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Contents

	Pages
INTERNATIONAL UNION	
France. Ratification of the Additional Act to the Arrangement of The Hague (of 25 th May, 1962)	162
LEGISLATION	
Australia. Patents Act 1952-1960 (Part three)	162
Italy. Decrees for the temporary protection of industrial property rights at twelve exhibitions (11 th , 12 th , 30 th April, 2 nd , 3 rd , 4 th , 5 th , 7 th , 8 th , 12 th and 25 th May, 1962)	169
GENERAL STUDIES	
Structural Evolution of the International Unions for the Protection of Intellectual Property (Professor Jacques Secretan)	170
CORRESPONDENCE	
Letter from Argentina (B. Salomon)	179
CONGRESSES AND MEETINGS	
Committee of Experts on Patents of the Council of Europe (Meeting of July, 1962)	183

INTERNATIONAL UNION

FRANCE

Ratification of the Additional Act to the Arrangement of The Hague

(25th May, 1962)

We have received the following communication from the Federal Political Department:

"In a Note dated 25th April, 1962, the Legation of the Principality of Monaco has notified us that France has deposited its instrument of ratification in respect of the Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models of 6th November 1925, revised at London on 2nd June, 1934, and signed at Monaco on 18th November, 1961.

"We have the honour to inform you that we are today instructing our Diplomatic representatives to notify this deposit to the signatory Governments of the above-mentioned Additional Act".

LEGISLATION

AUSTRALIA

Patents Act 1952-1960

(Part three)*

Extension on ground of war loss

95. — (1) Where, by reason of hostilities between Her Majesty and a foreign state, a patentee as such has suffered loss or damage, including loss of opportunity of dealing in or developing his invention, the patentee may, after advertising, as prescribed, his intention to do so, apply to the High Court or to the Commissioner for the extension of the term of the patent.

(2) This section does not apply where the patentee:

- (a) is a subject of the foreign state; or
- (b) is a company:

- (i) the business of which is managed or controlled by; or
- (ii) which is carried on wholly or mainly for the benefit of,

subjects of the foreign state, notwithstanding that the company is registered in Australia or in some other part of the Queen's dominions.

(3) For the purposes of this section, account shall not be taken of loss or damage suffered by a person while he was a subject of the foreign state or by a company while its business was managed or controlled as specified in paragraph (b) of the last preceding sub-section.

(4) An application for the extension of a patent may be made under this section notwithstanding that the patent has previously been extended, or a new patent for the invention has previously been granted, on the ground of inadequate remuneration or, on one or more occasions, on the ground of loss or damage suffered by reason of hostilities between Her Majesty and a foreign state.

(5) An application under this section shall be made at least six months before the expiration of the term of the patent or at such later time as the High Court or the Commissioner, as the case may be, allows.

(6) An application to the High Court under this section shall be made as prescribed by Rules of Court and an application to the Commissioner shall be made as prescribed by the regulations.

(7) A person interested may:

- (a) in the case of an application to the High Court — within such time and in such manner as are prescribed by Rules of Court; or
- (b) in the case of an application to the Commissioner — within such time and in such manner as are prescribed by the regulations,

give notice of opposition to the granting of the application and shall serve a copy of the notice on the applicant.

(8) A person so giving notice is entitled to appear and be heard on the application.

(9) If the High Court finds that the patentee has suffered loss or damage by reason of hostilities between Her Majesty and the foreign state, the High Court may:

- (a) order the extension of the term of the patent, subject to such restrictions, conditions and provisions (if any), for such further term as the Court thinks fit; or
- (b) order the grant of a new patent for such term, and containing such restrictions, conditions and provisions (if any), as the Court thinks fit.

(10) If the Commissioner finds that the patentee has suffered loss or damage by reason of hostilities between Her Majesty and the foreign state, the Commissioner may:

- (a) extend the term of the patent, subject to such restrictions, conditions and provisions (if any) as the Commissioner thinks fit, for such further term as the Commissioner thinks fit; or
- (b) grant a new patent for such term, and containing such restrictions, conditions and provisions (if any), as the Commissioner thinks fit.

