of Sciences having its own status. The Chemical Institute of the Slovak Academy of Sciences in Bratislava was established as an independent organizational unit by the Praesidium of the Slovak Academy of Sciences in 1955. It is a permanent authority, dealing with basic research in chemistry and biochemistry of saccharides, enzyme systems and heterocyclic compounds having biological activity. The head of the Collection is subordinated directly to the director of the Institute. The activities of CCY cover the whole

State. It cooperates with other Czechoslovak and foreign collections. It is a member of the Federation of Czechoslovak Collections of Microorganisms, a member of the World Federation of Culture Collections (WFCC, member No. 333) and a member of the European Culture Collections' Organization (ECCO).

The main task of the Collection is to collect and keep alive and with initial properties pure cultures of yeasts and yeast microorganisms. The extent of the Collection is not limited and depends on efficiency and needs in respect of the scientific and historical importance of the strains and on the extent of the information acquired concerning the strains. At present, the Collection has 3,500 strains.

Basic activities of CCY include:

- storage of strains of yeasts and yeast microorganisms which are important from the point of view of science, industry, protection of the health of man and animals and of the environment, storage of taxonomically and genetically important strains, testing and standard strains, strains serving in analytics, as well as legally protected strains;
- defining of genotype and phenotype of the stored strains;
- extending the Collection with domestic isolates, type cultures and important strains from other collections and the like;
- providing pure yeast strains for the purposes of research, production and training;
- determining and defining of the strains for the purposes of science, industry and environmental protection;
- giving expert consultations on problems of taxonomy and nomenclature and taking care of the methodical level of cultivation and storage of the strains;
- cooperating with the Federal Office for Inventions.

Of the total staff of six persons, three are university graduates (two engineers and candidates of science, one engineer), the rest are specialized and technical staff.

CCY covers a total area of 135 m² and consists of two microbiological laboratories, one laboratory with special instruments, a room for depositing yeasts under paraffin oil, a cultivating room and a sterilizing room. The instrumental equipment of the laboratories allows standard level microbiological operations.

5. Microorganisms Accepted for Deposit With CCY

The yeasts accepted are those which can be stored in liquid nitrogen or as active cultures

without any substantial change in their properties.

The yeasts accepted are those whose storage can be accomplished by standard laboratory techniques without appreciable adapting during storage in liquid nitrogen or during storage on agar slant.

In addition to the classical method of storage, the strains are stored at ultra-low temperatures.

6. Fees

	CSK
– For storage of a microorganism	20,000
– for a viability statement	1,000
– for furnishing of samples	1,200

7. The official language of collection is Slovak. Correspondence can be made also in English.

8. Pursuant to Article 7(2)(b) of the Budapest Treaty, the status of international depositary authority shall be acquired by the Collection from the date of publication of the communication by the International Bureau.

[End of text of the communication of the Government of Czechoslovakia]

Pursuant to Article 7(2)(b) of the Budapest Treaty, the Czechoslovak Collection of Microorganisms (CCM) and the Czechoslovak Collection of Yeasts (CCY) acquire, respectively, the status of international depositary authority as from August 31, 1992.

Budapest Communication No. 78 (this communication is the subject of Budapest Notification No. 107, of July 8, 1992).

Normative Activities of WIPO in the Field of Industrial Property

Working Group of Non-Governmental Organizations on Arbitration and Other Extra-judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties

First Session
(Geneva, May 25 to 27, 1992)

NOTE

I. Introduction

A Working Group of Non-Governmental Organizations on Arbitration and Other Extra-judicial Mechanisms for the Resolution of Intellectual Property Disputes between Private Parties (hereinafter referred to as "the Working Group") held its first session at the headquarters of WIPO, on May 25 and 26, 1992. The meeting of the Working Group was convened by the Director General of the World Intellectual Property Organization (WIPO).

The following non-governmental organizations were represented at the meeting: Association of Dutch Patent Agents (APA), Brazilian Association of Industrial Property Agents (ABAPI), Brazilian Association on Industrial Property (ABPI), Center for Advanced Study and Research on Intellectual Property (CASRIP), Chartered Institute of Arbitrators (CI Arb), Committee of National Institutes of Patent Agents (CNIPA), Federal Chamber of Patent Attorneys (FCPA), Institute of Intellectual Property (IIP), Institute of Professional Representatives Before the European Patent Office (EPI), International Advertising Association (IAA), International Association for the Advancement of Teaching and Research in

Intellectual Property (ATRIP), International Association for the Protection of Industrial Property (AIPPI), International Chamber of Commerce (ICC), International Confederation of Societies of Authors and Composers (CISAC), International Federation of Associations of Film Distributors (FIAD), International Federation of Film Producers Associations (FIAPF), International Federation of Industrial Property Attorneys (FICPI), International Federation of Reproduction Rights Organizations (IFRRO), International Federation of the Phonographic Industry (IFPI), International Literary and Artistic Association (ALAI), International Publishers Association (IPA), International Video Federation (IVF), International Union of Architects (IUA), Japan Patent Association (JPA), United States Trademark Association (USTA). Five experts, invited by the International Bureau, also participated in the meeting. The list of participants follows this Note.

The Director General of WIPO, Dr. Arpad Bogisch, chaired the meeting.

Discussions were based on a memorandum prepared by the International Bureau entitled "Observations on the Possible Establishment of Extra-Judicial Dispute-Resolution Services within the Framework of WIPO" (hereinafter referred to as "the working document") (document ARB/WG/I/1).

The present Note, which was prepared by the International Bureau, summarizes the discussions without reflecting all the observations made.

II. The Desirability of or the Need for Specialized Extra-judicial Services for the Resolution of Disputes in the Field of Intellectual Property

A number of participants expressed the view that extra-judicial mechanisms for the resolution of intellectual property disputes between private parties, particularly arbitration, offered several advantages over court litigation and merited further examination by WIPO with a view to determining whether a role could be played by WIPO in this area. Among the advantages noted by participants were the following:

(i) The possibility of selecting mediators, arbitrators or other third party neutrals with *special skills* in the field of intellectual property or the subject matter to which the dispute relates. It was underlined that intellectual property disputes could involve technical issues of considerable complexity whose understanding required highly specialized theoretical and practical expertise which might not be generally available in national judicial systems. Some participants called attention to the fact that intellectual property disputes could and did arise in the context of larger commercial disputes which would require

arbitrators or other third party neutrals with experience reaching beyond intellectual property. Others, particularly in the sectors in which copyright played a central role, indicated that intellectual property was the main component of the products or services they provided in the market and that disputes essentially concerned with intellectual property were not unusual.

(ii) The *confidentiality* of the existence of the dispute and its outcome could be assured by extra-judicial procedures, thereby meeting a need of the business community that judicial resolution could not meet. Confidentiality was considered particularly important in respect of disputes involving trade secrets.

(iii) Extra-judicial procedures provided a *flexibility* that responded to the needs of business relationships. The disputants could select the kind of procedure that was best adapted to their commercial needs. In particular, extra-judicial procedures were more apt to facilitate the continuation of the business relationship in the context of which a dispute had arisen by encouraging a conciliatory rather than adversarial approach to the dispute-settlement process.

(iv) In situations where a dispute involved intellectual property rights covering the same or similar subject matter in different jurisdictions, extra-judicial procedures provided the possibility of adopting a *single procedure* in respect of all the jurisdictions concerned, thereby offering an approach that was cost-effective and that minimized dislocation of management and personnel time and resources. Some participants cautioned against thinking that extra-judicial procedures were always cost-effective, pointing out that arbitration proceedings could involve considerable time and cost.

(v) Extra-judicial dispute-resolution procedures reduced the risk (built in when the national court of a given country decides the dispute) that, where the litigants belong to different legal cultures one's would prevail over the other's.

It was pointed out by some participants that, while interest in and resort to arbitration and other extra-judicial procedures was growing, those procedures were not always well known in some circles, particularly in the context of intellectual property disputes. It was considered that it would be desirable for the International Bureau to endeavor to publicize the availability and advantages of extra-judicial dispute-resolution services generally and of any such services that might be offered by WIPO.

Several participants pointed out that there might be some doubt in certain jurisdictions about the arbitrability of certain aspects of intellectual property disputes. Others were of the view that an extra-judicial dispute resolution should be viewed as a consensual procedure on an *inter partes* basis, and that any

decision on the dispute should be considered in the same manner as an *inter partes* contract which could not have an *erga omnes* effect, but, rather, reflected a private arrangement between the parties. Like contracts, such private arrangements were subject to supervening considerations of public policy, for example, competition or antitrust laws.

III. The Appropriateness of WIPO for Providing Extra-judicial Dispute-Resolution Services

In response to the question whether dispute-resolution services, which were directed at facilitating, by consensual means, the enforcement of intellectual property rights, were compatible with the activities of WIPO, which seemed to concern principally the setting of standards and the obtaining of protection, the representative of the International Bureau pointed out that the Convention Establishing the World Intellectual Property Organization established, as one of the objectives of the Organization, the promotion of the protection of intellectual property throughout the world. Since a title of protection was of little use if it could not be enforced, the provision by WIPO of services for the extra-judicial resolution of disputes which would encourage consensual enforcement would seem not only to be compatible with, but also to promote actively, that objective of the Organization.

In response to a query concerning the means by which such services might be established, the representative of the International Bureau stated that the conclusion of a new treaty was not considered to be necessary. In the first place, a well-established framework for the recognition and enforcement of arbitral awards already existed on the international level. Furthermore, the power to establish such services seemed to fall clearly within the competence of the Governing Bodies of WIPO. In particular, it was recalled that the General Assembly of WIPO was competent to exercise such functions as were appropriate under the Convention Establishing the World Intellectual Property Organization and, thus, as were appropriate to the objectives of the Organization established by that Convention. In addition, the Assemblies constituted by the Paris Convention for the Protection of Industrial Property and the Berne Convention for the Protection of Literary and Artistic Works, as well as by other treaties administered by WIPO, were competent to take appropriate action designed to further their objectives, which objectives were always related to the protection of intellectual property.

It was also recalled that intellectual property concerned private property rights and that many of WIPO's activities were, in consequence, related to services used by or put at the disposal of the private

sector. Such was the case of the registration activities 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.

IV. The Range of Possible Services that Might Be Made Available Through WIPO

Arbitration. Arbitration was considered to be the best known and, in many jurisdictions, the most important alternative to judicial adjudication. Many participants referred to the Convention on the Recognition and Enforcement of Foreign Arbitral Awards (the New York Convention), done at New York on June 10, 1958, to which 87 States were party. It was noted that that Convention facilitated, at the international level, the enforcement of arbitral awards and that there was not an equivalent convention concerning the enforcement of judgments of national tribunals.

As concerns the rules governing arbitration proceedings, the UNCITRAL Arbitration Rules, prepared by the United Nations Commission on International Trade Law, were mentioned as a basic reference. While those Rules were currently widely accepted and used in international commercial transactions, it was considered desirable that an endeavor be made by WIPO to draft a modified form of rules specially adapted to intellectual property disputes and any services that might be made available through WIPO.

