

Industrial Property

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NOTICE

The International Bureau announces with this number the future publication of an English edition of *La Propriété Industrielle*, to be entitled *Industrial Property*. This will appear monthly and the subscription rates will be the same as for *La Propriété Industrielle*, namely, Swiss francs 33 for the ordinary edition and Swiss francs 40 for the special edition printed on separate sheets on one side only. This new publication naturally implies the demise of the *Industrial Property Quarterly* which is now discontinued.

Subscribers are requested, when paying subscriptions, to indicate whether they require the English or the French edition.

This publication is the result of the entry into force on the 4th January, 1962, of the Lisbon text of the Paris Convention for the Protection of Industrial Property, this having been ratified by Czechoslovakia, the Federal Republic of Germany, France, Great Britain, Monaco and the United States of America, and adhered to by Haiti and Iran.

It will be open, in the same way as *La Propriété Industrielle*, to professional advertisements, and intending advertisers should communicate with the "Office de Publicité René Thonney, Case-Ville 2350, Lausanne (Switzerland)".

By reason of previous commitments, the present number differs slightly from *La Propriété Industrielle* for January, but in future, the material in the two publications will be substantially identical.

INTERNATIONAL UNION

Union for the Protection of Industrial Property

As on 4th Januar, 1962

General Union⁽¹⁾

Founded by the Union Convention of Paris of 20th March, 1883, which entered into force on 7th July, 1884, revised at Brussels (1900), at Washington (1911), at The Hague (1925), at London (1934) and at Lisbon on 31st October, 1958, the *General Union* includes the following 50 countries:

| | |
|---|--|
| Australia (2 VI 1958) | from 5 th August 1907 |
| Territory of Papua and Territory under Mandate of New Guinea (5 I 1960) | 12 th February 1933 |
| Territory of Norfolk Island (5 I 1960) | 29 th July 1936 |
| Territory under Mandate of Nauru | 29 th July 1936 |
| Austria (19 VIII 1947) | 1 st January 1909 |
| Belgium (24 XI 1939) | commencement (7 th July 1884) |
| Brazil | commencement |
| Bulgaria | 13 th June 1921 |
| Canada (30 VII 1951) | 1 st September 1923 |
| Ceylon | 29 th December 1952 |
| Cuba | 17 th November 1904 |
| Czechoslovakia (4 I 1962) | 5 th October 1919 |
| Denmark and Faroe Islands (1 VIII 1938) | 1 st October 1894 |
| Dominican Republic | 11 th July 1890 |
| Finland (30 V 1953) | 20 th September 1921 |
| France (including Metropolitan Departments, Algerian Departments, Departments of the Sahara, Departments of Guadeloupe, Guiana, Martinique and Reunion and Overseas Territories) (4 I 1962) | commencement |
| Germany (4 I 1962) | 1 st May 1903 |

Great Britain and Northern Ireland

| | |
|---|--------------------------------|
| (4 I 1962) | from commencement |
| Territory of Tanganyika (28 I 1951) | 1 st January 1938 |
| Trinidad and Tobago | 14 th May 1908 |
| Singapore | 12 th November 1949 |
| Greece (27 XI 1953) | 2 nd October 1924 |
| Haiti (4 I 1962) | 1 st July 1958 |
| Hungary | 1 st January 1909 |
| Indonesia (5 VIII 1948) | 1 st October 1888 |
| Iran (4 I 1962) | 16 th December 1959 |
| Ireland (14 V 1958) | 4 th December 1925 |
| Israel (State of —) | 24 th March 1950 |
| Italy (15 VII 1955) | commencement |
| Japan (1 VIII 1938) | 15 th July 1899 |
| Lebanon (30 IX 1947) | 1 st September 1924 |
| Liechtenstein (Principality of —) (28 I 1951) | 14 th July 1933 |
| Luxemburg (30 XII 1945) | 30 th June 1922 |
| Mexico (14 VII 1955) | 7 th September 1903 |
| Monaco (Principality of —) (4 I 1962) | 29 th April 1956 |
| Morocco (21 I 1941) (2) | 30 th July 1917 |
| Netherlands (5 VIII 1948) | commencement |
| Surinam (5 VIII 1948) | 1 st July 1890 |
| Netherlands Antilles (5 VIII 1948) | 1 st July 1890 |
| Dutch New Guinea (5 VIII 1948) | 1 st October 1888 |
| New Zealand (14 VII 1946) | 7 th September 1891 |
| Western Samoa (14 VII 1946) | 29 th July 1931 |

(1) The Lisbon text of the Union Convention came into force on 4th January 1962. It applies to the relations between those countries which have ratified or it adhered to it (names in heavy italics). However, there still remain in force:

The London texts of the Union Convention and the Arrangement of Madrid (Indications of Source) came into force on 1st August, 1938. The London texts of the Arrangements of Madrid (Trade Marks) and The Hague came into force on 13th June, 1939. They apply to relations between the countries which have ratified them or which have subsequently adhered to them (names in heavy print).

The Hague text in relations with countries where the London text is not yet in force (names in ordinary print);

The Washington text in relations with countries where neither the London nor The Hague texts are at present in force (names printed in italics).

(2) The Industrial Property Laws and the Offices of the three parts of this Unionist country (former French and Spanish Protectorates and Zone of Tangier) have not yet been coordinated.

| | |
|--|-----------------------|
| Norway (1 VIII 1938) | from 1st July 1885 |
| Poland | » 10th November 1919 |
| Portugal with the Azores and Madeira (7 XI 1949) | » commencement |
| Rhodesia and Nyasaland (Federation of —) | » 1st April 1958 |
| Roumania | » 6th October 1920 |
| San Marino | » 4th March 1960 |
| South Africa (Republic of —) | » 1st December 1947 |
| Spain (2 III 1956) | » commencement |
| Spanish Colonies | » 15th December 1947 |
| Sweden (1 VII 1953) | » 1st July 1885 |
| Switzerland (24 XI 1939) | » commencement |
| Syria (30 IX 1947) | » 1st September 1924 |
| Tunisia (4 X 1942) | » commencement |
| Turkey (27 VI 1957) | » 10th October 1925 |
| United Arab Republic | » 1st July 1951 |
| United States of America (4 I 1962) | » 30th May 1887 |
| Vatican (State of the City of the —) | » 29th September 1960 |
| Viet-Nam (25 VI 1939) | » commencement |
| Yugoslavia | » 26th February 1921 |

(The text revised at Lisbon on 31st October, 1958, was signed by 33 countries [see *Prop. ind.*, 1958, p. 210 and 1959, p. 107].)

Restricted Unions

1. Restricted Union concerning the prevention of false indications of source⁽¹⁾

Founded by the Arrangement of Madrid of 14th April, 1891, which entered into force on 15th July, 1892, revised at Washington (1911), at The Hague (1925), at London (1934) and at Lisbon on 31st October, 1958, this Restricted Union includes the following 29 countries:

| | |
|--|---------------------------------|
| Brazil | from 3rd October 1896 |
| Ceylon | » 29th December 1952 |
| Cuba | » 1st January 1905 |
| Czechoslovakia | » 30th September 1921 |
| Dominican Republic | » 6th April 1951 |
| France (including Metropolitan Departments, Algerian Departments, Departments of the Sahara, Departments of Guadeloupe, Guiana, Martinique and Reunion and Overseas Territories) | » commencement (15th July 1892) |
| Germany (1 VIII 1938) | » 12th June 1925 |
| Great Britain and Northern Ireland (1 VIII 1938) | » commencement |
| Trinidad and Tobago | » 1st September 1913 |
| Hungary | » 5th June 1934 |
| Ireland (14 V 1958) | » 4th December 1925 |
| Israel (State of —) | » 24th March 1950 |
| Italy | » 5th March 1951 |
| Japan | » 8th July 1953 |
| Lebanon (30 IX 1947) | » 1st September 1924 |
| Liechtenstein (Principality of —) (28 I 1951) | » 14th July 1933 |
| Monaco (Principality of —) | » 29th April 1956 |
| Morocco (21 I 1941) | » 30th July 1917 |
| New Zealand (17 V 1947) | » 20th June 1913 |
| Western Samoa | » 17th May 1947 |
| Poland | » 10th December 1928 |
| Portugal with the Azores and Madeira (7 XI 1949) | » 31st October 1893 |
| San Marino | » 25th September 1960 |
| Spain (2 III 1956) | » commencement |
| Spanish Colonies | » 15th December 1947 |
| Sweden (1 VII 1953) | » 1st January 1934 |
| Switzerland (24 XI 1939) | » commencement |
| Syria (30 IX 1947) | » 1st September 1924 |
| Tunisia (4 X 1942) | » commencement |
| Turkey (27 VI 1957) | » 21st August 1930 |

| | |
|---------------------------------|--------------------|
| United Arab Republic | from 1st July 1952 |
| Viet-Nam (25 VI 1939) | » commencement |

(The text revised at Lisbon on 31st October, 1958, was signed by 18 countries [see *Prop. ind.*, 1958, p. 212]. This text has been ratified by France, Germany, Czechoslovakia, Monaco and Great Britain.)

2. Restricted Union concerning the international registration of trade and commercial marks⁽¹⁾

Founded by the Arrangement of Madrid of 14th April, 1891, which came into force on 15th July, 1892, revised at Brussels (1900), at Washington (1911), at The Hague (1925), at London (1934) and at Nice on 15th June, 1957, this Restricted Union includes the following 21 countries⁽²⁾:

| | |
|--|---------------------------------|
| Austria (19 VIII 1947) | from 1st January 1909 |
| Belgium (24 XI 1939) | » commencement (15th July 1892) |
| Czechoslovakia | » 5th October 1919 |
| France (including Metropolitan Departments, Algerian Departments, Departments of the Sahara, Departments of Guadeloupe, Guiana, Martinique and Reunion and Overseas Territories) | » commencement |
| Germany (13 VI 1939) | » 1st December 1922 |
| Hungary | » 1st January 1909 |
| Italy (15 VII 1955) | » 15th October 1894 |
| Liechtenstein (Principality of —) (28 I 1951) | » 14th July 1933 |
| Luxemburg (1 III 1946) | » 1st September 1924 |
| Monaco (Principality of —) (3) | » 29th April 1956 |
| Morocco (21 I 1941) | » 30th July 1917 |
| Netherlands (5 VIII 1948) | » 1st March 1893 |
| Portugal with the Azores and Madeira (7 XI 1949) | » 31st October 1893 |
| Roumania | » 6th October 1920 |
| San Marino | » 25th September 1960 |
| Spain (2 III 1956) | » commencement |
| Spanish Colonies | » 15th December 1947 |
| Switzerland (24 XI 1939) | » commencement |
| Tunisia (4 X 1942) | » commencement |
| United Arab Republic (3) | » 1st July 1952 |
| Viet-Nam (25 VI 1939) | » commencement |
| Yugoslavia | » 26th February 1921 |

(The text revised at Nice on 15th June, 1957, has so far been ratified by the following countries: Czechoslovakia, France, Italy, Principality of Monaco, Portugal and Spain and adhered to by Roumania [see Article 12 of the Nice text].)

3. Restricted Union concerning the international deposit of industrial designs or models⁽¹⁾

Founded by the Arrangement of The Hague of 6th November, 1925, which entered into force on 1st June, 1928, revised at London on 2nd June, 1934, and at the Hague on 28th November, 1960, this Restricted Union includes the following 14 countries:

| | |
|--|---------------------|
| Belgium (24 XI 1939) | from 27th July 1929 |
| France (including Metropolitan Departments, Algerian Departments, Departments of the Sahara, Departments of Guadeloupe, Guiana, Martinique and Reunion and Overseas Territories) | » 20th October 1930 |

⁽¹⁾ See footnote (1), page 1.