(11) The term granted on the application (whether by way of extension or grant of a new patent) shall not exceed ten years but where the term of the patent has previously been extended or a new patent for the invention has previously been granted, on the ground of loss or damage suffered by reason of hostilities between Her Majesty and a

*) See *Industrial Property*, 1962, p. 112, 144.

foreign state, the aggregate of the terms (whether by way of extension or grant of a new patent) shall not exceed ten years.

(12) If the Commissioner considers that an application made to him under this section ought to be decided by the High Court, he may refer the application to the High Court and the High Court may decide the application as though it had been made to the High Court in the first instance.

(13) The patentee shall serve on the Commissioner an office copy of an order of the Court under this section and the Commissioner shall insert in the Register a reference to the order.

Application by exclusive licensee

96. — In this Part, a reference to a patentee includes a reference to an exclusive licensee.

Part X. Restoration of Patents

Application for restoration of patents which have ceased

97. — (1) Where a patent has ceased by reason of failure to pay a prescribed fee within the prescribed time, the patentee may apply to the Commissioner for the restoration of the patent.

(2) The application shall contain a statement of the circumstances which led to the failure to pay the prescribed fee within the prescribed time, and if it appears from the statement that the failure was unintentional, and that no undue delay has occurred in the making of the application, the Commissioner shall advertise the application in the *Official Journal*.

(3) A person interested may, within such time as is prescribed, give notice to the Commissioner of opposition to the restoration and shall serve a copy of the notice on the patentee.

Hearing of application and order thereon

98. — (1) The Commissioner shall hear the case and either restore the patent (including any patent of addition on that patent) or dismiss the application.

(2) The Commissioner shall not restore the patent until all unpaid renewal fees have been paid.

(3) The Commissioner may, if he thinks fit, as a condition of restoring the patent, require that an entry shall be made in the Register in respect of a document or instrument in respect of which the provisions of this Act as to entries in the Register have not been complied with.

(4) Where a patent is restored under this section, such provisions as are prescribed have effect for the protection or compensation of persons who availed themselves, or took definite steps by contract or otherwise to avail themselves, of the subject-matter of the patent after the patent was notified in the *Official Journal* as having ceased and before the date of the first advertisement of the application.

(5) Proceedings shall not be taken in respect of an infringement of a patent committed between the date on which the patent ceased and the date of the restoration of the patent.

(6) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this section, and the Commissioner shall be entitled to appear and be heard, and shall appear if so directed by the Appeal Tribunal.

Part XI. Revocation and Surrender of Patents

Petition to revoke patent

99. — The Attorney-General or any other person may present a petition to the High Court for the revocation of a patent.

Grounds of revocation

100. — (1) A patent may be revoked, either wholly or in so far as it relates to any claim of the complete specification, on one or more of the following grounds, but on no other ground:

- (a) that the applicant was not a person entitled to apply for the patent, so far as the invention is claimed in any claim;
- (b) that the patent, so far as the invention is claimed in any claim, was obtained in contravention of the rights of the petitioner or of some person under or through whom the petitioner claims;
- (c) that the complete specification does not comply with the requirements of section forty of this Act;
- (d) that the invention, so far as claimed in any claim, is not an invention within the meaning of this Act;
- (e) that the invention, so far as claimed in any claim, was obvious and did not involve an inventive step, having regard to what was known or used in Australia on or before the priority date of that claim;
- (f) that the invention, so far as claimed in any claim, is the subject of a valid claim of earlier priority date contained in the complete specification of another patent;
- (g) that the invention, so far as claimed in any claim, was not novel in Australia on the priority date of that claim;
- (h) that the invention, so far as claimed in any claim, is not useful;
- (i) that the patentee has contravened, or has not complied with, the conditions contained in the patent;
- (j) that the patent was obtained on a false suggestion or representation;
- (k) that the invention, so far as claimed in any claim, was secretly used in Australia, before the priority date of that claim; and
- (l) that leave to amend, or a direction to amend, the complete specification under Part VIII of this Act was obtained by fraud.

(2) For the purposes of paragraph (e) or (g) of the last preceding sub-section, account shall not be taken of any secret use.