Other Extra-judicial Procedures. It was pointed out that in certain countries a wide range of extra-judicial procedures other than arbitration were increasingly used. That range included conciliation or mediation, the executive or "mini" trial and hybrid procedures involving a combination of some or all of those procedures.

As opposed to adjudication or arbitration, those procedures are non-adversarial in nature and provided for the involvement of an intermediary or third party "neutral" who assisted the parties in reaching an amicable settlement of the dispute by common agreement. Typically, the intermediary acted as a mediator or conciliator. The philosophy behind those procedures was to characterize a dispute as a problem to be resolved together by the parties rather than a conflict to be won; disputes, therefore, could be settled without unnecessarily endangering and disrupting commercial relationships. In view of those advantages, some participants considered that WIPO services should be available in respect of means other than, and in addition to, arbitration. Certain participants pointed out, however, that those other procedures were not always widely used in all countries.

A number of participants underlined particularly the importance of the availability of a conciliator or mediator consultant (referred to as a "dispute manager" in the working paper), particularly for large and complex disputes. The main roles of such a consultant would be to assist the parties in the identification of the issues in dispute, to provide the possibility of arriving at an early settlement of the dispute through the mediation of the consultant and to design, or to facilitate the choice of, the most appropriate procedures for the settlement of those issues that remained in dispute despite the attempt to reach a settlement through mediation. Some participants pointed out that there were a number of countries where such a notion of a conciliator or mediator consultant was unknown. In addition, it was mentioned that conciliation had not yet been widely resorted to under existing institutions administering systems for the settlement of international commercial disputes between private parties.

Experts. It was pointed out that experts could be used in two capacities: first, to reach a determination of the dispute between the parties in much the same way as a single arbitrator but without necessarily being bound by a particular set of arbitral rules, and, secondly, to give an expert opinion on a particular point or issue, usually technical, in the context of a broader range of issues. It was generally considered that further consideration of the use of experts should be limited to the second sense of technical experts acting as neutral fact-finders and giving technical opinions on particular issues.

List of Arbitrators. The adequate selection of arbitrators was considered to be a critical condition for the success of an arbitration system. Many participants were of the view that a list of arbitrators should be established. The qualifications required for nomination to the list could be specified by WIPO and could include, according to some participants, those qualifications mentioned in paragraph 39 of the working document, as well as other qualifications that would ensure a reliable, internationally oriented, technically adequate and neutral procedure.

It was suggested that the list be established on the basis of names of persons with adequate expertise or qualifications nominated by non-governmental organizations. Each nomination would have to be accompanied by a professional curriculum vitae of the designated person. The attention of the Working Group was drawn to the possibility that a number of non-governmental organizations might not, in accordance with their statutes and regulations, be entitled to nominate persons to be placed in the list of arbitrators. The question was raised as to which non-governmental organizations should be invited to nominate names for that list and the suggestion was made that, in addition to organizations primarily interested in intellectual property, organizations

administering institutional arbitration could be invited to make nominations.

It was expected that, in a number of disputes, the parties would be able to appoint the arbitrators by common agreement. In those cases where the parties are unable to reach an agreement, it was considered appropriate that the Director General of WIPO should, at the request of the parties concerned, act as appointing authority (see, further, "Appointing Authority," below). In exercising such a function, it was understood that the Director General would do so only after consultations with the parties concerned.

List of Conciliators and Mediators. Certain participants stated that, if conciliators and mediators were to be made available through services provided by WIPO, then WIPO should prepare a list of persons qualified to perform such functions. It was pointed out by those participants that, since the function of the conciliator and mediator was different from that of the arbitrator, there should be different lists established according to different sets of criteria. A greater number of participants considered, however, that it was not necessary to prepare a separate list of conciliators and mediators, since undue specialization of functions might not be desirable.

List of Experts. It was considered inappropriate to establish a list of experts, since it would not be possible to establish and maintain an adequate, up-to-date list of experts in every possible branch of technical expertise.

Appointing Authority. While, as noted above, in many cases, the parties to a dispute submitted to either *ad hoc* or institutional arbitration were able to appoint the arbitrators by common agreement, in default of such agreement, it was considered necessary to have an appointing authority. That function could be performed by the Director General of WIPO. The appointing authority would appoint the arbitrator or the arbitrators on the basis of the names mentioned in the list of arbitrators established by WIPO. The appointing authority, it was understood, would consult the parties to the dispute and, if agreement was not reached during such consultations, would appoint the arbitrator(s) taking into account the circumstances of each case and the special qualifications of each arbitrator.

Code of Ethics. While it was acknowledged that a Code of Ethics could be useful for arbitrators and other intermediaries, it was felt that such a Code could also be used to bring unwarranted challenges to arbitral awards, thereby avoiding the finality of arbitration. Instead of a Code of Ethics, it was suggested to require from arbitrators and other intermediaries upon nomination a declaration of non-interest in the subject matter of the dispute and in relation to the parties to the dispute, and a commit-

ment to report conflicts of interest and cognate matters arising during the conduct of the dispute-settlement procedure.

Other Services. In the course of the discussions, it was mentioned that consideration should be given to the provision by WIPO of services of a promotional and educational nature, such as the preparation of publications, the drafting of model contract clauses, and the organization of symposia and seminars on arbitration and other procedures for the settlement of disputes in the field of intellectual property.

LIST OF PARTICIPANTS*

I. Organizations

Association of Dutch Patent Agents, Netherlands (APA): M. Gelissen. Brazilian Association of Industrial Property Agents (ABAPI): J.A. Faria Correa. Brazilian Association on Industrial Property (ABPI): J.A. Faria Correa. Center for Advanced Study and Research on Intellectual Property (CASRIP): D. Chisum. Chartered Institute of Arbitrators (CIArb): R. Briner; D. Brown-Berset. Committee of National Institutes of Patent Agents (CNIPA): U. Wittenzellner; W. Holzer. Federal Chamber of Patent Attorneys (Patentanwaltskammer (PAK)), Germany (FCPA): U. Wittenzellner. Institute of Intellectual Property, Japan (IIP): Y. Ishii. Institute of Professional Representatives Before the European Patent Office (EPI): W. Holzer. International Advertising Association (IAA): M.

Ludwig. International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): G. Karnell. International Association for the Protection of Industrial Property (AIPPI): J. Clark. International Chamber of Commerce (ICC): D. Hascher; J.H. Kraus; X. de Mello. International Confederation of Societies of Authors and Composers (CISAC): N'D. N'Diaye. International Federation of Associations of Film Distributors (FIAD): G. Grégoire. International Federation of Film Producers Associations (FIAPF): A. Chaubeau. International Federation of Industrial Property Attorneys (FICPI): A. Briner. International Federation of Reproduction Rights Organisations (IFRRO): T. Koskinen. International Federation of the Phonographic Industry (IFPI): B. Lindner. International Literary and Artistic Association (ALAI): G. Karnell. International Publishers Association (IPA): J.-A. Koutchoumow. International Union of Architects (IUA): J. Duret. International Video Federation (IVF): H. Pasgrimaud; C.G. Soulie. Japan Patent Association (JPA): Y. Kanezaki; K. Uchida. United States Trademark Association (USTA): R.A. Rolfe.

II. Experts

T. Arnold, United States of America; J.A. Faria Correa, Brazil; Z. Kitagawa, Japan; D.C. Maday, Switzerland; L. Street, Australia.

III. International Bureau of WIPO

A. Bogsch (*Director General*); F. Gurry (*Director-Counsellor, Office of the Director General*); R. Sateier (*Assistant Legal Counsel, Office of the Legal Counsel*).

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

Permanent Committee on Industrial Property Information (PCIPI)

Ad hoc Working Group on Trademark Information (PCIPI/TI)

First Session
(Geneva, March 30 to April 3, 1992)

The PCIPI ad hoc Working Group on Trademark Information held its first session from March 30 to April 3, 1992, in Geneva.

The International Bureau stated that, henceforth, all the PCIPI members present at the first session would be considered members of the Working Group.

The Working Group discussed the measures proposed by the International Bureau concerning a task on quality control measures for data entry and validation and decided that a questionnaire regarding quality control measures should be prepared by the International Bureau and addressed to the members of the PCIPI.

The Working Group discussed four draft questionnaires prepared by the International Bureau and agreed that the International Bureau should distribute questionnaires on the following projects for reply by the end of June 1992:

- mark search systems and examination methods;
- numbering systems for mark applications and registrations;
- content and layout of official gazettes;
- electronic filing and transmission of trademark data between data bases via telecommunications networks.

The Working Group decided that the International Bureau should be invited to prepare a revised version of WIPO Standard ST.60–Recommendation concerning bibliographic data relating to marks, based on the present text, but by using a three-digit coding system, since the Working Group acknowledged that it was not possible to incorporate new codes required

for the implementation of the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol) in the present structure of Standard ST.60.

The Working Group agreed to recommend to the PCIP Executive Coordination Committee that the abbreviation of the International Classification of Goods and Services for the Purposes of the Registration of Marks established by the Nice Agreement ("Nice Classification") should be "NCL." It noted that the Committee of Experts of the Vienna Union had recommended that the abbreviation of the International Classification of the Figurative Elements of Marks should be "CFE." The Working Group also agreed to recommend to the PCIP Executive Coordination Committee that editions of these Classifications should be indicated by a superscript Arabic numeral. Subject to the approval of the Committees of Experts of the Vienna and Nice Unions, the Working Group agreed to recommend to the PCIP Executive Coordination Committee that two new standards be adopted.

The Working Group finally proposed two new tasks to be included on the PCIP working program with the following wording:

- study the various practices which exist in defining when a mark is to be considered a figurative mark; and
- study the various practices which exist regarding quality and dimensions of the figurative element in an application concerning a figurative mark.

Working Group on General Information (PCIP/GI)

Eighth Session
(Geneva, April 6 to 10, 1992)

The PCIP Working Group on General Information held its eighth session from April 6 to 10, 1992, in Geneva.

The Working Group discussed the third draft of the inventory of definitions of the expression "patent family" and agreed to recommend its adoption to the PCIP Executive Coordination Committee; it also agreed that those definitions should be included in the Glossary of Terms Concerning Industrial Property Information and Documentation.

The Working Group agreed to recommend to the PCIP Executive Coordination Committee that two-letter codes for 17 newly independent States be added to WIPO Standard ST.3.

The Working Group finalized the draft of WIPO Standard ST.24–Recommendation Concerning the Filing of Nucleotide and Amino Acid Sequences in Computer-Readable Form—and agreed to recommend

its adoption to the PCIP Executive Coordination Committee.

The Working Group concluded that a WIPO standard concerning corrections and alterations to patent data was highly desirable and agreed to recommend to the PCIP Executive Coordination Committee that the elaboration of such a standard be included in the PCIP Working Program for the 1992-93 biennium.

The Working Group agreed on a final version of the draft questionnaire for updating the survey on computerized search systems and agreed to recommend its adoption to the PCIP Executive Coordination Committee.