⁽²⁾ It should be noted that Cuba, Brazil, Indonesia, Mexico, the Dutch Antilles, Turkey and Surinam withdrew from the Restricted Union with effect from 22nd April, 1932, 8th December, 1934, 4th November, 1936, 10th March, 1943, 10th March, 1953, 10th September, 1956, and 21st April, 1959, respectively. However, these seven countries expressly declared that international marks protected before the date at which withdrawal took effect would continue to benefit from protection until expiry of the period of their international registration.

⁽³⁾ The United Arab Republic and the Principality of Monaco only recognise international trade marks registered as from the date of their respective adhesions to the Arrangement.

| | |
|---|---|
| Germany (13 VI 1939) | from commencement (1 st June 1928) |
| Indonesia (5 VIII 1948) | » commencement |
| Liechtenstein (Principality of —) (28 I 1951) | » 14 th July 1933 |
| Monaco (Principality of —) | » 29 th April 1956 |
| Morocco (21 I 1941) | » 20 th October 1930 |
| Netherlands (5 VIII 1948) | » commencement |
| Surinam (5 VIII 1948) | » commencement |
| Netherlands Antilles (5 VIII 1948) | » commencement |
| Dutch New Guinea (5 VIII 1948) | » commencement |
| Spain (2 III 1956) | » commencement |
| Spanish Colonies | » 15 th December 1947 |
| Switzerland (24 XI 1939) | » commencement |
| Tunisia (4 X 1942) | » 20 th October 1930 |
| United Arab Republic | » 1 st July 1952 |
| Vatican (State of the City of the —) | » 29 th September 1960 |
| Viet-Nam (25 VI 1939) | » commencement |

(The text as revised at The Hague on 28th November, 1960, has been signed by the following countries: Belgium, France, Germany, Italy, Liechtenstein [Principality of], Luxemburg, Monaco [Principality of], Netherlands, Switzerland, Vatican and Yugoslavia.)

4. Separate Union concerning the international classification of goods and services to which trade marks apply

Founded by the Arrangement of Nice of 15th June, 1957, this Restricted Union came into force on 8th April, 1961, and includes the following 14 countries:

| | |
|--|--|
| Australia | from commencement (8 th April 1961) |
| Czechoslovakia | » commencement |
| Denmark | » 30 th October 1961 |
| France (including Metropolitan Departments, Algerian Departments, Departments of the Sahara, Departments of Guadeloupe, Guiana, Martinique and Reunion and Overseas Territories) | » commencement |
| Germany | » 29 th December 1961 |
| Israel (State of —) | » commencement |
| Italy | » commencement |
| Lebanon | » commencement |
| Monaco (Principality of —) | » commencement |
| Norway | » 28 th June 1961 |
| Poland | » commencement |
| Portugal | » commencement |
| Spain | » commencement |
| Sweden | » 28 th June 1961 |

5. Separate Union concerning the protection of appellations of origin and their international registration

This separate Union has not yet come into force

Founded by the Arrangement of Lisbon of 31st October, 1958, this separate Arrangement has been signed by the following 12 countries:

| | |
|---------------------|----------|
| Czechoslovakia | Italy |
| Cuba | Morocco |
| France | Portugal |
| Greece | Roumania |
| Hungary | Spain |
| Israel (State of —) | Turkey |

(The Arrangement of Lisbon will come into force after ratification by five countries, one month after the deposit of the fifth ratification has been notified by the Government of the Swiss Confederation, and, in the case of countries ratifying later, one month after the notification of each of such ratifications. France and Czechoslovakia have *ratified* this separate Arrangement.)

Convention of Paris - Madrid Arrangement¹⁾

(Lisbon Texts)

Ratification by the German Federal Republic

Reservation by Czechoslovakia

We are informed by the Swiss Federal Political Department that the following reservation has been made by Czechoslovakia:

(Translation)

"The Ministry of Foreign Affairs presents its compliments to the Swiss Legation and has the honour to acknowledge its Note No. 70-0-2 dated 22nd September last with respect to the ratification by the German Federal Republic of the Convention of Paris for the Protection of Industrial Property of 20th March, 1883, as last revised at Lisbon on 31st October, 1958, and the Arrangement of Madrid for the Prevention of False or Misleading Indications of Source of 14th April, 1891, as last revised at Lisbon on 31st October, 1958.

On the instructions of its Government, the Ministry of Foreign Affairs draws attention to the unjustified declaration of the Government of the German Federal Republic, seeking, contrary to law, to apply the validity of these international instruments equally to the so-called *Land* of Berlin. West Berlin is situated on the territory of the German Democratic Republic and has never constituted, neither in the past nor in the present, part of the German Federal Republic. For this reason the German Federal Republic is not entitled to exercise its authority over West Berlin nor to bind it by treaties.

The Ministry of Foreign Affairs rejects the above mentioned declaration of the German Federal Republic and protests against it. At the same time the Ministry of Foreign Affairs requests that the contents of the present note be communicated to all the signatories of the above mentioned international instruments.

Prague, 18th October, 1961."

Reservation by Roumania

We are informed by the Swiss Federal Political Department that the following reservation has been made by Roumania:

(Translation)

"The Ministry of Foreign Affairs of the Peoples' Republic of Roumania presents its compliments to the Swiss Legation and with reference to the Legation's Note No. 01661 of 26th September, 1961, regarding the ratification by the German Federal Republic of the Convention of Paris for the Protection of Industrial Property and the Arrangement of Madrid for the Prevention of False or Misleading Indications of Source, as last revised at Lisbon on 31st October, 1958, has the honour to make the following statement:

The Government of the Peoples' Republic of Roumania does not recognise the competence of the German Federal

¹⁾ The Arrangement of Madrid for the Prevention of False or Misleading Indications of Source of 14th April, 1891, as last revised at Lisbon on 31st October, 1958.

Republic to extend the application of the above mentioned international acts to the *Land* of Berlin, as the latter does not form part of the territory of the German Federal Republic.

Consequently, the Government of the Peoples' Republic of Roumania cannot take note of the declaration of the German Federal Republic with regard to this problem.

The Ministry of Foreign Affairs request that the present communication be notified to all the States concerned with the above mentioned Convention and Arrangement.

Bucarest. 6th November, 1961."

Arrangement of Nice

concerning the International Classification of Goods and Services to which Trade Marks apply of 15th June, 1957

Ratification by Denmark

(of 30th October, 1961)

The following communication was received from the French Ministry of Foreign Affairs:

(Translation)

"I have the honour to inform you that the instruments of ratification in respect of the Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply have been deposited by Denmark with the Ministry of Foreign Affairs in Paris on 30th October, 1961."

Ratification by the German Federal Republic

(of 29th December 1961)

The following communication was received from the French Ministry of Foreign Affairs:

(Translation)

"I have the honour to inform you that the instrument of ratification in respect of the Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply has been deposited by the German Federal Republic with the Ministry of Foreign Affairs in Paris on 29th December, 1961.

In depositing the instrument of ratification, the Chargé d'Affaires ad interim of the German Federal Republic made the following declaration:

- (1) the said Arrangement shall also apply to the *Land* of Berlin unless the Government of the German Federal Republic declares to the contrary to the French Republic within three months of the coming into force of the said Arrangement on the territory of the German Federal Republic;
- (2) by virtue of the power granted by Article 2, paragraph (2), the German Federal Republic will apply the International Classification of Goods and Services as a subsidiary system."

CONVENTIONS AND TREATIES

International Conference for the Protection of New Plant Products

(Paris, 21st November to 2nd December, 1961)

This Conference, held under the Chairmanship of M. Henri Ferru, Director of the National Institute for Agricultural Research in Paris, was a conclusion to the first Conference which took place in Paris from 7th to 11th May, 1957, and which ended its work by drawing up a Final Act determining the fundamental principles for the protection of new plant products and entrusting a committee of Experts with the task of preparing a draft Convention¹⁾.

The Committee, composed of representatives of eight signatory countries of the Final Act (German Federal Republic, Austria, Belgium, France, Spain, Italy, Netherlands and Sweden), and observers from four countries (Denmark, Norway, United Kingdom and Switzerland), pursued its studies from 1958 to 1960 under the chairmanship of M. J. Bustaret, Inspector-General in the French Ministry of Agriculture, and established a draft Convention²⁾.

The International Bureau was represented at five meetings of the Committee (Paris, 22nd-25th April, 1958; Paris, 15th-19th September, 1958; Munich 1st-3rd July, 1959; Paris, 18th and 19th January, 1960; Rome, 15th-20th February, 1960), with a view to retaining the new International Instrument within the framework of the Union of Paris, or at least to ensure a certain coordination between the provisions of the new Convention and those of the Convention of Paris for the Protection of Industrial Property.

Our continued cooperation at the sessions of the conferences and the committees has always aimed at harmonising the new system of protection with the system already afforded to a limited extent by the Convention of Paris.

However, the majority of the experts considered it necessary to draw up a draft Convention independent of the Union of Paris instead of a separate Arrangement within the framework of that Union.

* * *

Delegates from the twelve following countries participated at the Conference which was held in Paris from 21st November to 2nd December, 1961, at the "Centre des Conférences internationales": German Federal Republic, Austria, Belgium, Denmark, Spain, Finland, France, Italy, Netherlands, United Kingdom, Sweden and Switzerland.

Observers representing the following organisations also attended the Conference: the International Bureau, represented by M. Ch.-L. Magnin, Vice-Director (closing sessions);

¹⁾ See *La Propriété Industrielle*, 1957, p. 103.

²⁾ See Final Act of the Conference, the Draft Convention and the Report of the President of the Committee of Experts in *La Propriété Industrielle*, 1961, pp. 11-20.

M. G. Ronga. Counsellor, Head of the Legal Division, and M^{me} I. Soutter. Secretary, Member of the Legal Division; the Food and Agriculture Organisation of the United Nations (FAO); the European Economic Community (EEC); the Organisation for Economic Cooperation and Development (OECD), and certain non-governmental organisations such as the International Association for the Protection of Industrial Property (IAPIP); the International Association of Professional Selectors (ASSINSEL); the International Community of Growers of Ornamental Plants of Asexual Reproduction (CIOPORA); the International Federation for the Seeds Trade (FIS); the European Union of Bulk Trade in Potatoes (UECGPT) and the Union des Fabricants (UF).

At the first session, the Conference, after having approved its Regulations, appointed as Chairman M. Ferru (France) and Vice-Chairmen Messrs. Bornas (Spain). Smith (Great Britain), Hesser (Sweden), Nijdam (Netherlands) and Bustaret (France); M. Laclavière (France) was appointed Secretary-General.

The Conference constituted a General Commission: Chairman, M. Bustaret (France); Vice-Chairmen, Messrs. de Cillis (Italy). Gally (Switzerland), Skov (Denmark), Murmann (German Federal Republic), Smith (Great Britain); a Legal Committee: Chairman, M. von Haeften (German Federal Republic); Vice-Chairmen, Messrs. Finnis (France), Roscioni (Italy), Van Leeuwen (Netherlands); a Committee for the study of Article 14; a Commission for examining credentials: Chairman, H. E. Talamo Atenolfi (Italy); Members, Messrs. de Reuse (Belgium), Labry (France), Pelckmann (German Federal Republic); a Drafting Committee: Chairman, M. Larose (Belgium).

The discussion on all 38 Articles of the draft Convention first took place in the Committees and in the General Commission and then at the last session, in the Plenary Conference which approved the final text of the 41 Articles of the Convention, the Annex and a Recommendation as published below.

* * *

The organisation of the new Union will, on the one hand, provide for the financial and administrative autonomy desired by the States participating in the Conference and, on the other hand, the operation of its Bureau within the general framework of the United International Bureaux in Geneva.