(3) For the purposes of paragraph (k) of sub-section (1) of this section, account shall not be taken of any use of the invention, so far as claimed in any claim:

- (a) for the purposes of reasonable trial or experiment only; or

(b) by a department or authority of the Commonwealth, or of a State or Territory of the Commonwealth, or by a person authorized by such a department or authority, where the patentee, or a person from whom he derives his title, has communicated or disclosed the invention, so far as so claimed, to the department, authority or person.

(4) This section is subject to section one hundred and fifty-eight of this Act.

Petition may be presented on basis that indicated priority date is incorrect

101. — (1) The petitioner may, in his petition, specify a ground of invalidity by reference either to the priority date indicated in the relevant claim or by reference to a date which the petitioner alleges to be the priority date of that claim as determined by this Act.

(2) If the High Court finds that a date other than the date indicated in the claim (whether that other date is the date alleged in the petition or not) is the priority date of the claim as determined by this Act, the High Court shall, in deciding the case, treat the first-mentioned date as the priority date of the claim.

Hearing of petition

102. — The respondent is entitled to begin and give evidence in support of the patent, and, if the petitioner gives evidence disputing the validity of the patent, the respondent is entitled to reply.

Powers of Court

103. — The High Court may:

- (a) revoke the patent, and shall order the petitioner to serve on the Commissioner an office copy of the order for the revocation of the patent; or
- (b) if it is of opinion that a claim in the complete specification is invalid, revoke the patent in so far as it relates to that claim, and shall order the patentee to lodge at the Patent Office a disclaimer of the invalid claim.

References to be made in Register

104. — The Commissioner shall insert in the Register a reference to an order or disclaimer served on him or lodged at the Patent Office in pursuance of the last preceding section.

Defences in action for infringement

105. — Every ground on which a patent may be revoked is available as a ground of defence in an action for infringement of a patent, and, for the purposes of such a ground of defence in such an action, references in this Part to the petitioner and the respondent shall be read as references to the defendant and plaintiff, respectively.

Surrender of patent

106. — (1) A patentee may at any time, by giving notice to the Commissioner, offer to surrender his patent, and the Commissioner may, after giving notice of the offer and bearing all parties interested who desire to be heard, if he thinks fit, accept the offer, and shall thereupon revoke the patent.

(2) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under the last preceding sub-section.

(3) Where an action for infringement, a proceeding for the revocation of a patent, or a proceeding in which the validity of a patent, or of a claim in the complete specification, is disputed, is pending in a court, the Commissioner shall not accept the offer for the surrender, or revoke the patent, except by leave of the court or by consent of the parties to the action or proceeding.

Grant of patent where patent revoked

107. — (1) Where a patent has been revoked, in so far as it relates to any claim of the complete specification, on the ground of fraud, or where a patent fraudulently obtained has been surrendered and revoked, the Commissioner may, on application made in accordance with the provisions of this Act, grant to the applicant a patent for the whole or a part of the invention in lieu of the patent so revoked.

(2) The priority date of each claim of the complete specification shall be such date as the Commissioner determines, having regard to the priority dates of the claims of the complete specification of the revoked patent.

(2A) An appeal lies to the Appeal Tribunal from a determination of the Commissioner under the last preceding sub-section.

(3) No action lies for an infringement of a patent granted under subsection (1) of this section which occurred before the sealing of the patent.

Part XII. Working of Patents and Compulsory Licences

Compulsory licences

108. — (1) A person interested may, after the expiration of three years from the date of sealing of a patent, present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to the patented invention have not been satisfied, and praying for the grant of a compulsory licence.

(2) The Commissioner shall consider the petition, and, if the parties do not come to an arrangement among themselves and the Commissioner is satisfied that a *prima facie* case has been made out, he shall refer the petition to the High Court; if the Commissioner is not so satisfied he shall dismiss the petition.

(3) Where the Commissioner refers a petition to the High Court in pursuance of the last preceding sub-section, and the Court is satisfied that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the Court may order the patentee to grant licences on such terms as, subject to this Part, the Court thinks just.

(3A) In an order under the last preceding sub-section, the Court shall direct that the licence to be granted:

- (a) shall be a licence that does not confer on the licensee, or on the licensee and persons authorized by him the right to make, use, exercise and vend the patented invention to the exclusion of all other persons, including the patentee; and

(b) shall be a licence assignable only in connexion with an enterprise or goodwill in connexion with which the licence is used.