The Working Group approved the final draft of the "Glossary of Terms Concerning Industrial Property Information and Documentation." It also agreed that the Glossary, if adopted by the PCIP Executive Coordination Committee, should be published in Volume 3, Part 10, of the *WIPO Handbook on Industrial Property Information and Documentation*.

The Working Group discussed two draft questionnaires, one on filing procedures and filing requirements, the other on examination methods and publication procedures adopted in industrial property offices in the field of industrial designs, and agreed to request the International Bureau to submit revised questionnaires for comments with the intention of agreeing on the final version at its next session.

Finally, the Working Group noted a summary of replies to the questionnaire on the content of industrial designs gazettes and agreed to draw the attention of the PCIP Executive Coordination Committee to the need to elaborate relevant guidelines which could result in a WIPO recommendation similar to the existing WIPO Standard ST.18–Recommendation Concerning Official Gazettes and Other Patent Announcement Journals, e.g., Abstract Journals.

Working Group on Search Information (PCIP/SI)

Ninth Session
(Geneva, May 4 to 15, 1992)

The PCIP Working Group on Search Information held its ninth session from May 4 to 15, 1992, in Geneva. Fifteen members of the Working Group were represented at the session: Belgium, Denmark, Finland, France, Germany, Japan, Portugal, Romania, Russian Federation, Spain, Sweden, Switzerland, United Kingdom, United States of America, European Patent Office (EPO).

The Working Group dealt with 51 IPC revision projects carried over from the 1991 working program. Of those projects, 23 belonged to the mechanical field, 15 to the chemical field and 13 to the electrical field.

The Working Group also dealt with another 38 IPC revision projects on the program for the 1992-93 biennium. Of those projects, eight belonged to the mechanical field, 15 to the chemical field and 15 to the electrical field.

With respect to the task relating to the study of the IPC entries usable both for classifying and for indexing purposes, the Working Group agreed on the distribution of the work between the offices volunteering to participate.

The Working Group noted a statement by the Representative of Romania that his country was in the process of acceding to the Strasbourg Agreement Concerning the International Patent Classification.

Ad hoc Working Group on the Management of Industrial Property Information (PCIPI/MI)

Ninth Session
(Tokyo, May 25 to 27, 1992)

The PCIPI ad hoc Working Group on the Management of Industrial Property Information held its ninth session from May 25 to 27, 1992, in Tokyo.

Twenty-one members of the Working Group were represented at the session: Australia, Brazil, Canada, China, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Finland, France, Germany, Hungary, Japan, Malaysia, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom, United States of America, European Patent Office (EPO). India, the International Federation for Information and Documentation (FID), the Patent Documentation Group (PDG) and the publishers of the journal *World Patent Information* were represented by observers. The Japan Patent Information Organization (JAPIO), the Japan Institute of Invention and Innovation (JIII), the Japan Patent Attorneys Association (JPAA) and the Japan Patent Association (JPA) were represented by ad hoc observers.

The Working Group noted the final report on the synoptical presentation of different IPC editions on CD-ROM and congratulated the International Bureau, the German Patent Office, the Hungarian Office of Inventions and the Spanish Registry of Industrial Property on the timely completion of the IPC:CLASS CD-ROM.

The Working Group also noted that sales of the IPC:CLASS CD-ROM had already started and that approximately 250 copies of the CD-ROM would have to be sold in order to break even and expressed the hope that this CD-ROM would meet the expectations of the different users.

The Working Group was informed that the structured files on the IPC:CLASS CD-ROM were downloadable by industrial property offices for internal purposes, i.e., for carrying out their functions, and that the description of the file structures could be obtained from the International Bureau.

The Working Group also noted that offices not being in a position to use the structured files of the said CD-ROM for downloading should inform the International Bureau that they wished to obtain the so-called isolated files, specifying the preferred file structure.

The Working Group agreed that work relating to the possibility of creating a data base covering revision concordance data be discontinued, since the revision concordance data was available on the IPC:CLASS CD-ROM, the structured files containing those data were available for downloading by industrial property offices and isolated files of the data could be made available to those offices.

The Working Group noted the survey of the current situation in industrial property offices regarding electronic filing of patent applications. The Working Group also noted the information given by the Delegations of Japan, the United States of America and the EPO concerning the development of an electronic filing system within the trilateral cooperation between their Offices.

The Working Group expressed the wish to be kept fully informed of any progress made by the said three Offices in the field of electronic filing of patent applications and invited them to submit detailed proposals that might advance work under that task.

Executive Coordination Committee (PCIPI/EXEC)

Tenth Session
(Tokyo, May 25 to 29, 1992)

From May 25 to 29, 1992, the PCIPI Executive Coordination Committee held its tenth session at the Japanese Patent Office in Tokyo. Twenty-one members of the Committee were represented at the session: Australia, Brazil, Canada, China, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Finland, France, Germany, Hungary, Japan, Malaysia, Netherlands, Norway, Spain, Sweden, Switzerland, United Kingdom, United States of America, European Patent Office (EPO). India, the International Federation for Information and Documentation (FID), the Patent Documentation Group (PDG) and the publishers of the journal *World Patent Information* were represented by observers. The Japan Patent Information Organization (JAPIO), the Japan Institute of Invention and

Innovation (JIII), the Japan Patent Attorneys Association (JPAA) and the Japan Patent Association (JPA) were represented by ad hoc observers.

The Committee discussed the proposal of the International Bureau to revise WIPO Standard ST.14 (Recommendation for the Inclusion of References Cited in Patent Documents) and decided to include a new task in the PCIPI working program for the 1992-93 biennium and to assign it to the PCIPI Working Group on General Information (PCIPI/GI).

The Committee discussed proposals formulated by Denmark to revise WIPO Standards ST.9 (Recommendation Concerning Bibliographic Data on and Relating to Patent Documents) and ST.16 (Standard Code for Identification of Different Kinds of Patent Documents), and decided to include two new tasks in the PCIPI working program for the 1992-93 biennium and to assign them to the PCIPI/GI.

The Committee approved two-letter codes for 17 newly independent States, provided that the countries concerned were issuing or registering industrial property titles.

The Committee decided that the draft WIPO standard concerning the filing of nucleotide and amino acid sequences in computer-readable form should be referred back to the PCIPI/GI. It instructed the Working Group to consider the inclusion in such a standard of all elements of a sequence listing available to an applicant and to define their recording format.

The Committee approved the inclusion in the PCIPI working program for the 1992-93 biennium of the elaboration of a WIPO standard concerning the correction and alteration of patent data.

The Committee approved the "Glossary of Terms Concerning Industrial Property Information and Documentation."

The Committee decided to include the new task "Elaboration of WIPO recommendation concerning the content and layout of industrial designs gazettes" in the PCIPI working program for the 1992-93 biennium and assigned it to the PCIPI/GI.

The Committee decided to include two new tasks in the PCIPI working program for the 1992-93 biennium: (a) study the various practices which exist in defining when a mark is to be considered a figurative mark; and (b) study the various practices which exist regarding quality and dimensions of the figurative element in an application concerning a figurative mark, and agreed to assign these tasks to the PCIPI ad hoc Working Group on Trademark Information (PCIPI/TI).

The Committee approved WIPO Standard ST.40 (Recommendation Concerning Making Facsimile Images of Patent Documents Available on CD-ROM) as established by the PCIPI ad hoc Working Group on Optical Storage (PCIPI/OS).

The Committee discussed a proposal concerning the revision of the International Patent Classification (IPC) which was presented by the Delegation of Japan and supported by Australia. The Committee noted problems faced by the users of the IPC, in particular in relation to use of the IPC for retrieving patent documents by means of automated searching. The Committee unanimously agreed to set up an ad hoc working group to consider in detail the future development of the IPC.

International Patent Classification (IPC) Union

In April 1992, final modifications were made to WIPO's CD-ROM product IPC:CLASS, containing material relating to the IPC, and a Users' Guide in

German, French and Spanish was prepared. All members of the IPC Union will receive such a CD-ROM.

Registration Systems Administered by WIPO

Patent Cooperation Treaty (PCT)

United States of America. In April 1992, three WIPO officials conducted a Seminar on the PCT organized by the Patent Resources Group, a private corporation of the United States of America, at Hiltonhead, Hilton Head Island, South Carolina (United States of America), for some 150 patent attorneys.

In May 1992, a WIPO official and three EPO officials gave a course organized by the Patent Resources Group, also at Hiltonhead, on Euro/PCT procedures, European patent law and practice, addressed to some 70 patent attorneys and practitioners from the United States of America.

Three WIPO officials conducted the first PCT Paralegal Training Course for members (patent administrators) of patent departments of industry and law firms in Washington, D.C., in May 1992. Eighteen firms/corporations were represented by 30 participants at that meeting, which was organized in cooperation with a firm of patent attorneys.

In May 1992, two WIPO officials gave a briefing to the clerical/paralegal staff of the International (PCT) Unit of the U.S. Patent and Trademark Office in Washington, D.C., and another WIPO official gave a separate briefing to the examining professionals of that Office on the new PCT Rules which entered into force on July 1, 1992. Some 50 participants attended each of the two sessions.

In May 1992, three WIPO officials gave a briefing on the new PCT Rules at Du Pont de Nemours, a private company in Wilmington (Delaware) for some 90 patent attorneys in the

morning, and some 50 paralegals/secretaries in the afternoon.

In May 1992, a WIPO official gave a luncheon address to the Rochester (New York) Intellectual Property Law Association on the new PCT Rules, which was attended by some 70 attorneys.

Also in May 1992, a WIPO official briefed some 60 attorneys and paralegals of the Minnesota Mining and Manufacturing Co. (3M), a private company in St. Paul (Minnesota) on the new PCT Rules.

Viet Nam. In May 1992, two government officials undertook a study visit to WIPO in Geneva, on the legal, administrative and operational aspects of the PCT.

Computerization Activities

In May 1992, two representatives of the European Patent Office's Information and Documentation Service (EPIDOS) in Vienna visited WIPO to discuss with WIPO officials cooperation between WIPO and the EPO for the purpose of producing various CD-ROM products, in particular the ESPACE-WORLD CD-ROMs (containing bibliographic data and the complete facsimile images of international applications published by the International Bureau under the PCT) and the inclusion in this product of later publications of international search reports and of amended claims, as well as of corrected versions of published international patent applications.

Madrid Union

Computerization Activities

In April 1992, the Users' Guide to the WIPO ROMARIN CD-ROM in English and French was finalized.

In May 1992, packages containing the prototype disc and the software of the ROMARIN CD-ROM containing information in the International Register of Marks were sent, together with the Users' Guide, to the offices of the Madrid Union member States

and a number of other interested offices and persons.

Also in May 1992, a WIPO official attended the XVth Patent and Trademark Depositary Libraries (PTDLs) Meeting organized by the United States Patent and Trademark Office in Washington, D.C., where he made a presentation on WIPO's role in information dissemination under the Madrid Agreement and gave a demonstration of its ROMARIN CD-ROM product.