The Conference, in an aim to achieve both economy and technical and administrative cooperation between the three Unions, approved the regulations relating to such cooperation and the competence of the Swiss Confederation with regard to the supervision of the new Bureau, including its responsibilities as the Diplomatic Authority of the new Union.

The Conference took note of the reserve expressed by the Delegation of the Swiss Confederation to leave open for final decision by the Swiss Federal Council the acceptance of its mandate of supervising and controlling authority, after consultations with the Unions of Paris and Berne.

International Convention for the Protection of New Varieties of Plants ¹⁾

THE CONTRACTING STATES,

Convinced of the importance which the protection of new plant varieties holds not only for the development of agriculture in their countries but also for safeguarding the interests of breeders;

Conscious of the special problems which arise from the recognition and protection of the right of the creator in this field and particularly of the limitations that the requirements of the public interest may impose;

Deeming it highly desirable that these problems to which very many States rightly accord importance should be resolved by each of them in accordance with uniform and clearly defined principles;

Anxious to reach an agreement on these principles to which other States having the same interests may be able to adhere;

Have agreed as follows:

Article 1

(1) The purpose of the present Convention is to recognise and to secure to the breeder of a new plant variety, or to his successor in title, a right the content and the mode of exercise of which are defined hereafter.

(2) The States parties to the present Convention, hereinafter referred to as Member States of the Union, constitute a Union for the Protection of New Plant Varieties.

(3) The seat of the Union and its permanent organs shall be at Geneva.

Article 2

(1) Each Member State of the Union may recognise the right of the breeder provided for in the present Convention by the grant either of a special title of protection or of a patent. Nevertheless, a Member State of the Union whose national law admits of protection under both these forms may provide only one of them for one and the same botanical genus or species.

(2) For the purposes of the present Convention, the word "variety" applies to any cultivar, clone, line, stock or hybrid, which is capable of cultivation and which satisfies the provisions of sub-paragraphs 1 (c) and 1 (d) of Article 6.

Article 3

(1) Without prejudice to the rights specially provided for in the present Convention, physical persons and corporate bodies having their domicile or registered office in one of the Member States of the Union shall, in so far as the recognition and protection of the breeder's right are concerned, enjoy in the other Member States of the Union the same treatment as is accorded or may hereafter be accorded by the respective laws of such States to their own nationals, provided that such persons and bodies comply with the conditions and formalities imposed on such nationals.

¹⁾ This unofficial translation has been made and kindly provided by the Ministry of Agriculture, Fisheries and Food of the United Kingdom to whom we are obliged.

(2) Nationals of Member States of the Union not having their domicile or registered office in one of those States shall likewise enjoy the same rights provided that they fulfil such obligations as may be imposed on them for the purpose of enabling the new varieties which they have created to be examined and the multiplication of such varieties to be controlled.

Article 4

(1) The present Convention shall apply to all botanical genera and species.

(2) The Member States of the Union agree to take all measures necessary for the progressive application of the provisions of the present Convention to the largest possible number of botanical genera and species.

(3) Each Member State of the Union shall, on the entry into force of the Convention in its territory, apply the provisions of the Convention to at least five of the genera named in the list annexed to the Convention.

Each Member State further undertakes to apply the said provisions to the other genera in the list, within the following periods from the date of the entry into force of the Convention in its territory:

- (a) within three years, to at least two genera;
- (b) within six years, to at least four genera;
- (c) within eight years, to all the genera named in the list.

(4) Any Member State of the Union protecting a genus or species not included in the list shall be entitled either to limit the benefit of such protection to the nationals of Member States of the Union protecting the same genus or species and to physical persons and corporate bodies having their domicile or registered office in one of those States, or to extend the benefit of such protection to the nationals of other Member States of the Union or to Member States of the Paris Union for the Protection of Industrial Property and to physical persons and corporate bodies having their domicile or registered office in one of these States.

(5) Any Member State of the Union may, on signing the present Convention or on depositing its instrument of ratification or accession, declare that it will apply, in the matter of the protection of new plant varieties, Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property.

Article 5

(1) The effect of the right granted to the breeder of a new plant variety or his successor in title is that his prior authorisation shall be required to the production, for purposes of commercial marketing, of the reproductive or vegetative propagating material, as such, of the new variety, and to the offering for sale or commercialisation of such material. Vegetative propagating material shall be deemed to include whole plants. The breeder's right shall extend to ornamental plants or parts thereof normally commercialised for purposes other than propagation when they are used commercially as propagating material in the production of ornamental plants or cut flowers.

(2) The authorisation given by the breeder or his successor in title may be made subject to such conditions as he may specify.

(3) Authorisation by the breeder or his successor in title shall not be required either for the utilisation of the new variety as an initial source of variation for the purpose of creating other new varieties or for the commercialisation of such varieties. Such authorisation shall be required, however, when the repeated use of the new variety is necessary for the commercial production of another variety.

(4) Any Member State of the Union may, either under its own law or by means of special arrangements under Article 29, grant to breeders, in respect of certain botanical genera or species, a more extensive right than that set out in the first paragraph of this Article, extending in particular to the commercialised product. A Member State of the Union which grants such a right may limit the benefit of it to the nationals of Member States of the Union which grant an identical right and to physical persons or bodies corporate having their domicile or registered office in such States.

Article 6

(1) The breeder of a new variety or his successor in title shall be entitled to benefit from the protection provided for in the present Convention when the following conditions are satisfied:

- (a) Whatever may be the origin, artificial or natural, of the initial variation from which it resulted, the new variety must be clearly distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. Common knowledge may be established by various references such as: cultivation or commercialisation already proceeding, entry in an official register of varieties already made or in course of being made, inclusion in a reference collection or a precise description in a publication. A new variety may be defined by morphological or physiological characteristics. In all cases, such characteristics must be capable of precise description and recognition.
- (b) The fact that a variety has been entered in trials, or has been registered or submitted for registration in an official register, may not be held against the breeder of such variety or his successor in title.

At the time of the application for protection in a Member State of the Union the new variety must not have been offered for sale or commercialised with the agreement of the breeder or his successor in title, in the territory of that State or for longer than four years in the territory of any other State.

- (c) The new variety must be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
- (d) The new variety must be stable in its essential characteristics, that is to say, it must remain true to its description after repeated reproduction or propagation or, where the breeder has defined a particular cycle of reproduction or multiplication at the end of each cycle.

(e) The new variety shall be given a denomination in accordance with the provisions of Article 13.

(2) Provided that the breeder or his successor in title shall have completed the formalities provided for by the national law of each country, including the payment of fees, the grant of protection in respect of a new variety may not be made subject to conditions other than those mentioned above.

Article 7

(1) Protection shall only be granted after examination of the new plant variety in the light of the criteria defined in Article 6. Such examination shall be adapted to each botanical genus or species having regard to its normal manner of reproduction or multiplication.

(2) For the purposes of this examination, the competent authorities of each country may require the breeder or his successor in title to furnish all the necessary information, documents, propagating material or seed.

(3) During the period between the making of the application for protection of a new plant variety and the decision thereon, any Member State of the Union may take measures to protect the breeder or his successor in title against the wrongful acts of third parties.

Article 8

(1) The right conferred on the breeder of a new plant variety or his successor in title shall be granted for a limited period. This period may not be less than fifteen years. For plants such as vines, fruit trees and their root-stocks, forest trees and ornamental trees, the minimum period shall be eighteen years.

(2) The period of protection in a Member State of the Union runs from the date of the delivery of the title of protection.

(3) Each Member State of the Union may adopt longer periods than those indicated above and may fix different periods for particular classes of plants, in order to take account, in particular, of the requirements of regulations concerning the production and sale of seeds and propagating material.

Article 9

The free exercise of the exclusive right accorded to the breeder or his successor in title may not be restricted otherwise than for reasons of public interest.

When any such restriction is made in order to ensure the widespread distribution of new varieties, the Member State of the Union concerned shall take all measures necessary to ensure that the breeder or his successor in title receives equitable remuneration.

Article 10

(1) The right of the breeder shall be declared null and void, in accordance with the provisions of the national law of each Member State of the Union, if it is established that the conditions laid down in sub-paragraphs (a) and (b) of Article 6 (1) were not effectively complied with at the time when the title of protection was delivered.

(2) The breeder or his successor in title shall forfeit his right when he is no longer in a position to provide the competent authority with reproductive or propagating material capable of producing the new variety with its morphological and physiological characteristics as defined when the right was granted.

(3) The right of the breeder or his successor in title may become forfeit:

(a) if he does not, after being requested to do so and within a prescribed period, provide to the competent authority the reproductive or propagating material, the documents and the information deemed necessary for checking the new variety, or if he does not allow inspection of the measures which have been taken for the preservation of the variety;

(b) if he has failed to pay within the prescribed period such fees as may be payable to keep his rights in force.

(4) The right of the breeder may not be annulled and the right of the breeder or his successor in title may not become forfeit except on the grounds set out in the present Article.

Article 11

(1) The breeder or his successor in title may choose the Member State of the Union in which he wishes to make his first application for protection of his right in respect of a new variety.

(2) The breeder or his successor in title may apply to other Member States of the Union for protection of his right without waiting for the delivery to him of a title of protection by the Member State of the Union in which he made his first application.

(3) The protection applied for in different Member States of the Union by physical persons or bodies corporate entitled to benefit under the present Convention is independent of the protection obtained for the same new variety in other States whether or not such States are Members of the Union.

Article 12

(1) The breeder or his successor in title, who has duly deposited an application for protection of a new variety in one of the Member States of the Union, shall, for the purposes of deposit in other Member States of the Union, enjoy a right of priority for a period of twelve months. This period shall run from the date of the deposit of the first application. The day of deposit shall not be included in such period.

(2) To benefit from the provisions of the preceding paragraph, the further deposit must include an application for protection of the new variety, a claim in respect of the priority of the first application and, within a period of three months, a copy of the documents which constitute that application, certified correct by the authority which received it.

(3) The breeder or his successor in title shall be allowed a period of four years after the expiry of the period of priority in which to furnish, to the Member State of the Union in which he has deposited an application in accordance with the terms of paragraph (2), the additional documents and material required by the laws and regulations of that State.

(4) Such matters as the deposit of another application or the publication or use of the subject of the application, occurring within the period provided for in paragraph (1), shall not constitute grounds of objection to an application deposited in accordance with the foregoing provisions. Such matters may not give rise to any right in favour of a third party or to any right of personal possession.

Article 13

(1) A new variety shall be given a denomination.

(2) Such denomination must identify the variety; in particular, it may not consist solely of figures. The denomination must not be liable to mislead or to lead to confusion concerning the characteristics, value or identity of the new variety or the identity of the breeder. In particular, it must be different from every denomination which designates, in any Member State of the Union, existing varieties of the same or a closely related botanical species.

(3) The breeder or his successor in title may not submit as the denomination of a new variety either a designation in respect of which he enjoys the protection, in a Member State of the Union, accorded to trade marks or trade names, and which applies to products which are identical or similar within the meaning of the law concerning trade marks and trade names or a designation liable to lead to confusion with such a mark or name, unless he undertakes to renounce his right to the mark or name as from the registration of the denomination of the new variety. If the breeder or his successor in title nevertheless submits such a denomination, he may not, as from the time when it is registered, continue to assert his right to the trade mark or trade name in respect of the above-mentioned products.

(4) The denomination of the new variety shall be submitted by the breeder or his successor in title to the authority referred to in Article 30. If it is found that such denomination does not satisfy the requirements of the preceding paragraphs, the authority shall refuse to register it and shall require the breeder or his successor in title to suggest, within a prescribed period, another denomination. The denomination shall be registered at the same time as the title of protection is delivered in accordance with the provisions of Article 7.