(4) On the hearing of a petition under this section:

(a) the patentee, and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made a party to the proceedings; and

(b) the Commissioner shall be entitled to appear and be heard.

(5) An order directing the grant of a licence operates, without prejudice to any other method of enforcement, as if it were embodied in a deed granting a licence executed by the patentee and all other necessary parties.

(6) The petitioner shall serve on the Commissioner an office copy of an order under this section directing the grant of a licence and the Commissioner shall insert in the Register a reference to the order.

Revocation for non-working

109. — (1) A person interested may, after the expiration of two years from the date of granting of the first compulsory licence, present a petition to the Commissioner alleging that the reasonable requirements of the public with respect to a patented invention have not been satisfied, and praying for the revocation of the patent.

(2) The Commissioner shall consider the petition, and, if the parties do not come to an arrangement among themselves and the Commissioner is satisfied that a *prima facie* case has been made out, he shall refer the petition to the High Court; if the Commissioner is not so satisfied he shall dismiss the petition.

(3) Where the Commissioner refers a petition to the High Court in pursuance of the last preceding sub-section, and the Court is satisfied that the reasonable requirements of the public with reference to the patented invention have not been satisfied, the Court may (unless the patentee gives satisfactory reasons for his default) make an order revoking the patent.

(4) On the hearing of a petition under this section:

(a) the patentee, and any person claiming an interest in the patent as exclusive licensee or otherwise, shall be made a party to the proceedings; and

(b) the Commissioner shall be entitled to appear and be heard.

(5) The petitioner shall serve on the Commissioner an office copy of an order under this section revoking a patent and the Commissioner shall insert in the Register a reference to the order.

Reasonable requirements of public deemed not to have been satisfied in certain circumstances

110. — (1) For the purposes of the last two preceding sections, the reasonable requirements of the public shall be deemed not to have been satisfied:

(a) if, by reason of the default of the patentee:

(i) to manufacture to an adequate extent, and supply on reasonable terms, the patented article, or a part

of the patented article which is necessary for its efficient working;

(ii) to carry on the patented process to an adequate extent; or

(iii) to grant licences on reasonable terms, an existing trade or industry, or the establishment of a new trade or industry, in Australia is unfairly prejudiced, or the demand for the patented article, or the article produced by the patented process, is not reasonably met;

(b) if a trade or industry in Australia is unfairly prejudiced by the conditions attached by the patentee, whether before or after the commencement of this Act, to the purchase, hire or use of the patented article, or to the using or working of the patented process;

(c) if the patented invention, being an invention capable of being worked in Australia, is not being worked in Australia on a commercial scale and no satisfactory reason is given for the non-working; or

(d) if the working of the patented invention in Australia on a commercial scale is being hindered by the importation from abroad of the patented article by:

(i) the patentee or persons claiming under him;

(ii) by persons directly or indirectly purchasing from him; or

(iii) by other persons against whom the patentee is not taking, or has not taken, proceedings for infringement.

(2) Where, in any case to which paragraph (c) of the last preceding sub-section applies, the Court is satisfied that the time which has elapsed since the sealing of the patent has, by reason of the nature of the invention or for some other cause, been insufficient to enable the invention to be worked in Australia on a commercial scale, the Court may adjourn the further hearing of the petition for such period as appears to the Court to be sufficient for that purpose.

Order not to be at variance with treaty

111. — An order shall not be made under this Part which is at variance with a treaty, convention, arrangement or engagement between the Commonwealth and some other part of the Queen's dominions or between the Commonwealth and a foreign country.

Avoidance of certain conditions attached to sale, etc., of patented articles

112. — (1) It is not lawful, in a contract in relation to the sale or lease of, or a licence to use or work, a patented article or patented process, to insert a condition the effect of which would be:

(a) to prohibit or restrict the purchaser, lessee or licensee from using an article or class of articles or process, whether patented or not, supplied or owned by a person other than the seller, lessor or licensor, or his nominee; or

(b) to require the purchaser, lessee or licensee to acquire from the seller, lessor or licensor, or his nominee, an article or class of articles not protected by the patent, and any such condition is void.