Hague Union

Committee of Experts on the Development of the Hague Agreement Concerning the International Deposit of Industrial Designs, Second Session (Geneva, April 27 to 30, 1992). A note on the second session of the Committee of Experts on the

Development of the Hague Agreement Concerning the International Deposit of Industrial Designs, which was held in Geneva from April 27 to 30, 1992, was published in the June issue of this review (pp. 184 *et seq.*).

Activities of WIPO in the Field of Industrial Property Specially Designed for Developing Countries

Africa

Cape Verde. In April 1992, WIPO sent to the Government of Cape Verde, at its request, a draft industrial property law, with commentary, in Portuguese.

Ethiopia. In April 1992, a WIPO official visited Addis Ababa and held discussions with government officials on cooperation between WIPO and Ethiopia. Among the matters discussed were possible assistance from WIPO in drafting new industrial property legislation and the possible accession of Ethiopia to the WIPO Convention.

Guinea-Bissau. In April 1992, WIPO sent to the Government of Guinea-Bissau, at its request, a draft industrial property law, with commentary, in Portuguese.

Kenya. In April 1992, the Director General received the visit of Mr. Amos Wako, Attorney General of Kenya, at WIPO headquarters and discussed with him questions relating to the country's copyright and industrial property laws, including possible accession to certain WIPO treaties. It was agreed that the International Bureau of WIPO would prepare a draft amendment to the Copyright Act and organize, in cooperation with the Government of Kenya, a national copyright seminar in Nairobi.

Sao Tome and Principe. In April 1992, WIPO sent to the Government of Sao Tome and Principe, at its request, a draft industrial property law, with commentary, in Portuguese.

Senegal. Mr. Alassane Dialy Ndiaye, Minister for Industry, Commerce and Handicraft, visited WIPO in April 1992. He discussed with WIPO officials the strengthening of cooperation between WIPO and Senegal.

Uganda. In May 1992, a government official visited WIPO and discussed plans for strengthening cooperation between WIPO and Uganda.

Zaire. In April 1992, the UNDP Resident Representative in Kinshasa visited WIPO to discuss the status of activities under the UNDP-financed country project as well as a proposed extension of that project.

United Nations Economic Commission for Africa (ECA). In May 1992, an official from ECA visited WIPO and discussed possible cooperation between WIPO and ECA.

African Regional Industrial Property Organization (ARIPO). In April 1992, a WIPO official

attended the third session of the Council of Ministers of ARIPO, held at Victoria Falls (Zimbabwe).

Organization of African Unity (OAU). In April 1992, two WIPO officials attended a meeting, which took place in Addis Ababa (Ethiopia), on the strengthening of cooperation between the United Nations system and the OAU Secretariat.

Also in April 1992, two WIPO officials had meetings in Addis Ababa with Mr. Salim A. Salim, Secretary-General of OAU, and with other officials of that Organization to discuss cooperation between the two Organizations, including in respect of the proposed Protocols on Science and Technology and on Industry that are being prepared by the OAU Secretariat.

Arab Countries

Egypt. In May 1992, the Vice-Minister of Foreign Affairs was received by the Director General at WIPO and discussed with him questions of mutual interest.

Morocco. In May 1992, two WIPO officials visited Casablanca and Rabat and held discussions with government officials, as well as staff from the UNDP office in Rabat, on the detailed implementation of the work plan for the UNDP-financed country project.

Tunisia. In May 1992, two WIPO officials visited Tunis and held discussions with government and UNDP officials in Tunis on plans for strengthening the industrial property system in that country. A demonstration of CD-ROMs was given to the staff of the National Institute for Standardization and Industrial Property.

United Arab Emirates. In May 1992, the UNDP Resident Representative in Abu Dhabi visited WIPO and discussed with WIPO officials the possible strengthening of the industrial property system in that country.

Asia and the Pacific

Study Visits Organized by WIPO

India. In May 1992, two government officials from India undertook a study visit organized by WIPO in the context of the UNDP-financed country project relating to the modernization of Patent Information Services in Nagpur (PIS). They visited the United Kingdom Patent Office, the British Library, Derwent Publications Limited in London, the European Patent Office (EPO) in The Hague and Vienna, the Austrian Patent Office and WIPO.

Assistance With Legislation and Modernization of Administration

Patent and Trademark Project for ASEAN Countries. In April 1992, a WIPO official, together with an EPO official, visited the Commission of the European Communities (CEC) in Brussels to discuss with CEC officials the proposal for a project on patents and trademarks, for the benefit of ASEAN countries,

to be funded by the European Communities and executed by WIPO and the EPO.

Bangladesh. In May 1992, two government officials from Bangladesh discussed with WIPO officials in Geneva the implementation of the UNDP-financed country project in Bangladesh and the proposed activities to be carried out by WIPO in 1992.

China. In May 1992, a WIPO official visited Beijing to participate in the 40th anniversary of the founding of the China Council for the Promotion of International Trade (CCPIT), and had discussions with officials of CCPIT on matters of common interest. He also had discussions with officials of the Chinese Patent Office on the revision of the Chinese Patent Law.

India. In April 1992, two WIPO officials undertook a mission to India. Together with a WIPO consultant from Canada, they had meetings in New Delhi, Bombay and Nagpur with government officials and users and potential users of Patent Informa-

tion Services (PIS) from the private sector on the ongoing project on the modernization of PIS in Nagpur.

Those two WIPO officials also held discussions with government officials on the proposed computerization of the Trade Marks Registry, on legislation issues in the fields of industrial property and copyright, and on a possible regional colloquium of judges to be organized by WIPO in 1992 in cooperation with the Indian Law Institute. They also met with UNDP officials in New Delhi to review the above-mentioned matters, in particular, the modernization of PIS in Nagpur and the proposed project for the computerization of trademarks.

Also in April 1992, the following activities concerning India took place at WIPO in Geneva: the Director General received Professor P. S. Sangal, Dean of the Faculty of Law of the University of New Delhi, and discussed with him the situation of inventors in India; a government official from India had discussions with WIPO officials on the use of the patent system in industry; and the UNDP Resident Representative in New Delhi received a general briefing on WIPO's activities and discussed with WIPO officials present and future UNDP-financed projects to be implemented by WIPO in India.

Iran (Islamic Republic of). Two government officials had discussions in April 1992 in Geneva with WIPO officials regarding the proposed UNDP-funded country project to modernize the industrial property administration, WIPO's international registration of marks and other matters concerning cooperation in the field of industrial property.

Republic of Korea. In April 1992, Mr. Jong Rak Choi, Dean of the International Intellectual Property Training Institute (IIPTI) in Daeduk, and a member of its faculty visited WIPO in Geneva and held discussions with WIPO officials on future activities to be undertaken by IIPTI, and the possible strengthening of its cooperation with WIPO.

In May 1992, three government officials from the Republic of Korea visited WIPO and held discussions with the Director General and WIPO officials on the possible accession of that country to the Madrid Agreement Concerning the International Registration of Marks, the Protocol to the Madrid Agreement and the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks, as well as on other matters of mutual interest.

Singapore. In May 1992, the International Bureau prepared and submitted to the national authorities of Singapore, at their request, comments on the draft Patents Bill and draft implementing regulations.

Yemen. A WIPO official visited Aden in April 1992 in order to provide on-the-job training for officials of the Civil Registration and Notarization Department on the classification of patent documents as well as on patent information services.

United Nations Economic and Social Commission for Asia and the Pacific (ESCAP). In May 1992, an ESCAP official met with a WIPO official in Geneva to discuss plans for cooperation between the two organizations.

Latin America and the Caribbean

Assistance With Legislation and Modernization of Administration

Joint Project of WIPO, the Registry of Industrial Property of Spain and the European Patent Office (EPO) on the Issue of a Test CD-ROM Product Containing the First Pages of Latin American Patents and Patent Applications (DOPALES-PRIMERAS CD-ROM Project). In May 1992, two WIPO officials participated in Munich in a meeting of a working group set up by WIPO, the Industrial Property Registry of Spain and the EPO to discuss the future publication of the DOPALES-PRIMERAS CD-ROM product. Since Brazil has expressed interest in this new product, it will now also contain the bibliographic data and first pages of Brazilian patent documents; it will, therefore, in future, contain

information on 19 Latin American countries. The working group agreed on the contents and a work plan for the production of the next issue of CD-ROM DOPALES-PRIMERAS (containing information on patents granted in 1991) by early 1993. The working group also discussed the delivery of CD-ROM workstations and software for the collection of first pages and of bibliographic data in machine-readable form to Latin American industrial property offices.

Argentina. In May 1992, a government official visited WIPO to discuss cooperation between WIPO and Argentina.

Brazil. In April 1992, a delegation of members of the Brazilian Congress and their advisers visited

WIPO headquarters. They discussed with WIPO officials various questions related to recent international trends in industrial property protection. The Congressmen were collecting information in connection with the envisaged revision of the industrial property legislation in Brazil.

In May 1992, a WIPO official attended, as a speaker, the opening session of a national Seminar on Technological Cooperation and the Quality of Life in Rio de Janeiro, which the National Institute of Industrial Property (INPI) organized in the framework of the Brazilian preparations for the United Nations Conference on Environment and Development (UNCED). The purpose of the Seminar was to show the importance of patents as a source of information on environmental technologies. He also held discussions with government officials on various matters relating to WIPO's cooperation with Brazil.

Chile. In April 1992, on the occasion of his presence in Santiago to attend the VIIth International Congress on the Protection of Intellectual Rights (of Authors, Performers and Producers), the Director General held talks with Mr. Patricio Aylwin Azocar, President of Chile, and with several Ministers as well as with government officials. They discussed matters of common interest, particularly WIPO's cooperation in the proposed creation of a Chilean National Industrial Property Institute and the possible accession of Chile to the Patent Cooperation Treaty.

Colombia. In April 1992, at the invitation of the Government of Colombia, the Director General visited Santa Fe de Bogotá, accompanied by two WIPO officials and a WIPO consultant from Switzerland. He held talks with several Ministers on cooperation between WIPO and Colombia, including the possible accession of Colombia to the Paris Convention for the Protection of Industrial Property.

During his visit, the Director General received the decoration of the National Order of Merit in the grade of Commander [*Orden Nacional del Mérito en el Grado de Comendador*] from the hands of Mr. Humberto de la Calle Lombana, Minister of Government, on behalf of Mr. Cesar Gaviria, President of Colombia. The ceremony was also marked by the inauguration of the new computerized system of the National Registry of Copyright of Colombia.

The WIPO officials and the WIPO consultant from Switzerland also reviewed with government officials cooperation activities, particularly with a view to establishing a copyright library in the Colombian Copyright Office.

In May 1992, Mr. Arturo Hein Cáceres, UNDP Resident Representative in Colombia, was received by the Director General and met with WIPO officials in Geneva. They discussed the ongoing country project in Colombia.