(5) A new variety must be submitted in Member States of the Union under the same denomination. The competent authority for the delivery of the title of protection in each Member State of the Union shall register the denomination so submitted, unless it considers the denomination unsuitable in that State. In this case, it may require the breeder or his successor in title to submit a translation of the original denomination or another suitable denomination.

(6) When the denomination of a new variety is submitted to the competent authority of a Member State of the Union, the latter shall communicate it to the Office of the Union referred to in Article 15 which shall notify it to the competent authorities of the other Member States of the Union. Any Member State of the Union may address its objections,

through the said Office, to the State which communicated the denomination.

The competent authority of each Member State of the Union shall notify each registration of the denomination of a new variety and each refusal of registration to the Office of the Union which shall inform the competent authorities of the other Member States of the Union. Registrations shall also be communicated by the Office to the Member States of the Union of Paris for the Protection of Industrial Property.

(7) Any person who, in a Member State of the Union, offers for sale or markets reproductive or vegetative propagating material of a new variety, shall be obliged to use the denomination of that new variety, even after the expiry of the protection of the variety, in so far as, in accordance with the provisions of paragraph (10), prior rights do not prevent such use.

(8) From the date of delivery of a title of protection to a breeder or his successor in title in a Member State of the Union:

- (a) the denomination of the new variety may not be used, in any Member State of the Union, as the denomination of another variety of the same or a closely related botanical species;
- (b) the denomination of the new variety shall be considered as the generic name for that variety. Consequently, no person may, subject to the provisions of paragraph (10), apply for the registration of, or obtain protection, as a trade mark or trade name, for a denomination identical to or liable to cause confusion with such denomination, in respect of identical or similar products, within the meaning of the law concerning trade marks and trade names, in any Member State of the Union.

(9) It shall be permitted, in respect of a product, to add a trade mark or trade name to the denomination of the new variety.

(10) Prior rights of third parties in respect of signs used to distinguish their products or enterprises shall not be affected. If, by reason of a prior right, the use of the denomination of a new variety is forbidden to a person who, in accordance with the provisions of paragraph (7), is obliged to use it, the competent authority shall, if need be, require the breeder or his successor in title to submit another denomination for the new variety.

Article 14

(1) The right accorded to the breeder in pursuance of the provisions of the present Convention shall be independent of the measures taken by each Member State of the Union to regulate the production, certification and marketing of seed and propagating material.

(2) Nevertheless, such measures shall so far as possible avoid hindering the application of the provisions of the present Convention.

Article 15

The permanent organs of the Union shall be:

- (a) the Council;

(b) the General Secretariat, entitled the Office of the International Union for the Protection of New Varieties of Plants. The Office shall be under the high authority of the Swiss Confederation.

Article 16

(1) The Council shall consist of representatives of the Member States of the Union. Each Member State of the Union shall appoint one representative to the Council and an alternate.

(2) Representatives and alternates may be accompanied by assistants and advisers.

(3) Each Member State of the Union shall have one vote in the Council.

Article 17

(1) States which have signed but not yet ratified the present Convention shall be invited as observers to meetings of the Council. Their representatives shall be entitled to speak in an advisory capacity.

(2) Other observers and experts may also be invited to such meetings.

Article 18

(1) The Council shall elect from among its members a Chairman and a first Vice-Chairman. It may elect other Vice-Chairmen. The first Vice-Chairman shall take the place of the Chairman if the latter is unable to officiate.

(2) The Chairman shall hold office for three years.

Article 19

(1) Meetings of the Council shall be convened by its Chairman.

(2) A regular meeting of the Council shall be held annually. In addition, the Chairman may convene the Council at his discretion; he shall convene it within a period of three months if a third of the Member States of the Union so request.

Article 20

(1) The Council shall adopt its rules of procedure.

(2) The Council shall adopt the administrative and financial regulations of the Union, after having consulted the Government of the Swiss Confederation. The Government of the Swiss Confederation shall be responsible for ensuring that the regulations are carried out.

(3) A majority of three-quarters of the Member States of the Union shall be required for the adoption of such regulations and any amendments to them.

Article 21

The tasks of the Council shall be the following:

- (a) to study measures to safeguard the interests of and to encourage the development of the Union;
- (b) to examine the annual report of the activities of the Union and adopt the programme of future work of the Union;
- (c) to give to the Secretary-General, whose functions are set out in Article 23, all necessary directions, including

those concerning relations with national authorities;

- (d) to examine and approve the budget of the Union and fix the contribution of each Member State of the Union in accordance with the provisions of Article 26;
- (e) to examine and approve the accounts presented by the Secretary-General;
- (f) to fix, in accordance with the provisions of Article 27, the date and place of the conferences referred to in that Article and take the measures necessary for their preparation;
- (g) to make proposals to the Government of the Swiss Confederation concerning the appointment of the Secretary-General and the officials of the senior grade;
- (h) generally, to take all decisions necessary to assure the efficient functioning of the Union.

Article 22

Decisions of the Council shall be taken by a simple majority of the members present, except in the cases provided for in Articles 20, 27, 28 and 32, and for the vote on the budget and the fixing of the contributions of each Member State. In these last two cases, the majority required shall be three-quarters of the members present.

Article 23

(1) The Office of the Union shall have the task of carrying out all the missions and tasks entrusted to it by the Council. It shall be under the direction of the Secretary-General.

(2) The Secretary-General shall be responsible to the Council; he shall be responsible for carrying out the decisions of the Council.

He shall submit the budget for the approval of the Council and shall be responsible for its implementation.

He shall make an annual report to the Council on his administration and a report on the activities and financial position of the Union.

(3) The Secretary-General and the officials of the senior grade shall be appointed, on a proposal of the Council, by the Government of the Swiss Confederation which shall determine the terms of their appointment.

The terms of service and the remuneration of other grades in the Office of the Union shall be determined by the administrative and financial regulations.

Article 24

The Government of the Swiss Confederation shall watch over the expenditure and accounts of the Office of the International Union for the Protection of New Varieties of Plants. It shall present to the Council an annual report on its supervisory function.

Article 25

The procedures for technical and administrative co-operation between the Union for the Protection of New Varieties of Plants and the Unions administered by the United International Bureaux for the Protection of Industrial, Literary

and Artistic Property shall be determined by rules established by the Government of the Swiss Confederation in agreement with the Unions concerned.

Article 26

- (1) The expenses of the Union shall be met:
 - (a) from annual contributions of Member States of the Union;
 - (b) from payments received for services rendered;
 - (c) from miscellaneous receipts.

(2) For the purpose of determining the amount of their annual contribution, the Member States of the Union shall be divided into three classes:

| | |
|------------------------|-------------|
| First class | five units |
| Second class | three units |
| Third class | one unit |

Each Member State of the Union shall contribute in proportion to the number of units of the class to which it belongs.

(3) For each budgetary period, the value of the unit of contribution shall be obtained by dividing the total expenditure to be met from the contributions of Member States by the total number of units.

(4) Each Member State of the Union shall indicate, on joining the Union, the class in which it wishes to be placed. Any Member State of the Union may, however, subsequently declare that it wishes to be placed in another class.

Such declaration must be made at least six months before the end of the financial year preceding that in which the change of class is to take effect.

Article 27

(1) The present Convention shall be reviewed periodically with a view to the introduction of amendments designed to improve the working of the Union.

(2) For this purpose, Conferences shall be held every five years, unless the Council, by a majority of five-sixths of the members present, considers that the convening of such a Conference should be advanced or delayed.

(3) A Conference shall not be deemed to be validly constituted unless at least half of the Member States of the Union are represented at it.

A majority of five-sixths of the Member States of the Union represented at the Conference shall be required for adoption of a revised text of the Convention.

(4) The revised text shall enter into force, in respect of Member States of the Union which have ratified it, when it has been ratified by five-sixths of the Member States of the Union. It shall enter into force thirty days after the deposit of the last instrument of ratification. If, however, a majority of five-sixths of the Member States of the Union represented at the Conference considers that the revised text includes amendments of such a kind as to exclude the possibility, for Member States of the Union which do not ratify the revised text, of remaining bound by the former text in respect of the other Member States of the Union, the revised text shall enter into force two years after the deposit of the last instrument

of ratification. In such case, the former text shall, from the date of such entry into force, cease to bind the States which have ratified the revised text.

Article 28

(1) The French, English and German languages shall be used by the Office of the Union in carrying out its tasks.

(2) Meetings of the Council and revision Conferences shall be held in the three languages.

(3) If the need arises, the Council may decide, by a majority of three-quarters of the members present, that further languages shall be used.

Article 29

Member States of the Union reserve the right to conclude among themselves special arrangements for the protection of new plant varieties, in so far as such arrangements do not contravene the provisions of the present Convention.

Member States of the Union which have not taken part in making such arrangements shall be allowed to accede to them on demand.

Article 30

(1) Each Member State of the Union undertakes to adopt all measures necessary for the application of the present Convention.

In particular, each Member State undertakes:

- (a) to assure to nationals of the other Member States of the Union appropriate legal remedies for the effective defence of the rights provided for in the present Convention;
- (b) to establish a special authority for the protection of new plant varieties or to entrust their protection to an existing authority;
- (c) to ensure that the public is informed of matters concerning such protection, including as a minimum the periodical publication of the list of titles of protection granted.

(2) Special agreements may also be concluded among Member States of the Union, with a view to the joint utilisation of authorities entrusted with the examination of new varieties, in accordance with the provisions of Article 7, and with assembling the necessary reference collections and documents.

(3) It is understood that on depositing its instrument of ratification or accession, each Member State must be in a position, under its own domestic law, to give effect to the provisions of the present Convention.

Article 31

(1) The present Convention shall be open for signature until December 2, 1962, by States represented at the Paris Conference for the Protection of New Varieties of Plants.

(2) The present Convention shall be subject to ratification, instruments of ratification shall be deposited with the Government of the French Republic, which shall notify such deposit to the other signatory States.

(3) When the Convention has been ratified by three States, it shall enter into force in respect of those States thirty

days after the deposit of the third instrument of ratification. It shall enter into force in respect of each State which ratifies thereafter, thirty days after the deposit of its instrument of ratification.

Article 32

(1) The present Convention shall be open to accession by non-signatory States in accordance with the provisions of paragraphs (3) and (4) of this Article.

(2) Requests for accession shall be addressed to the Government of the Swiss Confederation, which shall notify them to the Member States of the Union.

(3) Requests for accession shall be considered by the Council which shall have particular regard to the provisions of Article 30.

Having regard to the nature of the decision to be taken and to the difference in the rule laid down for the revision Conferences, accession of a non-signatory State shall be accepted if a majority of four-fifths of the members present vote in favour of it.

Three-quarters of the Member States of the Union must be represented when the vote is taken.

(4) In the case of a favourable decision, the instrument of accession shall be deposited with the Government of the Swiss Confederation which shall notify the Member States of the Union of such deposit.

Accession shall take effect thirty days after the deposit of such instrument.

Article 33

(1) When ratifying the Convention, in the case of a signatory State, or when submitting a request for accession, in the case of any other State, each State shall give, in the first case to the Government of the French Republic and in the second case to the Government of the Swiss Confederation, the list of genera or species in respect of which it undertakes to apply the provisions of the Convention in accordance with the requirements of Article 4. In addition, it shall specify, in the case of genera or species referred to in paragraph (4) of that Article, whether it intends to avail itself of the right of limitation available under that provision.

(2) Each Member State of the Union which subsequently decides to apply the provisions of the Convention to other genera or species shall send the same information as is required under paragraph (1) of the present Article to the Government of the Swiss Confederation and to the Office of the Union, at least thirty days before its decision takes effect.

(3) The Government of the French Republic or the Government of the Swiss Confederation, as the case may be, shall communicate to all the Member States of the Union the information referred to in paragraphs (1) and (2) of the present Article.