(2) The last preceding sub-section does not apply if:

- (a) the seller, lessor or licensor proves that, at the time the contract was entered into, the purchaser, lessee or licensee had the option of purchasing the article or obtaining a lease or licence on reasonable terms without the condition; and
- (b) the contract entitles the purchaser, lessee or licensee to relieve himself of his liability to observe the condition on giving the other party three months' notice in writing, and on payment in compensation for that relief:
- (i) in the case of a purchase — of such sum; or
- (ii) in the case of a lease or licence — of such rent or royalty for the residue of the term of the contract, as is fixed by an arbitrator appointed by the Attorney-General.

(3) In an action, application or proceeding under this Act, a person is not estopped from applying for or obtaining relief by reason only of an admission made by him as to the reasonableness of the terms offered to him under paragraph (a) of the last preceding sub-section.

(4) A contract relating to the lease of, or licence to use or work, a patented article or patented process may at any time after the patent, or all the patents, by which the article or process was protected at the time of the making of the contract has, or have, ceased to be in force, and notwithstanding anything in the same or in any other contract to the contrary, be determined by either party on giving three months' notice in writing to the other party.

(5) The insertion by the patentee in a contract of a condition which, by virtue of this section, is void is available as a defence to an action for infringement of the patent to which the contract relates, brought while that contract is in force.

(6) If the patentee offers to the other parties to a contract in which any such condition is inserted a new contract from which the condition is omitted but under which the rights of the parties are otherwise identical, then, whether the other parties accept the new contract in lieu of the existing contract or not, the defence ceases to be available in respect of the contract, but the patentee is not entitled to recover damages, or to an account of profits, in respect of an infringement of the patent committed before the new contract has been so offered.

(7) Nothing in this section:

- (a) effects a condition in a contract by which a person is prohibited from selling goods other than those of a particular person;
- (b) validates a contract which, but for this section, would be invalid;
- (c) affects a right of determining a contract, or a condition in a contract, exercisable independently of this section; or
- (d) affects a condition in a contract for the lease of, or licence to use, a patented article, by which the lessor or licensor reserves to himself or his nominee the right to supply such new parts of the patented article as are required to put or keep it in repair.

Part XIII. Infringement of Patents

High Court to have jurisdiction in infringement actions

113. — Jurisdiction is, by this section, conferred on the High Court to hear and determine an action or proceeding for the infringement of a patent, but this section does not deprive another court of jurisdiction which it possesses to hear and determine such an action or proceeding.

Exclusive licensee may sue for infringement

114. — (1) An exclusive licensee may bring an action or proceeding for the infringement of a patent.

(2) The patentee shall, unless he is joined as a plaintiff in the action or proceeding, be joined as a defendant.

(3) A patentee joined as a defendant is not liable for costs unless he enters an appearance and takes part in the proceedings.

Defendant may counter-claim for revocation

115. — A defendant in an action or proceeding for infringement of a patent may, without presenting a petition to the High Court under Part XI, apply by way of counter-claim in the action or proceeding for the revocation of the patent.

Proceedings to be removed from State Courts to High Court where counter-claim for revocation

116. — (1) Where a defendant, in an action or proceeding for the infringement of a patent in a court other than the High Court, applies by way of counter-claim for the revocation of the patent, the action or proceeding shall thereupon be removed into the High Court.

(2) The proceedings in the action or proceeding, and such documents (if any) relating to the action or proceeding as are filed as of record in the court in which the action or proceeding was commenced, shall be transmitted to the Registry of the High Court in the State or Territory of the Commonwealth in which the first-mentioned court is situated, or, if there is no such Registry, to the Principal Registry of the High Court.

(3) The provisions of sections forty-one, forty-three, forty-four and forty-six of the *Judiciary Act 1903-1950* apply in relation to an action or proceeding which is, or ought to be, removed into the High Court under this section.

Procedure in action for infringement of patent

117. — In an action or proceeding for infringement of a patent:

- (a) the plaintiff shall deliver with his statement of claim or declaration, or, by order of the court, Justice or Judge, at a subsequent time, particulars of the infringements complained of; and
- (b) the defendant shall deliver with his statement of defence or plea, or, by order of the court, Justice or Judge, at a subsequent time, particulars of the objections on which he relies.