Costa Rica. In April 1992, a UNDP and government-financed country project on the modernization of the Intellectual Property Registry was approved. This project will be administered by WIPO.

In May 1992, Mrs. Elizabeth Odio, Minister of Justice, visited WIPO and discussed with the Director General various matters of common interest, including cooperation between WIPO and Costa Rica and a proposed ministerial meeting of Central American countries to discuss their possible accession to the Paris Convention.

Mexico. In May 1992, a WIPO official undertook a mission to Washington, D.C., to discuss with officials of the World Bank the project for setting up the Mexican Institute of Industrial Property (IMPI), which was the result of a previous preparatory assistance project executed by WIPO. That project is being proposed for funding from a World Bank loan to Mexico and would commence operations in 1993.

Venezuela. In May 1992, a WIPO official and a WIPO consultant from Mexico undertook a mission to Caracas and had discussions with government and UNDP officials on assistance to the Government in the proposed establishment of an autonomous industrial property institute. The mission was partly financed by the UNDP-funded country project.

Inter-American Development Bank (IDB). In May 1992, a WIPO official undertook a mission to Washington, D.C., to the IDB. He had discussions with the President and other officials of IDB on possible cooperation between WIPO and IDB for the benefit of Latin America and Caribbean countries.

Development Cooperation (in General)

United Nations Development Programme (UNDP). In May 1992, several WIPO officials attended the 39th session of the UNDP Governing Council held in Geneva. The Director General and WIPO officials had discussions in Geneva with a number of UNDP officials, including Mr. Luis Maria

Gomez, Associate Administrator, on UNDP financing of WIPO development cooperation activities.

International Bank for Reconstruction and Development (World Bank). In May 1992, a WIPO official

visited the World Bank in Washington, D.C., and discussed with Bank officials possible cooperation in training between the two organizations.

Also in May 1992, an official from the World Bank visited WIPO and discussed a possible WIPO awareness seminar on intellectual property and WIPO programs and activities for the Bank staff.

International Chamber of Commerce (ICC). In May 1992, the Director General and a WIPO official attended the 9th Conference of ICC on the theme "Development Dimensions in the '90s" in Marrakesh. The Director General participated, as speaker and panelist, in the session on "Technology for Development."

Activities of WIPO in the Field of Industrial Property Specially Designed for European Countries in Transition to Market Economy

National Activities

Hungary. In April 1992, Mr. Ernő Pungor, Minister without portfolio, President of the National Committee for Technological Development, accompanied by an official of the same Committee, visited WIPO to discuss questions of mutual interest with the Director General.

Latvia. In May 1992, two officials of the Patent Office of Latvia visited WIPO and met with the Director General and a number of WIPO officials to discuss the draft industrial property legislation of Latvia and that country's possible accession to treaties administered by WIPO.

Lithuania. In April 1992, at the request of the national authorities, the International Bureau sent comments on the draft decree of the Government of Lithuania on the legal protection of industrial property in that country.

In May 1992, two officials from the Lithuanian State Patent Bureau visited WIPO to discuss with the Director General and several WIPO officials the situation of industrial property in Lithuania.

Also in May 1992, the International Bureau sent to the government authorities, at their request, the draft texts of the Announcement on the Decree of the Government of the Republic of Lithuania on the Protection of Industrial Property and the draft Trade-mark Law of Lithuania, which had both been discussed during the above-mentioned visit. The text of the Announcement appears in this issue's *Indus-*

trial Property Laws and Treaties, LITHUANIA – Text 1-001.

Russian Federation. In May 1992, Mr. Yuri Alexandrovich Ryzhov, Chairman of the Subcommittee for Science and Advanced Technology of the Russian Parliament, accompanied by an official of the Committee for Patents and Trademarks and the Director General of the Russian Agency for Intellectual Property (RAIS), visited WIPO and met with the Director General and several WIPO officials. During the visit, the situation of industrial property in the Russian Federation, the draft Copyright Law of the Russian Federation and that country's possible accession to several WIPO-administered treaties, as well as cooperation between WIPO and RAIS, were discussed.

Also in May 1992, the Director General gave an interview to the News Agency of the Russian Federation (TASS Agency) on the problems of the protection of intellectual property in the States on the territory of the former Soviet Union and on legislative trends in the field of patents in the Russian Federation. An article based on the interview was published in the *Russian Federation Newspaper* in May 1992.

Ukraine. In May 1992, Mr. Sergei Mikhailovich Ryabchenko, Chairman of the Committee on Science and Technology of Ukraine, visited WIPO to discuss with the Director General and a WIPO official the situation of industrial property in Ukraine and the possible accession of that country to treaties administered by WIPO in the field of industrial property.

Contacts of the International Bureau of WIPO with Governments and International Organizations in the Field of Industrial Property

United Nations

United Nations Administrative Committee on Coordination (ACC). The Director General and two WIPO officials attended this meeting which took place in Geneva in April 1992.

United Nations Organizational Committee of ACC. A WIPO official attended the resumed session of this Organizational Committee which took place in April 1992 in Geneva.

United Nations Consultative Committee on Substantive Questions (Operational Activities (CCSQ (OPS)). In May 1992, a WIPO official attended a UN system Seminar on the Implications for its Operational Activities of the Recent Global Political, Economic and Social Changes, convened by the Chairman of CCSQ (OPS).

United Nations Center Against Apartheid. In May 1992, a WIPO official participated, in Windhoek (Namibia), in a seminar organized by the United Nations Center Against Apartheid entitled "South Africa's Socio-Economic Problems: Future Role of the UN System in Helping Address Them." The participants included representatives of agencies and organizations of the United Nations system and other intergovernmental organizations as well as the African National Congress (ANC) and the Pan-Africanist Congress of Azania (PAC).

Other International Organizations

United Nations Educational, Scientific and Cultural Organization (UNESCO). In April 1992, a WIPO official attended the third ordinary session of the Intergovernmental Committee for the World Decade for Cultural Development which was held at Unesco headquarters in Paris.

Regional Organizations

Asian Patent Attorneys Association (APAA). In April 1992, on the occasion of the Congress of the International Association for the Protection of Industrial Property (AIPPI) held in Tokyo, the Director General and a WIPO official had discussions with

Mr. William Howie, President of APAA, on cooperation between WIPO and APAA.

European Bank for Reconstruction and Development (EBRD). In April 1992, two WIPO officials attended the first annual meeting of the Board of Governors of EBRD which was held in Budapest.

European Patent Organisation (EPO). In April 1992, a WIPO official attended the 30th session of EPO's Working Party on Technical Information, held in The Hague.

In May 1992, a WIPO official attended the 26th session of EPO's Working Party on Statistics in Munich.

Other Organizations

American Intellectual Property Law Association (AIPLA). In May 1992, two WIPO officials attended a number of sessions of the AIPLA Spring Meeting held in Minneapolis (Minnesota, United States of America), gave presentations on WIPO's activities in connection with the Patent Cooperation Treaty (PCT) and participated in discussions in the fields of patent law harmonization and international trademark registration.

European Communities Trade Mark Practitioners' Association (ECTA). In May 1992, a WIPO official participated in ECTA's Annual Conference held in Lisbon.

International Association for the Protection of Industrial Property (AIPPI), XXXVth Congress (Tokyo, April 5 to 11, 1992). The International Association for the Protection of Industrial Property (AIPPI) held its XXXVth Congress in Tokyo (Japan) from April 5 to 11, 1992. About 2,000 members of AIPPI from more than 50 countries as well as representatives of the governments of 10 countries and of several intergovernmental organizations participated. The World Intellectual Property Organization (WIPO) was represented by its Director General, Dr. Arpad Bogsch, Mr. François Curchod (Deputy Director General) and Mr. Ludwig Baeumer (Director, Industrial Property Division).

The opening ceremony was honored by the presence of His Imperial Highness the Crown Prince as well as Mr. Kozo Watanabe (Minister for Interna-

tional Trade and Industry), who both addressed the meeting. The Director General of WIPO delivered an address which is reproduced below.

The Congress dealt in plenary sessions with the following questions: harmonization of formal requirements for trademark applications, registrations and amendments thereof; biotechnology (relationship between patent protection of biotechnological inventions and plant variety protection; patentability of animal breedings); trademarks—conflicts with prior rights; experimental use as a defense to a claim of patent infringement; possibility of arbitration of intellectual property disputes between private parties; house marks; improvement of international protection of industrial designs and protection of industrial designs in the European Communities.

During the same period, the Executive Committee of AIPPI and its Council of Presidents held several meetings. Moreover, workshops were organized on franchising, the harmonized European Community trademark law, industrial property legislation as an element of market economies, protection of data bases, impact of anti-trust law on patent and know-how license agreements, character merchandising, and industrial property rights in the newly created States of Eastern Europe.

The work of the Congress culminated with the ratification by the Executive Committee of AIPPI of a number of resolutions, the essential contents of which are reproduced below.

The Executive Committee elected Mr. David G. Vice (Northern Telecom Limited, Mississauga, Ontario, Canada) as the new President of AIPPI and Ms. Joan Clark (Lawyer, Montreal, Canada) as Executive President. Mr. Bruno Phélip (Patent Attorney, Paris) was elected Assistant Reporter General by the Executive Committee.

Address by Director General of WIPO

*"His Imperial Highness the Crown Prince,
The Honorable Mr. Kozo Watanabe, Minister for
International Trade and Industry,
Mr. Gaishi Hiraiwa, President of AIPPI,
Mr. Masahiko Takeda, Executive President of AIPPI,
Ladies and Gentlemen,*

I thank the Japanese hosts and the leaders of the International Association for the Protection of Industrial Property—AIPPI—for inviting the World Intellectual Property Organization to address the opening of this, the XXXVth, Congress of the Association.

I shall first speak of the relations that the World Organization has with Japan, the host country of this brilliant Congress.

And, in the second place, I shall speak of the relations between AIPPI and the World Organization.

Japan is the country with the highest number of patent applications in the world. In the other fields of intellectual property—such as trademarks, industrial designs and works protected by copyright—Japan is, too, among the very first in the world.

Consequently, in the international field, in the field of relations among countries, nothing really worldwide can be done without Japan.

Fortunately, Japan is fully aware of the importance of international cooperation in the field of intellectual property.

It has been always a tradition in the Japanese Government to recognize and promote the internationalization of industrial property protection. The very expression 'internationalization' of industrial property was invented and first used in Japan.

I heard it for the first time from the then Prime Minister, Mr. Fukuda, when he informed me that Japan was acceding to the Patent Cooperation Treaty, the PCT.

This tradition continues and is now represented by the Japanese Commissioner of Patents, Mr. Wataru Fukasawa.

And the same tradition has always existed and continues to exist among the Japanese inventors, industrialists and patent and trademark lawyers and agents, that is to say, the interested private circles of Japan.

The Japanese Group of AIPPI, by organizing this Congress, gives a new example of the highly international outlook of Japan on industrial property.

And now I turn to the whole of AIPPI.

AIPPI and the World Intellectual Property Organization work on parallel lines for the development of industrial property.