Article 34

(1) Every Member State of the Union, either on signing or on ratifying or acceding to the Convention, shall declare whether the Convention applies to the whole or to a part of its territories or to one or more or to all of the States or territories for which it is responsible.

This declaration may be added to at any time thereafter by notification to the Government of the Swiss Confederation. Such notification shall take effect thirty days after it has been received by that Government.

(2) The Government which has received the declarations or notifications referred to in paragraph (1) of this Article shall communicate them to all Member States of the Union.

Article 35

Notwithstanding the provisions of Article 6, every Member State of the Union has the right, without thereby creating an obligation for other Member States of the Union, to limit the requirement of novelty laid down in that Article, with regard to varieties of recent creation existing at the date of entry into force of the Convention in respect of such State.

Article 36

(1) If, at the date of the entry into force of the present Convention in respect of a Member State of the Union, the breeder of a new variety protected in that State, or his successor in title, enjoys in that State the protection of the denomination of that variety as a trade mark or trade name for identical or similar products within the meaning of the law concerning trade marks and trade names, he may either renounce the protection in respect of the trade mark or trade name or submit a new denomination for the variety in the place of the previous denomination. If, within a period of six months, a new denomination has not been submitted, the breeder or his successor in title may not continue to assert his right to the trade mark or trade name for the above-mentioned products.

(2) If a new denomination is registered for the variety, the breeder or his successor in title may not prohibit the use of the previous denomination by persons who, before the entry into force of the present Convention, were obliged to use the previous name, until a period of one year has expired from the publication of the registration of the new denomination.

Article 37

The present Convention shall not prejudice existing rights under the national laws of Member States of the Union or under agreements concluded between such States.

Article 38

(1) Any dispute between two or more Member States of the Union concerning the interpretation or application of the present Convention which is not settled by negotiation shall be submitted, at the request of one of the States concerned, to the Council which shall endeavour to bring about agreement between the Member States concerned.

(2) If such agreement is not reached within six months from the date when the Council was seized of the dispute, the dispute shall be submitted to an arbitration tribunal at the request of one of the parties concerned.

(3) The tribunal shall consist of three arbitrators.

When two Member States are parties to a dispute, each State shall appoint an arbitrator.

Where more than two Member States are parties to a dispute, two of the arbitrators shall be appointed by agreement among the States concerned. If the States concerned have not appointed the arbitrator within a period of two months from the date on which the request for convening the tribunal was notified to them by the Office of the Union, any of the Member States concerned may ask the President of the International Court of Justice to make the necessary appointments.

In all cases the third arbitrator shall be appointed by the President of the International Court of Justice.

If the President is a national of one of the Member States parties to the dispute, the Vice-President shall make the appointments referred to above, unless he is himself also a national of one of the Member States parties to the disputes. In this last case, the appointments shall be made by the member of the Court who is not a national of one of the Member States parties to the dispute and who is selected by the President to make the appointments.

(4) The arbitration decision shall be final and binding on the Member States concerned.

(5) The tribunal shall determine its own procedure, unless the Member States concerned agree otherwise.

(6) Each of the Member States parties to the dispute shall bear its own costs of representation before the arbitration tribunal; other costs shall be borne in equal parts by each of the States.

Article 39

Signature, ratification and accession to the Convention shall be without reservation.

Article 40

(1) The present Convention shall be of unlimited duration.

(2) Subject to the provisions of paragraph 4 of Article 27, if a Member State of the Union denounces the Convention such denunciation shall take effect one year after the day on which notification of denunciation is made by the Government of the Swiss Confederation to the other Member States of the Union.

(3) Any Member State may at any time declare that the Convention shall cease to apply to certain of its territories or to States or territories in respect of which it has made a declaration in accordance with the provisions of Article 34. Such declaration shall take effect one year after the day on which notification of it is made by the Government of the Swiss Confederation to the other Member States of the Union.

(4) Such denunciations and declarations shall not prejudice rights acquired by reason of the present Convention prior to the expiry of the time limit laid down in paragraphs (2) and (3) of the present Article.

Article 41

(1) The present Convention shall be drawn up in one copy in the French language to be deposited in the archives of the Government of the French Republic.

(2) A certified true copy shall be forwarded by that Government to the Governments of all signatory States.

(3) Official translations of the present Convention shall be established in the English, Dutch, German, Italian and Spanish languages.

In witness whereof, the plenipotentiaries authorised thereto, having presented their Full Powers, found to be in good and due form, have signed the present Convention and have affixed thereto their seals.

Done at Paris, this second day of December, 1961.

For the German Federal Republic

signed: G. v. HAEFTEN
Joseph MURMANN
Hans SCHADE

For Belgium

signed: A. BAYOT

For France

signed: Henri FERRU

For Italy

In my quality of Plenipotentiary, I declare that the Government of the Italian Republic, by virtue of the power granted by paragraph (5) of Article 4 of the present Convention, decides to apply Articles 2 and 3 of the Convention of Paris for the Protection of Industrial Property with regard to the protection of plant varieties.

signed: TALAMO

For the Netherlands

signed: F. E. NIJDAM

ANNEX

List referred to in Article 4, paragraph (3)

Species to be protected in each genus

| | |
|----------------|--|
| 1 — Wheat | — Triticum aestivum L. ssp. vulgare (VILL, HOST) MAC KAY Triticum durum DESF. |
| 2 — Barley | — Hordeum vulgare L. s. lat. |
| 3 — Oats | — Avena sativa L. Avena byzantina C. KOCH or Rice - Oryza sativa L. |
| 4 — Maize | — Zea Mays L. |
| 5 — Potato | — Solanum tuberosum L. |
| 6 — Peas | — Pisum sativum L. |
| 7 — Beans | — Phaseolus vulgaris L. Phaseolus coccineus L. |
| 8 — Lucerne | — Medicago sativa L. Medicago varia MARTYN |
| 9 — Red Clover | — Trifolium pratense L. |
| 10 — Ryegrass | — Lolium sp. |
| 11 — Lettuce | — Lactuca sativa L. |
| 12 — Apples | — Malus domestica BORKH |
| 13 — Roses | — Rosa hort or Carnations - Dianthus caryophyllus L. |

If two optional genera are chosen — numbers 3 or 13 above — they shall be counted as one genus only.

Recommendation

The Conference,

Having regard to Articles 7 and 30 of the Convention;

Having regard to the fact that the examination of new plant varieties will constitute for each of the Member States of the Union, from a technical and financial point of view, an onerous task which it is possible and desirable to alleviate by organising such examination on an international basis;

Having regard to the fact that such international co-operation will have as its effect the possibility of extending the Union to include a larger number of States and to cover a larger number of botanical genera and species;

Recommends to States represented at the Conference to undertake as soon as possible the studies necessary for the organisation of the examination on an international basis and for the conclusion of the arrangements provided for in Article 30 of the Convention.

Declaration

The signatory States declare it their common intention to extend the provisions of the Convention, as soon as it comes into force, to at least 15 varieties, the list of which will be established by them in common accord.

For the German Federal Republic

signed: G. v. HAEFTEN
Joseph MURMANN
Hans SCHADE

For France

signed: Henri FERRU

For the Netherlands

signed: F. E. NIJDAM

GENERAL STUDIES

The International Union for the Protection of Industrial Property in 1961

By Roland WALTHER

**Committee of National Institutes
of Patent Agents
CNIPA**

Sub-Committee on Patent Integration

(D. A. Was, E. Wiegand, W. P. Williams)

First Report on the Institution of Federal Patents

**Common Market Patent and Trademark Treaties.
Open or Closed?**

By Stephen P. LADAS, New York

(Translation)

Harmonization of Patent Legislations

By A. COLAS, Paris

**Study of the conditions of judicial certainty
in respect of patents**

CONGRESSES AND MEETINGS

(Translation)

International Vine and Wine Office

(41st Plenary Session of the Committee,
Paris, 11th to 16th September, 1961)

Resolution of the Committee

RESOLUTION No. 1

State of wine-growing in the world

The Committee,

Having noted the continuous increase of world vines and the even more rapid progress of wine production, again draws the attention of the Governments concerned to a situation which presents a real economic danger;

recommends,

in order to alleviate this situation, that the policy approved by the OIV at its previous sessions be untiringly pursued with particular attention to:

- (1) production discipline and, if markets are not assured, limitation or reduction of vineyards;
- (2) advertisement with an aim to encouraging new countries and new strata of society to a reasonable consumption of wine, such consumption of wine having always revealed itself as one of the best antidotes to alcoholism;
- (3) development of markets reserved for grapes and to by-products other than wines;

Also recommends that the Governments concerned should strongly pursue their efforts in favour of the quality of vine products and in particular wines, especially by the use of improved practical technologies, the elimination of inferior vines, the reduction of excess produce, the control of products and the prevention of fraud.

RESOLUTION No. 2

Organisation of trials of new varieties

The Committee, on the proposal of Commission I, considering that the improvement of varieties is one of the means of progress in respect of the characteristics of the products and conditions of vine-growing, but that this requires considerable efforts, the burdens of which can be

International Association for the Protection of Industrial Property

Executive Committee

(Ottawa, 25th to 29th September, 1961)

The Executive Committee of the International Association for the Protection of Industrial Property met at Ottawa from the 25th to 29th September, 1961, under the Presidency of Herr H. G. Heine (Germany).

At this Meeting were present Maître Paul Mathély (France), Rapporteur-Général, Mr. Stephen Ladas (U. S. A.), Treasurer-General and Dr. Rudolph Blum (Switzerland), acting as Secretary-General in the absence of M. Eugen Blum, who was unfortunately ill, and Members and Rapporteurs from 14 National Groups.

The International Bureau was represented by Mr. Ross Woodley, Counsellor.

For the study of the questions before the Committee, a number of Commissions were established who reported back to the Committee. Based on their careful work, a series of decisions were taken, the principal of which are set out below.

In the course of this Meeting, the Secretary-General, M. Eugen Blum, regretfully tendered his resignation to the Committee after very many years of devoted work for the benefit of the Association. This resignation was reluctantly accepted and M. Blum was unanimously elected a "Président d'Honneur" of the Association. In the place of M. Blum, the Committee enthusiastically and unanimously decided to nominate his son, Dr. Rudolph Blum, as the future Secretary-General of the Association who will act in that capacity *ad interim*.

The success of the Meeting owed much to the admirable organisation of the Canadian Group of IAPIP under its President, Mr. Christopher Robinson, Q. C.

QUESTION 25 B

Cancellation of the Registration of a Trade Mark at any time upon Proof of Abandonment

The object of this question is to examine whether it would not be advisable to provide for a double exception for the general rule as laid down in Article 5 C (1) of the Convention, amended according to the wish of the London Congress, and to permit the cancellation of the trade mark at any time without waiting 5 years in the following instances:

- absence of the *bona fide* intention to use the mark;
- effective abandonment of the mark.

One must remember that the Executive Committee had proposed in Luxemburg to complete Article 5 C (1) modified by the following provision:

“When the legislation of a country of the Union so permits, the cancellation can be pronounced at any time, in a case where, at the date of registration, there was no *bona fide* intention to use the mark, or in case the owner has effectively abandoned his mark.”

According to the summary of the reports, submitted by the Reporter General, the points under discussion were the following:

1. Expediency of the question.
2. The definition and the proof of “the absence of the *bona fide* intention to use the mark”.
3. The definition and the proof of “effective abandonment”.

Mr. Ellwood, the Reporter Secretary of the Committee, presents to the Executive Committee and comments on the following report:

Summary Report

The Sub-Committee after discussing the points set out on page 2 of the Summary prepared by Mr. Paul Mathély, Reporter General, came, by a majority, to the following conclusions:

1. It is expedient to pursue the question, and by so doing no harm would be done to Article 5 C (1).

2. National courts would be able to recognize and decide about a situation in which “the use of the mark has been discontinued without intention to resume its use”.