Relief in action for infringement of patent

118. — (1) The relief which a court may grant in an action or proceeding for infringement of a patent includes an

injunction (subject to such terms, if any, as the court thinks fit) and, at the option of the plaintiff, either damages or an account of profits.

(2) The court, Justice or Judge may, on the application of either party, make such order for inspection, and impose such terms and give such directions with respect to the inspection, as the court, Justice or Judge thinks fit.

Order revoking patent to be served on Commissioner

119. — (1) Where, in an action or proceeding for the infringement of a patent, the court, on an application by the defendant by way of counter-claim —

- (a) revokes the patent — the court shall order the defendant to serve on the Commissioner an office copy of the order revoking the patent; or
- (b) revokes the patent in so far as it relates to an invalid claim — the court shall order the patentee to lodge at the Patent Office a disclaimer of the invalid claim.

(2) The Commissioner shall insert in the Register a reference to an order or disclaimer served on him or lodged at the Patent Office in pursuance of the last preceding sub-section.

Declaration as to non-infringement

120. — (1) A person who desires to use a process, or to make, use or sell an article, may, by action in the High Court against a patentee or exclusive licensee, claim a declaration that the use of the process, or the making, use or sale of the article, would not constitute an infringement of a claim of the specification of the patent, although no assertion to the contrary has been made by the patentee or licensee.

(2) The High Court has jurisdiction to hear and determine an action under the last preceding sub-section.

(3) The High Court shall not make a declaration sought in an action under sub-section (1) of this section unless —

- (a) the plaintiff —
 - (i) has applied in writing to the defendant for an admission in writing to the effect of the declaration sought;
 - (ii) has furnished the defendant with full particulars in writing of the process or article; and
 - (iii) has undertaken to pay a reasonable sum for the expenses of the defendant in obtaining advice in respect of the declaration sought; and
- (b) the defendant has refused or failed to make such an admission.

(4) The costs of all parties in proceedings for a declaration under this section shall, unless the High Court otherwise orders, be paid by the person seeking the declaration.

(5) The validity of a claim in the specification of a patent shall not be called in question in proceedings for a declaration under this section and the making of, or refusal to make, the declaration does not imply that the patent is valid.

(6) Proceedings for a declaration under this section may be taken at any time after the publication of the complete specification and references in this section to a patentee shall be read as including a reference to an applicant whose complete specification has been published.

Groundless threats of legal proceedings

121. — (1) Where a person, by means of circulars, advertisements or otherwise, threatens a person with an action or proceeding for infringement of a patent, or some other like proceeding, then, whether the person making the threats is or is not entitled to or interested in a patent, or is or is not interested in an application for a patent, a person aggrieved may bring an action against the first-mentioned person and may obtain a declaration to the effect that the threats are unjustifiable, and an injunction against the continuance of the threats, and may recover such damages (if any) as he has sustained, unless the first-mentioned person satisfies the court that the acts in respect of which the proceedings were threatened constitute, or, if done, would constitute:

- (a) an infringement of a patent in respect of a claim in the specification which is not shown by the plaintiff to be invalid; or
- (b) an infringement of rights arising from the publication of the complete specification in respect of a claim in the specification which is not shown to be one which would be invalid if a patent had been granted in respect of the complete specification.

(2) The mere notification of the existence of a patent does not constitute a threat of proceedings within the meaning of this section.

(3) Nothing in this section renders a legal practitioner or a patent attorney liable to an action under this section in respect of an act done by him in his professional capacity on behalf of a client.

(4) Jurisdiction is, by this section, conferred on the High Court to hear and determine an action under this section, but this section does not deprive any other court of any jurisdiction which it possesses to hear and determine such an action.

Counter-claim by defendant for infringement

122. — (1) The defendant in an action under the last preceding section may apply, by way of counter-claim, for relief to which he would be entitled in a separate action in respect of an infringement, by the plaintiff, of the patent to which the threats relate and in any such case the provisions of this Act with respect to an action for infringement of a patent are, *mutatis mutandis*, applicable in relation to the action.