This is particularly true since Mr. Martin Lutz, Mr. Geoffroy Gaultier and Mr. Joseph DeGrandi are the permanent officers.

Working on parallel lines means that most of the improvements WIPO tries to bring about in international industrial property relations are also pursued by and frequently even initiated in AIPPI.

At the time of this Congress, the parallel work is directed mainly towards the achievement of the following five objectives:

first, the conclusion of a patent harmonization treaty, hopefully next year;

second, the adoption of new regulations under the Madrid Protocol, Regulations that should enable Japan, the United States of America, the United Kingdom, countries in Latin America and some other countries to become party to the Madrid system of the international registration of marks;

third, the elaboration of a new multilateral treaty simplifying national trademark registration procedures;

fourth, the setting up of a modernized system for the international deposit of industrial designs;

fifth, and last, *achieving further improvements in the field of the filing of international patent applications under the Patent Cooperation Treaty.*

This list is far from being complete. But these are the topics that are likely to require particularly attentive cooperation between AIPPI and WIPO at the present time and in the immediate future.

In conclusion, I wish to address myself once again to our Japanese hosts.

Being the only non-Japanese speaker in this opening ceremony, may I express, in the name of all the foreign participants, our profound admiration for the perfect organization of this Congress and our profound thanks for the warm friendship and hospitality of the Japanese Group of AIPPI.

All of us are deeply grateful to our Japanese hosts. Their efforts will be crowned by the full success of this Congress."

Resolutions Adopted

QUESTION 92D

Harmonization of Formal Requirements for Trademark Applications, Registrations and Amendments Thereof

RESOLUTION

1. Work Undertaken by AIPPI

1.1 In its Resolution adopted in Lucerne on September 20, 1991, AIPPI *has noted* the great interest of practitioners of industrialized and developing countries in the conclusion of an international agreement on the harmonization and standardization of certain formalities and documents.

1.2 In view of the strong majorities of affirmative answers to a questionnaire to which more than 60 replies were received from national and regional groups as well as from individual members, AIPPI *considered* that such international agreement could be reached on a certain number of points listed in the questionnaire and referred to under 1(e) of the Resolution.

1.3 In view of the differing views of considerable minorities on a certain number of items, AIPPI *has decided* to continue its studies on these items (31.2; 32.6; 32.7; 34.5; 34.6; 34.7; 34.8 of the questionnaire).

1.4 From the positive responses received to a second questionnaire on these items, AIPPI can now *conclude* that they may as well be included in the proposed harmonization treaty.

2. Work Undertaken by WIPO

2.1 AIPPI therefore *notes* with great satisfaction that the Governing Bodies of WIPO in their annual meetings in September/October 1991 took note of AIPPI's Resolution to Question 92D and that WIPO, in preparation of the third meeting of the Committee of Experts on the Harmonization of Laws for the Protection of Marks, scheduled for June 1 to 5, 1992, submitted, on February 25, 1992, a draft Treaty on the simplification of administrative procedures concerning marks (document HM/CE/III/2) which is largely based on the recommendations contained in the Resolution of Lucerne.

2.2 AIPPI *appreciates* that WIPO in its introduction to the draft Treaty made specific reference to the Resolution on Question 92D and even reproduced it in the Annex to document HM/CE/III/2.

2.3 AIPPI *notes* that WIPO in its draft Treaty has transformed the recommendations contained in the Resolution on Question 92D into clear and applicable legal provisions. AIPPI therefore fully supports the draft Treaty as an excellent document which, in its opinion, can largely be adopted in its present form.

2.4 AIPPI *offers* a certain number of proposals for changes or additions. These proposals are added to this Resolution as an annex.¹

3. Future Work

3.1 In view of the importance of the international harmonization of formalities in the field of trademarks as explained in the Resolution on Question 92D dated September 20, 1991, and in view of the excellent preparatory work of WIPO, AIPPI *urges* that the work on this draft Treaty be concluded as soon as possible and a Diplomatic Conference be convened for the conclusion of the proposed draft Treaty amended as suggested.

3.2 In view of the complexity of topics of substantive law, AIPPI *firmly believes* that the proposed Treaty should be restricted to the simplification of formalities. The harmonization of other topics of interest to trademark owners should be undertaken in a separate Treaty on the more arduous harmonization of substantive trademark law.

3.3 AIPPI, however, *reiterates* its wish expressed in I(d) of the Resolution dated September 20, 1991, that Trademark Offices ought to be obliged to accept a universal and standard form both for a trademark application and the power of attorney. Such forms might be added as an annex to the proposed treaty on the simplification of administrative procedures concerning marks.

QUESTION 93

Biotechnology (Relationship Between Patent Protection of Biotechnological Inventions and Plant Variety Protection; Patentability of Animal Breedings)

RESOLUTION

AIPPI,

– *taking into account* the Reports of the National Groups (*Annuaire* 1991/III) and the Summary Report (*Annuaire* 1992/1, 63);

– *having reviewed* recent developments in the field and in particular the revision of the UPOV Convention for the Protection of New Varieties of Plants and certain proposals for domestic and international legislation;

– *reaffirming* its Resolutions of Rio de Janeiro of 1985 (*Annuaire* 1985/III, 312) and of Sydney of 1988 (*Annuaire* 1988/II, 221), and in particular referring to the possibility that inventions in biotechnology might cause moral or ethical problems, recalls its statement in the Sydney Resolution that:

"The moral or ethical problems which could arise from the application of new techniques in biotechnology should be primarily regulated by laws specifically dealing with those issues, to which the patent laws of nearly all countries refer

¹ Not reproduced here.

in excluding from patentability inventions contrary to morals or public order;”

and noting that the new UPOV Act of 1991 fulfills most of the wishes expressed in the Rio de Janeiro and Sydney Resolutions:

Resolves:

1. Generally

1.1 that there should be abolition of any domestic or international provision such as Article 53(b) of the European Patent Convention of 1973 which prohibits protection by means of a patent for plant or animal varieties and for essentially biological processes for the production of plants or animals;

1.2 that there should be no future domestic or international legislation such as the proposed Patent Law Treaty and the proposed Community Directive on the Protection of Biotechnological Inventions that would have the effect of any such or similar prohibition;

1.3 that in particular, and following the lead of the new UPOV Act, the proposed Regulation on Community Plant Variety Rights should not involve provisions which would be in conflict with the possibility of double protection or with the option of protecting plant varieties either by means of a patent or by means of a plant variety certificate;

1.4 that it is desirable that biotechnology patents, which relate to a generic technological advance, and plant variety certificates, which relate essentially to specific varieties, should coexist and offer the possibility of strong, full and complementary protection;

1.5 that such protection is in the best long-term interests of inventors, breeders, farmers and consumers alike.

2. Concerning the Extent of Protection of Biotechnological Patents:

2.1 that such patents should offer the same scope of protection as any other patent;

2.2 that the scope of such protection:

- for product patents should extend to successive generations of claimed material, and
- for process patents should include naturally-reproduced successive generations as direct products of the process;

2.3 that existing doctrines of exhaustion should apply but may need adjustment in view of the nature of the patented material, and that in particular there is no present justification for a so-called “farmers’ privilege;”

2.4 that provision should be made for the possibility of deposits of biological material relating to microbiological inventions in line with those for microbiological inventions.

3. Concerning the Extent of Protection of Plant Variety Certificates:

3.1 recommends that national legislators should only in exceptional cases make use of the option offered in Article 15(2) of the new UPOV Act for “farmers’ privilege” under a plant variety rights scheme, and that, if such option is adopted, it should be with the strict safeguarding of the legitimate interests of the breeder, without whom improvements would not be made;

3.2 in view of the extended scope of protection provided for plant variety certificates in the new UPOV Act, improved mechanisms for ensuring public availability of the protected variety need to be studied.

4. Concerning the Interrelationship Between the Rights:

4.1 it is reaffirmed that the possibility of protection being provided by both the patent and plant breeders’ rights systems

may result in different parties having rights covering the same entity. In the event that it becomes necessary to obtain a license in order to avoid infringement of the rights of a party, either between the parties as such or other interested parties, AIPPI considers usual commercial agreement between the parties as the primary means appropriate for the resolution of licensing matters;

4.2 favors provisions allowing that an application for one right may provide a basis for a claim to priority for an application for the other right; in particular, that plant variety certificates should be included in Article 4A of the Paris Convention of 1883.

QUESTION 104

Trademarks: Conflicts With Prior Rights

RESOLUTION

1. In the context of the harmonization of trademark laws undertaken in particular by WIPO, AIPPI has studied the question of prior rights that can be used to challenge a trademark registration or application for registration. The first part of this Resolution addresses the substantive legal issues and the second part deals with the procedure to invoke such rights. This Resolution is concerned only with relative grounds for objection.

Substantive Law

2. AIPPI believes that at least the following grounds should be available for challenging a registration or an application for registration:

2.1 A mark which was previously deposited or registered by a third party, being identical or similar for designating identical or similar products or services, thus generating a likelihood of confusion. In determining the question of likelihood of confusion, the likelihood of association should be included.

2.2 A mark having a reputation, a well-known mark and a mark of a high reputation, to the extent that the conditions set out in the Resolution adopted at Barcelona by AIPPI on Question 100 (*Annuaire* 1991/I, 295) are met.

2.3 Collective, certification and guarantee marks, which should receive the same treatment as ordinary marks, in accordance with 2.1 and 2.2, above.

2.4 The prior use of an unregistered mark in good faith to a significant extent in the country where protection is sought, at least in the circumstances where the opposed applicant or registrant was aware of the existence of the mark or could not reasonably invoke ignorance.

One condition for the exercise of this right could be that the prior user applies for registration.

2.5 A trade name, in the light of Article 8 of the Paris Convention, provided that, taking into account the Resolution adopted at Madrid on Question 41B (*Annuaire* 1971/I, 53, 127, 201), the following conditions are met:

- (a) the trade name is used or is sufficiently known in the country where protection is sought; or
- (b) the trade name is used or is sufficiently known in international trade, and the owner shows an interest in trading in the foreseeable future in the country where protection is sought.

2.6 Geographical names, to the following extent:

- (a) a protected geographical name of earlier date can be used to object to a subsequent mark;
- (b) any geographical name, if a significant part of the relevant public knows it as a name, and the opponent,

which may be a local or municipal authority, has a justified interest.

2.6.1 If a geographical name is registered as a mark, the mark should not prevent third parties from making *bona fide* use of that name to indicate the place of origin of their products.

2.7 Literary or artistic property rights (copyright) or registered design rights.

2.8 Rights to a name, including a family name, a pseudonym and a signature, and a right of personal portrayal (image of a person).

2.9 Claims deriving from unfair competition law.

2.10 If it is possible to challenge use of a mark on the basis of any other non-trademark right, then in general it should be possible to challenge registration of the mark.

Procedures

3.1 AIPPI has no uniform view on whether examiners should have the power to object *ex officio* on the basis of prior rights during registration proceedings.