3. Consequently, no definition would be required.

Difficulty was felt by members of countries where there was no “compulsion to use” a mark at any time. The words “at any time” should be omitted from the title. National law would determine the period after which action might be begun.

4. To come to a conclusion, the Executive Committee could propose that Article 5 C (1) be completed by the following provision:

“When the legislation of a country of the Union provides for removal of the registration of a trade mark from the register on the ground of abandonment, such abandonment shall be deemed to exist if the use of the mark has been discontinued without intention to resume its use.”

QUESTION 29 B

Trade Marks or Names with Extended Protection

In his summary, the Reporter General pointed out that, taking into consideration the resolution adopted in London and the observations made in the reports, the search for a draft text could be made on the basis of the following scheme:

“The member countries of the Union undertake to refuse or invalidate the registration or to prohibit the use of a trade mark, of a trade name (and of any distinctive signs) even to designate objects or activities different from those they are covering:

- when this mark, name (or this sign) constitute the reproduction or imitation of a mark, name (or sign) which by the competent authorities of the country, where protection is sought, is deemed to be well known, even if they are not used;
- and when this registration or this use gives rise to confusion, procures an unjustified advantage or causes an actual weakening of the distinctive character or of the attractive power of the well known sign (or: when this registration or this usage is the cause of actual damage to the proprietor or procures an unjustified advantage to the proprietor, especially if the public is induced to suppose the existence of a commercial link between the enterprises).

The rights of third parties acquired in good faith before the well-known character of the mark, name (or sign) had been established, are reserved.”

Mr. Ellwood, Reporter Secretary of the Committee, submits and comments on the following report:

“The Sub-Committee took the view that as the outline set out on page 4 of the Summary of Mr. Mathély, Reporter General, was similar to that considered at the Lisbon Diplomatic Conference (in the absence of any draft from the Berne/Geneva Bureau) and rejected by that Conference, it was desirable to find a simple formula.

The U. S. suggestion (*Annuaire* 1961, 11 [i], p. 76) and the Netherlands suggestion (p. 91) were considered. It was found practical to recommend a modification or combination of the two suggestions.

The Sub-Committee agreed unanimously to put forward the accompanying resolution.

1. The Executive Committee recommends the insertion of a new provision in the Convention as follows:

“The member countries of the Union undertake to grant protection of trade marks, trade names and other distinctive signs against any use by third parties even for dissimilar products or in dissimilar enterprises, when this use is likely to confuse the public as to the origin of the products, or when this use by third parties is of an unfair nature towards the owner, especially if the public is led to infer a commercial link between the products or the enterprises.”

2. Moreover, the Executive Committee recommends that, pending the adoption of such new stipulation by a Conference of Revision, the member countries of the Union shall take all possible measures to provide under their law such extended protection of trade marks, trade names and other distinctive signs.”

Mr. Mathély, the Reporter General, points out that the text proposed by the Committee departs from the principles adopted by the London Congress on three points:

- first, the new text tends no longer to protect only the well-known signs, but also any signs whatsoever;
- further, the new text provides for protection against use only, and not for protection against registration of the sign;
- finally, the only criterion of extended protection is the possibility of confusion.

Mr. Ladas states that it would be advisable to eliminate the contestable notion of "well-known" and, in order to secure the extended protection, to maintain only the possibility of confusion which is a constituent element of unfair competition. He adds that, in fact, provision must also be made to protect the sign against registration, not only against its use.

Mr. Casalonga and Mr. Moser von Filseck plead in favour of maintaining the criterion of "well-known".

After an exchange of views, the President consults the Executive Committee on the two following points:

1. Is it advisable to include in the proposed text the notion of "well-known"?

The Executive Committee decides in favour by 27 against 15 votes.

2. Is it advisable to refer the text to the Committee to take into account the remarks made in the course of the discussion?

The Executive Committee decides in favour by 24 against 10 votes.

After the question had been studied again, Mr. Ellwood, the Reporter Secretary of the Committee, submits the new draft resolution which reads as follows:

"I. The Executive Committee recommends the insertion of a new stipulation in the Convention as follows:

'The member countries of the Union undertake to protect well-known trade marks, service marks, trade names and other distinguishing devices against their use or registration by others even for dissimilar products or services or in dissimilar enterprises whenever such use or registration might confuse the public as to origin or if the public might infer a commercial link between the products, services or enterprises or whenever such use or registration by others might be otherwise unfair to the proprietor.'

II. It further recommends that pending the adoption of such new stipulation by a Conference of Revision, the member countries of the Union should take all possible measures to provide under their law such additional protection to trade marks, service marks, trade names and other distinguishing devices."

The new text proposed by the Committee is unanimously adopted.

QUESTION 32 B

Translation of Trade Marks

The summary of the Reporter General recalls that the points under discussion were the following:

1. First of all, it would be right to choose between two procedures to secure the protection of the translation of the mark.

— The first procedure consists of permitting the owner of the mark to effect, in the country of origin, by one and the same act, a first complex deposit, comprising at the same time the deposit of the mark in its original form as well as in its various translations, transcriptions and transliterations the protection of which is sought, and it consists in permitting this owner to effect, in the member countries of the Union,

by one and the same act, an international deposit corresponding to the original one.

— The second procedure consists of permitting the owner of a mark deposited in the country of origin and in its original form, to effect in the other member countries of the Union corresponding deposits apply not only to the mark in its original form, but extend also to the translations of the mark into other languages, to its transcription into other characters or to its transliteration.

2. Provision must further be made that the obligation to use will apply only to one of the versions of the mark, either to its original form, or to its translation, transcription or transliteration.

3. Finally the question arises whether it will not be necessary to make the solution of the question agree with the provisions relating to the right of priority, to the system of the "telle quelle" mark and to the international registration.

Mr. Ellwood, the Reporter Secretary of the Committee, submits and comments on the following report:

"The Sub-Committee formulated certain principles upon which its subsequent suggestions would be based, viz:

a) There could in practice be no automatic protection of a mark in all languages.

b) The right to a mark claimed and filed in one language should not be lost because its use was confined to another language in which it was also filed.

c) Therefore, there should be some system of 'association' between the marks filed and provision that all associated marks should be assigned together.

d) The courts or authorities of each country should be able to decide on the eligibility for protection of marks in other languages.

e) The principles applicable to translations should as far as possible apply to transcription and transliteration.

The Sub-Committee noted Mr. Mathély's report, but thought the three points mentioned on page 7 were impracticable to deal with at this stage.

On further discussion it was decided in reference to c) above that 'association' would be impracticable and the concept of a combination of marks would be preferable.

The principles being agreed upon unanimously, a drafting Committee was given the task of preparing a draft for submission to the Plenary Session. That draft reads as follows:

First Draft Resolution

Any national of a country of the Union who in his country has used, registered or applied to register a trade mark, may register in the other Union countries a combination of such trade mark or any transcription or transliteration of such mark or translation thereof in the national language or languages of these countries, if such combination, translation or transcription is otherwise registrable (and in such case the original and the transcription, transliteration and translation shall each be protected).

The use of a trade mark in its transcribed, transliterated or translated form shall also satisfy the compulsory use with respect to the registration in the original language.

The drafting Committee was doubtful whether the words shown above in parentheses would be generally acceptable. They also thought it useful to put forward a simplified draft aimed solely at compulsory use. This

Second Draft Resolution

reads as follows:

Where a national of a member country of the Union, who in his country has used, registered or applied to register a trade mark, has this mark registered in another country of the Union, the use of any transcription or transliteration thereof, or the use of any translation into the official language(s) of such other country shall satisfy the obligation to use as to such registration."

Mr. Bodenhauseu contends that the second draft resolution submitted by the Committee does not settle the question. He recalls that the problem is as follows: Suppose a Briton has deposited in his country the mark "Eagle" and uses in France the translation of this mark in the form "Aigle". It must be provided that the Briton, by this use, is allowed to keep his rights. It appears, therefore, that only the first draft resolution will provide for the necessary link between "Eagle" and "Aigle" to secure the desired protection.

Consequently Mr. Bodenhauseu asks the President first to put to the vote the second draft, and he asks the Executive Committee to dismiss it.

The President consults the Executive Committee on the second draft.

The draft is rejected by 7 against 21 votes.

The first draft submitted by the Committee is put forward for discussion.

Mr. Mathély, Reporter General, makes a double observation:

— First of all, the words "if such combination is elsewhere likely to be registered" do not express exactly the idea of the text: the word "combination" should be replaced by the words "translated, transcribed or transliterated mark".

— Second, the clause shown in the text of the Convention in parentheses, must appear obligatorily in the text adopted in order that the translation be protected as such regardless of the original mark.

Mr. Bodenhauseu approves the observations made by the Reporter General.

After an exchange of views, the President puts the following proposition to the vote:

"The Executive Committee proposes the insertion of the following new provision in the Union Convention:

Any national of a member country of the Union who has used, registered or applied to register a mark in a member country of the Union, is entitled to have a combination of this mark registered in the other member countries of the Union, including any transcription or transliteration of the mark or a translation thereof into the official language(s) of these countries provided that the translated, transcribed or transliterated mark be elsewhere likely to be registered: in this case, both the original and its transcription, transliteration

or translation shall be protected as such. The use of a mark in its transcribed, transliterated or translated form shall also satisfy the obligation to use as to registration in the original language."

This proposition is adopted by 39 against 4 votes with 4 abstentions.

QUESTION 38B

The Problem of Exhibitions

As the Reporter General's summary recalls, this question has a double object:

1. The London Congress having expressed the wish to repeal Article 11 of the Convention, the question was whether it would not be advisable to fill this gap by introducing new provisions. With respect to this the French group had proposed the insertion of a new provision in the Convention to provide that the disclosure at an exhibition, under the system of a temporary protection granted by domestic laws, would not be a hindrance to the protection applied for within a certain period of time.

2. The question is also to investigate whether it would not be advisable to restrict the power of an owner of industrial property rights to practice orders for seizure towards alleged infringers taking part in an exhibition.

Mr. Tookey, the President of the Committee, proposed to the Executive Committee the following resolution and comments on the considerations underlying it:

The Executive Committee having examined various proposals and taking note of the fact that the Sub-Committee has not been able to find a proposal as a satisfactory compromise, decides:

(1) To leave it to the next Congress to decide whether the question should be further studied either on an exhibition basis or on a broader basis,

alternatively —

to remove this question from the agenda for the next Congress.

(2) The Executive Committee takes the view that the question of seizure at exhibitions is a matter of procedural detail which should be left to national legislations.

The President first consults the Executive Committee on point 2 of the proposition of the Committee, tending to remove from the agenda the question whether it would be advisable to provide certain immunities in favour of the exhibitors.

The striking out of the question is adopted by 39 votes.

After this, the President puts forward point 1 of the proposition of the Committee for discussion.

Mr. Luzzati takes up again the proposal of the Italian Group according to which the question should be simply struck off the agenda.

Mr. de Reede takes up again the proposal of the Dutch Group to replace Article 11 by new provisions inspired by the French proposition.

Mr. Mathély, the Reporter General, draws attention to the fact that the question requires to be studied more thoroughly,

and he proposes to keep the question on the agenda of the Berlin Congress, without prejudice.

This proposition is adopted by 30 against 5 votes.

QUESTION 23 B

The Notion of the Trade Mark

This question had been thoroughly examined by a Committee headed by Mr. Medcalf.

Mr. Medcalf had established a report which was distributed before the meeting of the Executive Committee.

In the name of the Committee, Mr. Holm-Nielsen submits to the Executive Committee the following conclusions and propositions:

"The Medcalf Report points out that there is little that all countries now agree to register as marks. It is worth while to propose what it now appears that a large number of countries can agree to register, in the hope that others will thereby be influenced to likewise agree to register these marks, particularly as most countries already protect such marks otherwise than by registration, and the reasons why such countries do not now provide for registration do not seem to be fundamental.