(2) Where the defendant applies by way of counter-claim for relief in respect of such an infringement, the plaintiff may, without presenting a petition to the High Court under Part XI, apply in the action for the revocation of the patent, and in any such case the provisions of section one hundred and sixteen of this Act and the provisions of this Act with respect to a petition for the revocation of a patent are, *mutatis mutandis*, applicable in relation to the action.

Special provisions as to vessels, aircraft and land vehicles

123. — (1) Subject to this section, the rights of the patentee are not infringed:

- (a) by the use on board a foreign vessel of the patented invention in the body of the vessel or in the machinery, tackle, apparatus or other accessories of the vessel, if the

vessel comes into waters within the territorial limits of Australia temporarily or accidentally only and the invention is used exclusively for the needs of the vessel; or

(b) by the use of the patented invention in the construction or working of a foreign aircraft or land vehicle, or in the accessories of such an aircraft or vehicle, if the aircraft or vehicle comes into Australia temporarily or accidentally only.

(2) In this section:

(a) "foreign vessel" and "foreign aircraft" mean a vessel or aircraft registered in a country with respect to which there is in force for the time being a Proclamation declaring that the laws of that country confer corresponding rights with respect to vessels, aircraft and land vehicles of Australia⁸); and

(b) "foreign land vehicle" means a land vehicle owned by a person ordinarily resident in such a country.

Exemption of innocent infringer from liability for damages

124. — (1) A court may refuse to award damages, or to make an order for an account of profits, in respect of an infringement of a patent committed after the date of commencement of this Act from a defendant who satisfies the court that, at the date of the infringement, he was not aware, and had no reason to believe, that a patent for the invention existed.

(2) If articles manufactured according to a patented invention and marked in such a manner as to indicate that the articles are patented in Australia have been sold or used in Australia to a substantial extent, the defendant shall be deemed, unless the contrary is proved, to have been aware of the existence of the patent.

(3) Nothing in this section affects the power of a court to grant relief by way of an injunction.

Part XIV. The Crown

Use of inventions for services of the Commonwealth or a State

125. — (1) At any time after an application for a patent has been lodged at the Patent Office or a patent has been granted, the Commonwealth or a State, or a person authorized in writing by the Commonwealth or a State, may make, use, exercise or vend the invention for the services of the Commonwealth or State.

(2) Where a patented invention was, before the priority date of the relevant claim of the complete specification, recorded in a document by, or tested by or on behalf of, the Commonwealth or a State, otherwise than in consequence of the communication of the invention directly or indirectly by the patentee or by a person from whom he derives title, no remuneration is payable to the patentee in respect of the use

of the invention by the Commonwealth or the State, as the case may be, under the last preceding sub-section.

(3) Authority may be given under sub-section (1) of this section either before or after a patent for the invention has been granted, and either before or after the acts in respect of which the authority is given have been done, and may be given to a person notwithstanding that he is authorized directly or indirectly by the applicant or patentee to make, use, exercise or vend the invention.

(4) Where an invention has been made, used, exercised or vended under sub-section (1) of this section, the Commonwealth or State shall, unless it appears to the Commonwealth or State that it would be contrary to the public interest to do so, inform the applicant or patentee as soon as possible of the fact and shall furnish him with such information as to the making, use, exercise or vending of the invention as he from time to time reasonably requires.

(5) Subject to sub-section (2) of this section, where a patented invention is made, used, exercised or vended under sub-section (1) of this section, the terms for the making, use, exercise or vending of the invention are such terms as are, whether before or after the making, use, exercise or vending of the invention, agreed upon between the Commonwealth or the State and the patentee or, in default of agreement, as are fixed by the High Court.

(6) The High Court may, in fixing those terms, take into consideration compensation which a person interested in the invention or patent has received, directly or indirectly, from the Commonwealth or State in respect of the invention or patent.

(7) An agreement or licence (whether made or given before or after the commencement of this Act) fixing the terms upon which a person other than the Commonwealth or a State may make, use, exercise or vend an invention is inoperative with respect to the making, using, exercising or vending of the invention, after the commencement of this Act, under subsection (1) of this section, unless the agreement has been approved by the Attorney-General of the Commonwealth or of the State.