3.2 If the examiner has the power to object on the basis of prior rights, he should have the power to object on the basis of a prior filed or registered mark, and may have the power to object on the basis of an unregistered mark of high reputation, a registered protected geographical name, and a registered corporate name.

3.3 AIPPI *recommends* that all national laws and international instruments should provide for a simple and inexpensive opposition procedure.

3.4 The possible grounds for opposition must in any event include a mark which was previously deposited or registered by the opponent. AIPPI takes the view that opposition proceedings should be open to any opponent wishing to enforce his own earlier rights. AIPPI *notes* that certain countries permit opposition to be based on rights owned by third parties.

3.5 AIPPI *recommends* that, particularly if the examiner or an opponent has the power to object on the basis of a prior registered mark, there should be a simple and inexpensive administrative procedure for challenging the objection on the ground of non-use of the prior mark.

3.6 Where the proprietor of a prior right consents to the registration of a mark by a third party, AIPPI *believes* that the examiner should not have the power to refuse the mark.

3.7 AIPPI *takes the view* that cancellation and invalidation procedures should be open to any party on the grounds of their own prior rights, subject to the possibility that the rights are no longer enforceable, for example, due to acquiescence.

The Question of Prior Use as Opposed to Prior Filing

4.1 AIPPI *notes* the existence of a different treatment as to the acquisition of exclusive rights in a trademark. Many countries recognize the first applicant as the owner of a mark, whereas other countries regard an earlier user as being the owner of a mark.

4.2 AIPPI *further notes* that there is a demand from trademark applicants for trademarks of supranational extent. Such marks would then cover countries from both groups, hence there is a need to consider the possibilities of reconciling the two approaches.

4.3 AIPPI also *notes* a trend towards convergence of the two legal systems. It has been proposed in common law jurisdictions that there should be a subsidiary registration system as a condition for enforcement of any rights in a mark. Equally, civil law

jurisdictions tend increasingly to recognize that use may give rise to a right of action in certain circumstances.

4.4 AIPPI *recommends* that the question should be given further detailed study.

QUESTION 105

Experimental Use as a Defense to a Claim of Patent Infringement

RESOLUTION

1. The following matters should be taken into consideration in determining the position of experimental use in relation to the infringement of patent rights.

1.1 Rights conferred by a patent include the right to forbid use of the patented invention by third parties.

1.2 The patent system should provide tools for research and contribute to the promotion of technical progress.

1.3 Patent literature is an important means for the dissemination of technical knowledge and should benefit the public as substantially as possible.

1.4 Third parties should be able to make tests to evaluate the teaching of a patent and its validity.

1.5 There must be a balance between the desire of third parties to test the commercial value of a patent and the fundamental principle that the patented invention cannot be used without the authorization of the patentee.

2. AIPPI *is in favor* of the authorization of experimental use of a patented invention by third parties because of the potential importance of such use for technical progress.

3. AIPPI *considers* that each country should exclude acts done for experimental purposes from the rights of the patentee and *wishes* this principle to be recognized and applied in accordance with the following rules.

3.1 Experimental use includes any use of the patented invention performed for academic purposes and having no commercial nature.

3.2 Experimental use includes testing to evaluate the teaching of the patent and validity of the patent.

3.3 Experimental use includes any use of the patented invention to an extent appropriate to experimentation (as opposed to commercial use) which is for the purpose of improving the invention or making an advance over the invention or finding an alternative to the invention, but not the commercial exploitation of the subject of any improvement or advance.

3.4 Experimental use should be subject to the overriding principle that the use must involve work on the subject of the patent; use merely to obtain the advantage of the invention disclosed by the patent is not experimental use.

4. Use by a third party during the patent's life (including any extension of the patent) for the purpose of obtaining regulatory approval to sell even after the patent's expiry is not experimental use.

AIPPI *observes* that some countries have allowed testing by third parties to be conducted during the patent's life for the purposes of obtaining regulatory approval for sales to be made after the patent's expiry.

5. As experimental use is an exception to the rights of the patentee, this exception should be narrowly interpreted by the courts.

6. The burden of proof of an experimental use exception should lie on the third parties which put forward such an exception.

QUESTION 106

Possibility of Arbitration of Intellectual Property Disputes Between Private Parties

RESOLUTION

1. *Recognizing* that while in some cases arbitration of intellectual property disputes between private parties may present advantages over court litigation but that in other cases there may be disadvantages, AIPPI *is of the opinion* that arbitration of such disputes should be made generally applicable to all forms of intellectual property disputes.

2. Some advantages of arbitration particularly valuable for intellectual property disputes are:

2.1 Arbitrators may be selected according to their special skills to suit the subject matter of the arbitration.

2.2 Confidentiality may be preserved.

2.3 Arbitration gives the possibility of a hearing in a neutral territory by a neutral arbitrator.

2.4 The informality, flexibility and confidentiality of arbitration hearings favor the possibility of settlements between the parties, based on common sense and mutual commercial interest.

2.5 Arbitration may be used to determine issues on the same or similar subject matter but arising in different countries, for example, infringement of corresponding patents in several countries; this may have the advantage of settling all the disputes between the parties at one time.

3. However, the success or failure of any arbitration system will depend on the establishment of user-friendly procedures ensuring justice to the parties at minimum cost and maximum speed.

4. AIPPI *is of the opinion* that intellectual property disputes should be proper subject matter for arbitration, provided:

- (a) the parties have the legal right to dispose of the rights in dispute; and
- (b) the decision is binding only on the parties involved.

5. Arbitrators in intellectual property arbitration should have the power, *inter alia*, subject to contrary agreement,

- (a) to decide *inter partes* as to the enforceability and infringement of intellectual property rights,
- (b) to award damages and an account of turnover and profits,
- (c) to grant injunctions (including provisional or temporary injunctions) but excluding *ex parte* orders,
- (d) to order delivery up or destruction of infringing items,
- (e) to act as mediators or conciliators in an effort to obtain agreement between the parties.

6. Harmonization of the laws of countries relating to arbitration should be promoted.

7(a) Though AIPPI does not, at this time, see an immediate practical advantage in establishing a new central international arbitration organization, AIPPI *is willing to reconsider* the matter if it can be shown that such organization would be likely to improve the resolution of intellectual property disputes.

(b) In the meantime, AIPPI *considers* that concrete proposals for clear rules for efficient dispute resolution are desirable and

should be investigated. AIPPI *encourages* WIPO to undertake this investigation. Such rules should not limit in any way the freedom of parties to adopt, by mutual agreement, a set of rules tailored to their specific situation.

8. In addition to arbitration, consideration should also be given to other forms of out-of-court dispute resolution such as conciliation and mediation.

QUESTION 107

House Marks

RESOLUTION

1. Background

1.1 AIPPI *recognizes* that entities have an increasing tendency to diversify their activities or to form economic associations with other entities carrying on different activities. A so-called "house mark" is used to identify the unity of these activities. A house mark (symbol of corporate image, group sign) constitutes a sign (word, graphic symbol or combination thereof) which is used in any way either by an entity or by a group or network of entities.

1.2 House marks are used to identify the entity or group and/or the products or services offered.

2. Existing Protection

2.1 AIPPI *considers* that adequate protection for house marks is accorded in most jurisdictions and in most circumstances by national trademark law, trade name law, copyright law, unfair competition law or any combination thereof.

2.2 AIPPI *recognizes*, however, that in some jurisdictions adequate protection is not accorded to house marks by the foregoing laws. In particular, protection may be unavailable:

- under trademark law where the house mark is not physically applied to any product or used in close association with any service;
- under either trademark or trade name law where a plurality of entities within a group or association is using the same house mark;
- under trade name law where the national trade name laws do not provide for protection of devices, logos or designs.

3. Recommendations

3.1 AIPPI *recommends* that house marks should be effectively protected.

3.2 At the Munich Congress in 1978 (*Yearbook* 1978/II) in relation to Question 70, AIPPI already affirmed that the use requirements in trademark law are not only fulfilled by the application of a mark to a product or service, but also to any other form of use which in the mind of the public gives rise to a link between the mark used, and a product or service. This particularly applies to house marks.

3.3 AIPPI *recommends* that national trademark and trade name laws be amended as necessary to permit the protection of house marks for a plurality of entities within a group or association.

3.4 AIPPI *reaffirms* the Resolution adopted in Madrid in 1970 as to Question 41B and *recommends* that legal protection be granted to graphic devices as or as part of trade names.

3.5 AIPPI *reaffirms* the Resolution adopted in Madrid in 1970 as to Question 41B and *recommends* an improvement of

national and international systems for the protection of trade names, including the revision of Article 8 of the Paris Convention for the Protection of Industrial Property. AIPPI also reaffirms the Resolution adopted in Barcelona in 1990 (*Annuaire* 1991/I, 271, 295 and 320) as to Question 100 as it applies to trade names.

3.6 AIPPI recommends that a house mark should not be submitted to any special restrictions or limitations such as, for example, set out in the second part of Article 20 of the December 1991 wording of the present draft GATT Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Article 20 reads as follows:

"The use of a trademark in commerce shall not be unjustifiably encumbered by special requirements, such as use with another trademark, use in a special form or use in a manner detrimental to its capability to distinguish the goods or services of one undertaking from those of other undertakings. This will not preclude a requirement prescribing the use of the trademark identifying the undertaking producing the goods or services along with, but without linking it to, the trademark distinguishing the specific goods or services in question of that undertaking."

QUESTION 108

Improvement of International Protection of Industrial Designs

RESOLUTION

Taking into account the criticisms of the Hague Agreement expressed by AIPPI in Paris in 1983 and in Rio de Janeiro in 1985, AIPPI is pleased to see the WIPO proposal to create a new international system for the protection of industrial designs. It recommends that such a system contain the following provisions:

1. intergovernmental organizations should be permitted to become party to the treaty;
2. direct filing of international applications with the International Bureau is required in order to simplify processing and reduce costs for multicountry protection;
3. considering that costs are critical to the success of such a system, a fee structure attractive to users is necessary;
4. a term of protection of at least 15 years (which may be in periods of five years) should be made available under the international deposit system consistent with prior AIPPI recommendations;
5. industrial designs subject to protection should be indicated by graphic or photographic representation, excluding the possibility of specimen deposits;
6. multiple deposits, which provide special advantages for users, should be available, but only for industrial designs within the same class of the Locarno International Classification;
7. a reasonable period for preliminary national refusal of an international registration should be provided; AIPPI prefers such period to be 12 months rather than 18 as provided in the WIPO proposal;
8. it is recognized that designs are fully portrayed graphically so that very limited language translations should be required;
9. of the options consisting of revision, a protocol or a new treaty, AIPPI recommends a new treaty to enable the maximum number of countries to participate.

On conclusion of an international treaty relating to procedural aspects of international design registration, AIPPI would welcome further work to achieve harmonization of substantive provisions of industrial design laws.