Although it seems that there is general agreement that it is not necessary that a trade mark should be affixed to wares, and that it is not necessary that a trade mark be connected to a business or part of a business, it seems wrong to include in this Question

- (a) whether it is necessary that a trade mark having been recognised and perhaps registered as such need be affixed to the wares in order that the trade mark may be valid;
 - (b) whether it is necessary that a trade mark must be connected to a business or part of a business;
- and it further seems wrong to include
- (c) whether there must be use prior to registration;
 - (d) whether licensing of a trade mark may be permitted;
 - (e) what rights of exclusive use are given by registration.

As the Report points out, the use of the terms 'trade mark', 'marque de fabrique et de commerce' and 'Warenzeichen' creates problems, particularly when it comes to referring, as Canadians and Scandinavians do, to trade marks being used in respect of both wares and services. It is best to use the simple term 'mark' (marque, Marke) while understanding that this word has a special meaning as indicated below. The result is that the term 'mark' is generic to all of the kinds of marks dealt with in the questionnaire, no distinction is drawn between manufacturers' and sellers' marks and registration is not necessarily implied by the use of the term.

The Executive Committee is of the opinion that it is desirable to state the essential characteristic of a mark, and to list some of the categories of signs that should not be refused recognition as marks by reason of their nature.

In view of this the Executive Committee is of the opinion that all countries should agree that

- (a) a mark is any sign that is inherently distinctive, or that has become distinctive, of the wares or services of a person or group of persons, and

(b) the following among others, should be recognised as marks provided that these are inherently distinctive or have become distinctive as set forth in paragraph (a):

- (1) words including slogans, and titles of periodical publications;
- (2) letters;
- (3) numerals;
- (4) devices including, for example, signatures, portraits, drawings, pictures and insignia, emblems and monograms;
- (5) names of persons including given names and surnames whether or not the same may also constitute or form part of the name of a firm or corporation;
- (6) the non-functional shape or other get-up of containers and packaging of wares;
- (7) colour as a feature of any of the above;
- (8) combinations of colours;
- (9) any combination of the above."

Mr. Pattishall criticizes that passage of the proposition of the Committee which reads as follows: "A mark is any sign that is inherently distinctive, or that has become distinctive, of the wares or services of a person or group of persons". Mr. Pattishall holds that one must take into account the circumstances in which a mark has lost any distinctive character and has become generic. He asks, therefore, that the provision concerned be replaced by a provision which should read as follows: "*A mark is any sign which is inherently distinctive, or has become distinctive, in the sense it indicates a commercial link between the wares or services and a person or a group of persons*".

Mr. Mathély, the Reporter General, does not share Mr. Pattishall's opinion for two reasons: First, the economic function of the mark is to identify a product and not necessarily to guarantee an origin by establishing a link between the product and the producer. On the other hand, the question raised by Mr. Pattishall is whether the right to the mark incurs forfeiture when the mark becomes generic; this question had not been examined by the Medcalf Committee that had contented itself with studying the notion of the mark: there is no reason for settling it now.

Dr. Rudolph Blum supports Mr. Pattishall's argument. Mr. Ladas and Mr. Pointet support the Reporter General's point of view.

After several members, amongst whom Mr. Marconnet and Mr. Ellwood, had intervened, the President puts Mr. Pattishall's amendment to the vote.

The amendment is rejected by 9 against 32 votes with 2 abstentions.

The President puts the whole of the proposition of the Committee as set forth in above report to the vote.

The proposition of the Committee is unanimously adopted.

Echoing various suggestions the Reporter General proposes to extend the subject of Question 23 to other points relating to the right of mark.

The Executive Committee unanimously declares in favour of such extension and instructs the Reporter General to determine the new points to be examined and to put them on the agenda for the Berlin Congress.

QUESTION 34 B

International Protection of Designs

Mr. Bouly, Reporter Secretary of the Committee, submits and comments on the following conclusions and propositions:

"The Executive Committee:

1. *Notes* that the Arrangement of The Hague concerning the International Deposit of Industrial Designs as last revised at The Hague on 20 November, 1960, gives rise to no serious objections from any national group, and decides to submit to the Berlin Congress the wish that a large number of countries should adhere, as soon as possible, to the Arrangement in order that the object of the revision may be fully achieved.

2. (a) *Notes* that it is neither possible nor desirable to include in the Convention a definition of designs in a context which hinders the Convention countries.

(b) Is nevertheless of opinion that it is desirable in order to avoid misunderstandings to explain in general terms that which is capable of being protected as designs; but, however, *notes*:

- (i) that the Sub-Committee has not been able to agree upon a formula acceptable to all its members;
- (ii) that the opinion of the majority of the members of the Sub-Committee is that, subject to certain reservations as to functional features, protection should be given not only to the design (in its widest conception) but also to the industrial article in which the design is incorporated;
- (iii) that one national group would prefer that the protection should be restricted to the features of the design itself.

3. *Is of the opinion* that designs should have their own systems of protection. Such protection and the protection provided by copyright law may be cumulative.

4. *Notes* the agreement of the national groups on the following points:

- (a) that the minimum essential requisite for the protection of designs, may be either 'novelty' or 'originality', a thorough investigation being necessary to clarify these notions as well as any other conditions for protection;
- (b) that protection can ensue only from a deposit which is made open to public inspection, but the publication of which can be deferred for a certain period with appropriate consequences;
- (c) that the affixing of an indication of the existence of a deposit (mention de réserve) shall not be a condition of protection, this being as provided for in Article 14 (1) of the Arrangement of The Hague.

5. *Notes* the agreement of the Sub-Committee that the duration of protection shall be at least 10 years.

6. *Is of the opinion* that in order to clarify the questions which have not yet led to agreement, it is necessary to institute an investigation through the national groups.

Note on paragraph 6: As to the investigation, the Sub-Committee has left to the Executive Committee the task of deciding whether the questionnaire required for the purposes of the investigation, shall be drawn up either by the Bureau of the Association, by a special committee or otherwise."

Mr. Mathély, Reporter General, remarks that the propositions of the Committee can be summed up in three points:

1. A wish aiming at ratification of the proceedings of The Hague of 1960.
2. A formula of agreement on the essential features of a system of protection of designs.
3. A recommendation to proceed to a study of comparative law with respect to the Berlin Congress; the questionnaire will be prepared by the Bureau.

The proposition of the Committee is unanimously adopted.

QUESTION 35 B

Studies on the Unification of Patent Laws Determination of Patentable Inventions and Conditions of Patentability

Mr. Tookey, President of the Committee, submits and comments on the following proposition:

The Executive Committee having considered the reports of the National Groups on the question of the unification of patent laws and particularly on the definition of patentable inventions and the conditions of patentability, recommends the adoption of the following:

1. Purpose of patent protection

The purpose of patent protection is to grant to the inventor an exclusive right for a limited period of time.

Such grant of an exclusive right is justified

- in the interest of progress,
- on the basis of the reward due to the disclosure of his invention by the inventor.

2. Subject matter of a patent

Patents shall be granted for all matter which is novel, involves an invention, and is susceptible of industrial application including (but without limitation) processes, machines, articles of manufacture, compositions of matter.

3. Definition of Novelty

An invention is considered new if it is not part of the prior art. The prior art comprises everything which has become accessible to the public before the date of filing of a national application or of a foreign application on which priority is based, by written or oral description, by use, or by any other manner.

4. Prior Disclosure by Inventor

The question of whether disclosure by the inventor prior to the filing of his application for a patent destroys novelty remains a difficult problem. Hence, the Committee emphasizes that in a case where laws are proposed with the idea of providing safeguards against the destruction of novelty by prior

disclosure by the inventor, it should be appreciated that such provisions would be dangerous unless the matter is taken care of by an international convention.

5. Unpatentable Subject Matter

It is not desirable to specify particular types of subject matter which should be regarded as unpatentable. In principle, all inventions in the industrial field should be regarded as proper subject matter for the grant of patents.

6. Conclusion

The study of Question 35 B should be expanded for the next Congress to the following extent, that it should cover not only the foregoing matters but also the functions of the specifications and claims in relation to the scope of the patent (see *Annuaire* 1960, Supplement No. 9, Consolidated Report, pp. 33, 65, 99). National Groups are asked to submit supplementary reports on this additional matter. If possible, these reports, in provisional or final form, should be submitted by 1st February, 1962, in order that they may be considered by the next meeting of Presidents of the National Groups to be held in that month. In accordance with the principle followed for the above, the reports should indicate not only those reforms which National Groups desire to adopt or are ready to accept, but also those provisions relating to those matters in question which National Groups would recommend for inclusion in any new system of patent law.

Examination of the Draft International Convention concerning the Protection of New Plant Varieties

Mr. Moser von Filseck, Reporter Secretary, first brings forward his commentaries of a general nature on the works of the Committee and the reasons underlying them.

Mr. Woodley, representing the International Bureau, gives some information on the history of this draft Convention and makes observations on its future.

After a few modifications in the wording had been taken into consideration in response to demands made by several members of the Executive Committee, Mr. Moser von Filseck submits the following draft resolution:

The Executive Committee has taken note with great interest of the draft International Convention for the protection of new varieties of plants of August 1960.

The Executive Committee being convinced that the grant of protection in this field is of no less importance than the protection of creations in the industrial field, welcomes the aim of the draft Convention to assure an effective protection of new varieties of plants.

The Executive Committee, however, feels compelled to make the following comments on this draft:

General Comments

I. The Executive Committee believes that the rights to be granted by the draft Convention are within the scope of Article 1 of the International Convention of Paris of 1883. It is an important aim of the Convention of Paris to encourage

economic and technical progress by the protection of creations which could contribute to such progress. In order to realize this aim, the Paris Union is open to all countries that provide legal protection for inventions and trade marks. The new draft Convention is directed in substance to both types of protection with similar objectives, i. e. the provision of incentives for the creation and development of new and improved products. Also, the protection contemplated under the new draft agreement would require with respect to novelty, examination and grant of protection for a limited period, provisions which are similar to those which must be present in existing forms of protection covered by the Convention of Paris of 1883. Under that Convention the machinery for administration is already provided for and a wealth of administrative experience is available.

II. The Executive Committee would like to draw the attention of the participant Governments to the inadvisability of instituting an international Agreement for the protection of new varieties of plants which is not open to all countries that are willing to grant an effective protection in this field. Quite apart from the question of inconsistency between the present draft Convention and the Convention of Paris of 1883, the system embodied in the draft would give rise to the following dangers:

(i) Countries which grant patent protection in the field of new varieties of plants might be encouraged to alter their legislation in order to exclude foreigners from the existing benefits.

(ii) Countries which until now have not provided for any such protection might either form limited Unions on a different basis or enact laws by which protection is granted only to their own nationals.

As a result the conclusion of the proposed Convention might discourage international collaboration in this field.

III. The Executive Committee, while recognizing that there are special problems in the field of new plant varieties and that protection in this field has so far been available only in very few countries, believes that a solution of these problems can be arrived at through the medium of a special arrangement in accordance with the provisions of Article 15 of the Convention of Paris of 1883. It might be possible to make home protection a prerequisite for the grant in other countries adhering to the special Arrangement of protection for a new plant variety. By this means the protection would be lawfully restricted to "ressortissants" of countries that grant protection as provided for in the draft Arrangement, and would nevertheless comply with the provisions of Article 2 of the Convention of Paris of 1883.

IV. The Executive Committee appreciates the advantages, when drafting a Convention in a new field where there has previously been very little protection, of framing provisions in such a way as to ensure a high degree of uniformity between the laws of the countries concerned. Nevertheless the Executive Committee is of the opinion that the provisions of the present draft are in certain respects too rigid.