QUESTION 108A

Protection of Industrial Designs in the European Community

RESOLUTION

Having studied the Green Paper of the Commission of the European Communities (CEC) on the Legal Protection of Industrial Designs, and the results of the meeting held on February 25 and 26 at which AIPPI was represented by a Special Committee, AIPPI resolves as follows:

1. In line with the Resolution adopted at Rio de Janeiro, which expressed views on the fundamental rules for a Regional Convention setting up a regional design title, AIPPI is pleased with the CEC's practical and concrete approach and its willingness to listen to the needs felt by industry.

AIPPI agrees that the correct approach is the "design approach" chosen by the CEC and approves of the adopted method not to regulate in a uniform manner the problem of cumulative protection offered by a design right and, for example, copyright or the rules against unfair competition, but AIPPI makes it clear that it is very much in favor of cumulative protection.

2. AIPPI emphasizes that the Commission's texts must not contain any proposals which are inconsistent with the Paris Convention.

3. AIPPI approves of the system being proposed:

- the adoption of a directive to harmonize the laws of Member States on the legal protection of designs, and
- the creation of a Community Design to which the same fundamental rules apply and which constitutes a new right.

In particular, AIPPI approves of the dual system being proposed for the Community Design, namely, the Unregistered Community Design (giving protection for a maximum of three years) and the Registered Community Design (giving protection for 25 years).

4. In its latest draft, the CEC proposed that "a design shall be protected as a Community Design to the extent that it is new and has an own individual character" (Article 4). AIPPI believes that this definition is not satisfactory and that the concept of "characterizing feature" [*physionomie propre*] ought not to appear as another requirement in addition to novelty. Novelty is the only criterion for protection and the concept of "individual character" ought to be a qualification of design novelty.

5. Contrary to the CEC draft, AIPPI is in favor of a system of absolute novelty, in time and space, without taking into account whether or not the earlier object in question is known to certain people. The Community Design has to be different in relation to any object previously disclosed.

6. AIPPI is in favor of giving protection to all designs, according to Article 3 of the CEC draft, excluding that in the shape which is dictated exclusively by the technical function.

7. As regards Interconnections (Article 8), AIPPI is in favor of simply deleting this whole Article. Failing this, AIPPI recommends that the exception be limited to "must fit."

8. AIPPI confirms that it agrees with the principle of a grace period. It is necessary to allow industry time to test the market. This grace period is not a priority right. Thus an intervening publication by a third party constitutes an anticipation which destroys novelty.

International Association for the Protection of Industrial Property (AIPPI) (Chinese Group). In April 1992, a WIPO official attended a Symposium on the Intellectual Property System in China, organized by the Chinese Group of AIPPI in Beijing.

International Symposium on Support to Inventors. From March 30 to April 3, 1992, the fifth International Symposium on "Support to Inventors" was organized jointly by WIPO and the International Federation of Inventors' Association (IFIA). Its aim was to examine the role of industrial property offices in support of inventors, and the role of innovation centers and universities in support of inventors.

The Director General delivered an address to the participants. The Symposium was attended by 91 participants—representatives of governments and industrial property offices, inventors' associations, innovation centers and universities, or individual inventors and entrepreneurs—from the following 41 countries, two intergovernmental organizations and one non-governmental organization: Algeria, Argentina, Austria, Belgium, Bulgaria, Cameroon, Canada, China, Colombia, Congo, Democratic People's Republic of Korea, Denmark, Finland, France, Greece, Hungary, India, Iran (Islamic Republic of), Japan, Libya, Malaysia, Mali, Morocco, Netherlands, Norway, Peru, Philippines, Poland, Portugal, Republic of Korea, Romania, Senegal, Singapore, Sri Lanka, Sweden, Switzerland, Syria, Spain, Tunisia, United Republic of Tanzania, United States of America, African Intellectual Property Organization (OAPI), European Patent Office (EPO), International Chamber of Commerce (ICC).

At the opening ceremony, a WIPO official presented a gold medal for outstanding services to inventors to Mr. Norman C. Parrish, founding member and President of the National Congress of Inventors' Organizations (NCIO) of the United States of America, for his contribution to the promotion of inventive and innovative activity, for services rendered to inventors in the United States of America and for promoting international cooperation among inventors and inventors' associations.

The participants attended the opening ceremony of the Geneva International Exhibition of Inventions, New Techniques and Products, which was organized by a Geneva organization.

International Vine and Wine Office (IWO). In May 1992, a WIPO official attended IWO's 72nd General Assembly and 20th Congress, held in Madrid.

Japanese Trademark Association (JTA). The Director General and two WIPO officials, on the occasion of their attendance at the AIPPI Congress held in April 1992 in Tokyo, discussed matters of

common interest and, in particular, the Madrid Protocol with representatives of JTA.

Licensing Executives Society International (LESI). In May 1992, the Director General and a WIPO official had discussions at WIPO with Mr. Akira Mifune, President of LESI, and Mr. Edward Grattan, Chairman of the Licensing Executives Society International Advisory Commission (LESIAC), on further cooperation between WIPO and LESI.

United States Trademark Association (USTA). In May 1992, a WIPO official attended USTA's Annual Meeting held in Toronto (Canada).

National Contacts

Chile. In May 1992, a WIPO consultant from Germany attended, as a speaker, a trademark seminar organized by a law firm in Santiago.

Finland. In May 1992, the Director General attended the celebration of the 150th anniversary of the issuing of the first Finnish patent, organized by the Finnish Patent Office. Speeches were made by Mr. Esko Aho, Prime Minister of Finland, Mr. Martti Enäjärvi, Director General of the National Board of Patents and Registration, Mr. Curt Lindbom, President of the Central Chamber of Commerce of Finland, and Mr. Gunnar Graeffe, President of the Central Organization of Finnish Inventors' Associations.

Japan. In April 1992, two WIPO officials participated in the evaluation and planning meeting organized in Tokyo by the Japanese Patent Office to review the activities undertaken by WIPO under the funds-in-trust arrangement that was established from a voluntary contribution from the Government of Japan, under its development cooperation program. The meeting evaluated the activities undertaken under the funds-in-trust arrangement during the Japanese fiscal year April 1991 to March 1992, and reviewed the proposed plan of new activities for the fiscal year April 1992 to March 1993.

Turkey. In April 1992, a government official visited WIPO in Geneva and had discussions with WIPO officials on various aspects of cooperation, in particular the strengthening of the industrial property system in Turkey.

United States of America. In May 1992, a WIPO official attended the "International Town Meeting on Harmonization of Patent Law," organized by the John Marshall Law School in Chicago.

Miscellaneous News

National News

Angola. The Industrial Property Law (No. 3 of February 28, 1992) entered into force on March 29, 1992.

France. Decree No. 92-360 of April 1 on Qualification for and the Organization of Industrial Property Professions was published in the *Journal officiel de la République française* on April 3, 1992, pp. 4865 *et seq.*, and entered into force on the same date.

Germany. The Law on Extension of Industrial Property Rights of April 23, 1992, entered into force on May 1, 1992.

Iceland. A new Patent Act (No. 17 of 1991) was adopted on March 20, 1991.

Slovenia. The Law on Industrial Property of March 11, 1992, entered into force on April 4, 1992, and will appear in a forthcoming issue of this review.

Calendar of Meetings

WIPO Meetings

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

1992

September 21 to 29 (Geneva)

Governing Bodies of WIPO and the Unions Administered by WIPO (Twenty-Third Series of Meetings)

Some of the Governing Bodies will meet in ordinary session, others in extraordinary session.

Invitations: As members or observers (depending on the body), States members of WIPO or the Unions and, as observers, other States and certain organizations.

October 12 to 16 (Geneva)

Working Group on the Application of the Madrid Protocol of 1989 (Fifth Session)

The Working Group will continue to review joint Regulations for the implementation of the Madrid Agreement Concerning the International Registration of Marks and of the Madrid Protocol, as well as draft forms to be established under those Regulations.

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.

November 2 to 6 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Tenth Session)

The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (April 1991) 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.

- November 9 to 13 (Geneva)** **WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Fifteenth Session)**
- The Committee will review and evaluate the activities carried out under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (July 1991) 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.
- November 16 to 20 (Geneva)** **Committee of Experts on the Harmonization of Laws for the Protection of Marks (Fourth Session)**
- The Committee will continue to examine a draft trademark law treaty, with particular emphasis on the harmonization of formalities with respect to trademark registration procedures.
- 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.
- November 25 to 27 (Geneva)** **Working Group of Non-Governmental Organizations on Arbitration and Other Extra-Judicial Mechanisms for the Resolution of Intellectual Property Disputes Between Private Parties (Second Session)**
- The Working Group will continue to consider the desirability of establishing with WIPO a mechanism to provide services for the resolution of disputes between private parties concerning intellectual property rights, as well as the type of services that might be provided under such a mechanism.
- Invitations:* International non-governmental organizations having observer status with WIPO.

UPOV Meetings

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

1992

- October 26 and 27 (Geneva)** **Administrative and Legal Committee**
- Invitations:* Member States of UPOV and, as observers, certain non-member States and inter-governmental organizations.
- October 28 (Geneva)** **Consultative Committee (Forty-Fifth Session)**
- Invitations:* Member States of UPOV.
- October 29 (Geneva)** **Council (Twenty-Sixth Ordinary Session)**
- Invitations:* Member States of UPOV and, as observers, certain non-member States and inter-governmental and non-governmental organizations.
- October 30 (Geneva)** **Meeting with International Organizations**
- Invitations:* International non-governmental organizations, member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

Other Meetings

1992

- September 17 and 18 (Munich)** **International Community of Breeders of Asexually Reproduced Ornamental and Fruit-Tree Varieties (CIOPORA): VIth International Symposium on the Protection of Plant Breeders' Rights**
- September 24 and 25 (Helsinki)** **International Federation of Reproduction Rights Organisations (IFRRO): Annual General Meeting**
- October 3 (Sitges)** **International Literary and Artistic Association (ALAI): Executive Committee**

October 4 to 7 (Sitges)	International Literary and Artistic Association (ALAI): Study Days
October 7 to 10 (Amsterdam)	International League of Competition Law (LIDC): Congress
October 18 to 24 (Maastricht/Liège)	International Confederation of Societies of Authors and Composers (CISAC): Congress
November 15 to 21 (Buenos Aires)	International Federation of Industrial Property Attorneys (FICPI): Executive Committee
December 4 (Washington, D.C.)	International Association for the Protection of Industrial Property (AIPPI): Annual Meeting of the U.S. Group

1993

June 7 to 11 (Vejde)	International Federation of Industrial Property Attorneys (FICPI): Executive Committee
June 26 to July 1 (Berlin)	Licensing Executives Society (International) (LES): Annual Meeting
September 20 to 24 (Antwerp)	International Literary and Artistic Association (ALAI): Congress
September 27 to 29 (Helsinki)	International Association for the Protection of Industrial Property (AIPPI) (Finnish Group): Symposium

1994

June 12 to 18 (Copenhagen)	International Association for the Protection of Industrial Property (AIPPI): Executive Committee
June 20 to 24 (Vienna)	International Federation of Industrial Property Attorneys (FICPI): Congress