Special Comments

Article 5

(i) It might be advisable that the protection for ornamental plants capable of vegetative reproduction should not be confined to generative or vegetative reproduction material but should be extended to cover the ornamental plants resulting from the vegetative reproduction or to parts of such plants, so that the plants and also parts of plants such as flowers, for example, would be included.

(ii) The provisions in Article 5 (2) so severely restrict the rights of the breeder that he might be deprived of an equitable reward for his research. It should be left to the countries concerned to decide whether they believe that such a severe restriction is inevitable. Countries that wish to adhere to the new Convention should be left free to give the breeders a better protection. For these reasons, it is suggested that Article 5 (2) and (3) should be deleted.

Article 7

Experience in the field of the protection of technical inventions has shown that examination can take a long time. For this reason it might be advisable to grant a preliminary protection as soon as novelty has been established.

Article 9

This provision envisages that the free exercise of the exclusive right may be restricted in the public interest but sets no limit on the extent or nature of such restriction. The only permissible restriction should be the grant of a compulsory licence by a properly constituted tribunal. In such a case the owner of the right should be entitled to equitable remuneration.

Article 10

This provision is so worded that it would not be possible to annul the right on the ground of fraud.

Article 14

Even if it should be advisable that a special non-proprietary designation be registered for each new variety, such designation should be registered separately from trade marks. The breeder should be entitled to use his own proprietary trade marks and to enforce his rights in them.

The President consults the Executive Committee which unanimously adopts the propositions submitted by the Committee.

International Chamber of Commerce

Commission on the International Protection
of Industrial Property

(Paris, 23rd-24th November 1961)

Summary Record

The Commission for the International Protection of Industrial Property met at International Headquarters, 38, Cours Albert I^{er}, Paris, on 23 and 24 November, 1961, at 3 p. m. under the Chairmanship of Dr. Stephen P. Ladas (United States), Chairman, assisted by Mr. François Prevot (France), First Vice-Chairman, Mr. J. C. Pinto Coelho (Portugal), Mr. P. J. Pointet (Switzerland), Vice-Chairmen, Mr. L. A. Ellwood (United Kingdom), Rapporteur, Mr. Stojan Pretnar (Yugoslavia), Technical Advisor, and Mr. Frédéric Eisemann, Head of the Legal Group, Secretary of the Commission.

The International Bureau was represented by Mr. Ross Woodley, Counsellor.

Among other matters discussed the Commission considered the Draft Resolution submitted by the Brazilian Government to the Second Committee of the General Assembly of the United Nations, proposing that the Secretary-General should draw up a report on certain aspects of the system for the protection of industrial property.

The Chairman said that he thought it necessary for the ICC to take a position in view of the grave repercussions which such a resolution might have on the system for the protection of industrial property, if it were adopted. There were grounds to fear that the report requested from the General Secretariat of the United Nations might be considerably influenced by the so-called "Troika" system, and might challenge hitherto unchallenged principles and adopt certain inaccuracies which underlay the Brazilian point of view. Having emphasized that the sponsors of the draft Resolution were endeavouring to win support from other Delegations, the Chairman invited the Commission to make use of the authorisation given in advance by the ICC Council to draw up a statement designed to defend the patent system against the attacks made on it.

Mr. Hill confirmed that, in obedience to the ICC mission of facilitating international trade without any restrictions, the ICC Council and Executive Committee had given the Commission authority to act with all speed. The Permanent Representative of the ICC at the United Nations had already stated the ICC point of view. It was now for the Commission to finalise a text which the combined action of all the ICC organs could put up in opposition to the point of view which menaced the whole foundation of the system for the international protection of patents.

Mr. Woodley shared the view that it would be a very good thing for the ICC to take up a position as a matter of urgency: he regretted that a statement of this kind had been drawn up at the very moment when the Office of the Union was trying to persuade the new countries to join in the Paris Union.

Mr. Eisemann, after stressing that the National Committees and the ICC Permanent Delegate to the United Nations

were ready to act, thought it would be desirable for the IAPIP to intervene in the same sense.

Mr. Pretnar referred to the complexity of the problems of industrial property in the new countries. He brought out the point that while the deliberations of the ICC had always dealt with the legal aspect, the Brazilian Resolution was more concerned with the economic repercussions. The Yugoslav Delegate thought it desirable that this new subject should be placed on the Commission's programme of work.

Following interventions by Mr. Chapple, Mr. Pointet, Mr. Oudemans, Mr. van Reepingen and Mr. Poirier, the Commission decided to leave it to the Officers to finalize the statement on the basis of the Chairman's draft. It was understood that while seeking to show sympathy for the legitimate concerns of the new countries, the draftsmen should frankly state the opinion of the ICC for the enlightenment of all who sought it.

In view of the urgency of stating the ICC position the Commission agreed that the text finalised by the Officers should be circulated forthwith and reserved the right to consider it before the end of the meeting.

This text having been circulated on the following day (Doc. 450/210 Rev.), the Yugoslav Delegate asked that his abstention be recorded in the Minutes.

* * *

The International Bureau for the Protection of Industrial Property thinks that it would be well to amplify this item of the Summary Record of the Paris Meeting of the International Chamber of Commerce as mentioned above and outline the subsequent developments.

The Commission had before it, as has been indicated, a Draft Resolution submitted by the Brazilian Government to the Second Committee of the General Assembly of the United Nations. The Commission very wisely settled a statement in reply to this Resolution which was despatched to the Secretary-General of the United Nations.

This statement was as follows:

"The International Chamber of Commerce desires again to call attention to the importance of international protection of patents and the promotion of patent licenses leading to progress in economic and technological development throughout the world.

The prosperity and high standards of living of industrially-developed countries are due, to a large extent, to the existence of a patent system. The reward offered to the inventor in that system stimulates and encourages research and invention and attracts capital intended for perfecting inventions and bringing them into the market; and, by requiring the inventor to disclose his invention in the patent application, it adds to the sum of human knowledge and lays the basis for further invention.

Newly developing countries should take advantage of experience and should afford protection by the grant of patents to their own nationals and to foreigners, if they are desirous of accelerating technological and economic progress.

Patent protection enables private capital to be invested in newly developing countries and the creation of new industries and new opportunities for employment in such countries. It also enables small enterprises to maintain themselves, relying on its protection and to compete successfully against large enterprises whatever their economic and financial power.

The generally existing system of compulsory licensing avoids any abuse which might result from the non-working of the invention in any country, and the supplying of its needs merely by importation from other countries. It is just the purpose of a compulsory license system to enable a local industry capable of practicing the invention, but unable to secure a voluntary license from the patentee on adequate terms, to obtain a compulsory license under the legal procedures of the national law.

Newly developing countries, by protecting foreign patentees, enable them to make available to local industry contractually patent licenses, know-how and technological information which enure to commercial success.

The royalties involved are a small burden, when compared with benefits conferred by the disclosure of technological information.

If license agreements include clauses which limit competition in a way beyond that which is normal in patent or know-how agreements, a remedy can always be found in proper and just legislation.

The most advanced and equitable system of international patent rights, taking account of public interest in the use and working of foreigners' patents, is that secured by the International Convention for the Protection of Industrial Property, that is, an international Charter embodying the experience of fifty member countries: it has governed, for nearly eighty years, the relations of countries in all stages of economic development. Its membership includes not only the countries of North America and Western Europe, but also countries of Eastern Europe such as Bulgaria, Czechoslovakia, Hungary, Poland, Roumania and Yugoslavia, and Latin-American countries, such as Brazil, Cuba, Dominican Republic, Haiti and Mexico, and countries of a nascent development, such as Ceylon, Egypt, Greece, Indonesia, Iran, Lebanon, Morocco, Rhodesia, Syria, Tunisia, Turkey and Viet-Nam.

The International Convention has been revised from time to time and, last, in Lisbon in 1958. At a Revision Conference countries have an opportunity to propose and discuss any amendments of the international regime of patents deemed desirable by them. It is submitted that this is the proper and proven method of finding appropriate solutions for any desired changes in the international system of patents.

Therefore, the International Chamber of Commerce urgently recommends that all countries which are not party to the International Convention for the Protection of Industrial Property should adhere to such Convention and should join the fifty countries party to it and that they should give, by

their law, effective protection to inventors and patentees, in order to ensure normal development of industry and trade on a world basis.”

* * *

At the same time, the Director of the International Bureau considered the Draft Resolution of the Brazilian Government and immediately despatched a letter to the Secretary-General of the United Nations drawing his attention to the interest of the International Bureau in this Resolution as being the only International Organisation solely engaged in the development of the protection of industrial property and offering his cooperation in any future work which might emerge as a result of the Brazilian Resolution. A reply was received from the Secretariat of the United Nations thanking the Director and informing him that a Resolution had been adopted by the General Assembly on the 19th December 1961, at the instance of Brazil, in a form which varied considerably from the original Draft submitted.

This Resolution, as adopted, is as follows:

Resolution adopted by the General Assembly

(on the report of the Second Committee [A/5056 and Corr. 1])

1713 (XVI). The role of patents in the transfer of technology to under-developed countries

The General Assembly,

Recalling its resolution 1429 (XIV) of 5 December 1959 on the possibilities of a further expansion of international contacts, as well as an increased exchange of knowledge and experience in the field of applied science and technology,

Taking note of Economic and Social Council resolution 375 (XIII) of 13 September 1951 and of the reports on restrictive business practices prepared by the Secretariat and by the *Ad Hoc* Committee established under the above-mentioned Council resolution ¹⁾,

Bearing in mind that a United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas will be convened under Economic and Social Council resolution 834 (XXXII) of 3 August 1961,

Bearing in mind that access to knowledge and experience in the field of applied science and technology is essential to accelerate the economic development of under-developed countries and to enlarge the over-all productivity of their economies,

Realizing that the protection of the rights of the patent-holders both in their country of origin and in foreign countries has contributed to technical research and, therefore, to international and national industrial progress,

Affirming that it is in the best interest of all countries that the international patent system should be applied in such a way as to take fully into account the special needs and requirements of the economic development of under-developed countries, as well as the legitimate claims of patentees,

Requests the Secretary-General, in consultation with appropriate international and national institutions, and with the concurrence of the Governments concerned, to prepare for the Committee for Industrial Development, for the Economic and Social Council, and for the General Assembly at its eighteenth session, and taking into consideration any pertinent discussions which might take place in the United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas, a report containing:

- (a) A study of the effects of patents on the economy of under-developed countries;
- (b) A survey of patent legislation in selected developed and under-developed countries, with primary emphasis on the treatment given to foreign patents;
- (c) An analysis of the characteristics of the patent legislation of under-developed countries in the light of economic development objectives, taking into account the need for the rapid absorption of new products and technology, and the rise in the productivity level of their economies;
- (d) A recommendation on the advisability of holding an international conference in order to examine the problems regarding the granting, protection and use of patents, taking into consideration the provisions of existing international conventions and the special needs of developing countries, and utilizing the existing machinery of the International Union for the Protection of Industrial Property.

* * *

We understand that the Resolution was adopted by 84 votes in favour, none against, with 7 abstentions. It is important to note that the action to be taken by the Secretary-General is to be “in consultation with appropriate international and national institutions” and that if an international conference is to be called, use shall be made of the “existing machinery of the International Union for the Protection of Industrial Property”.

The words quoted did not appear in the original draft.

¹⁾ See *Official Records of the Economic and Social Council, Sixteenth Session, Supplement No. 11A (E/2379 and Add. 1); ibid., Supplement No. 11 (E/2380); document E/2443; Official Records of the Economic and Social Council, Nineteenth Session, Supplement No. 3 (E/2671); and ibid., Supplement No. 3A (E/2675).*