(8) No action for infringement lies in respect of the making, use, exercise or vending of a patented invention under sub-section (1) of this section.

(9) The right to make, use, exercise and vend an invention under sub-section (1) of this section includes the right to sell goods which have been made in exercise of that right and a purchaser of goods so sold, and a person claiming through him, is entitled to deal with the goods as if the Commonwealth or State were the patentee of the invention.

(10) Where the Government of the Commonwealth has made an agreement or arrangement with the Government of some other country for the supply to that country of goods required for the defence of that country

(a) the use of an invention by the Commonwealth, or by a person authorized in writing by the Commonwealth, for the supply of those goods shall, for the purposes of this Part, be deemed to be use of the invention by the Commonwealth for the purposes of the Commonwealth;

⁸ The Governor-General, by Proclamations dated 20th April, 1954 and 24th July, 1958, declared that the laws of certain specified countries confer corresponding rights with respect to vessels, aircraft and land vehicles of Australia. See *Commonwealth Gazette* 1954, p. 1237, and Vol. V of Commonwealth Statutory Rules 1901-1956, p. 5466; and *Commonwealth Gazette* 1958, p. 2691, and Commonwealth Statutory Rules 1958, p. 530.

- (b) the Commonwealth or that person may sell those goods to that country in pursuance of the agreement or arrangement; and
- (c) the Commonwealth or that person may sell to any person such of those goods as are not required for the purpose for which they were made.

Declaration may be sought as to use of patented invention

126. — (1) A patentee who considers that a patented invention has been made, used, exercised or vended under sub-section (1) of the last preceding section may apply to the High Court for a declaration accordingly.

(2) In a proceeding under the last preceding sub-section:

- (a) the Commonwealth or the State concerned, as the case may be, shall be the defendant; and
- (b) the Commonwealth or State may, by way of counterclaim in the proceeding, apply for the revocation of the patent, in which case the provisions of this Act with respect to the revocation of patents apply, *mutatis mutandis*, in relation to the counter-claim.

Exclusive licensees

127. — In the last two preceding sections, references to a patentee include references to an exclusive licensee under the patent.

Forfeited articles

128. — Nothing in this Part affects the right of the Commonwealth or of a State, or a person deriving title directly or indirectly from the Commonwealth or a State, to sell or use an article forfeited under a law of the Commonwealth or the State.

Acquisition of inventions and patents by the Commonwealth

129. — (1) The Governor-General may direct that an invention the subject of an application for the grant of a patent, or a patent, shall be acquired by the Attorney-General from the applicant or patentee and thereupon the invention or patent, and all rights in respect of the invention or patent, are, by force of this section, transferred to and vested in the Attorney-General in trust for the Commonwealth.

(2) Notice of the acquisition shall be given to the applicant or patentee and be published in the *Official Journal* and the *Gazette* unless, in the case of the acquisition of an invention the subject of an application for a patent, an order is in force under section one hundred and thirty-one of this Act in relation to the application.

(3) The Commonwealth shall pay to the applicant or patentee, and, in the case of the acquisition of a patent, to all other persons appearing in the Register as having an interest in the patent, such compensation as is agreed upon between the Commonwealth and the applicant, patentee or other persons, as the case may be, or as, in default of agreement, is determined by the High Court in an action for compensation against the Commonwealth.

(To be continued)

(Translation)

ITALY

Decrees

concerning the temporary protection of industrial property rights at twelve exhibitions

(of 11, 12, 30 April, 2, 3, 4, 5, 7 and 8 May, 1962) ¹⁾

Industrial inventions, utility models, designs or models and trade marks relating to objects appearing at the following exhibitions:

X^a *Mostra nazionale di elettrodomestici* (Milan, 5-12 September, 1962);

XXVIII^a *Mostra nazionale della radio e televisione* (Milan, 5-12 September, 1962);

XX^a *Fiera di Ancona — Mostra mercato internazionale della pesca, degli sports nautici e attività affini* (Ancône, 23 June-18 July, 1962);

XXVI^a *Fiera del Levante — campionaria internazionale* (Bari, 9-24 September, 1962);

Salone internazionale della ceramica and

Mostra nazionale dell'argenteria e oreficeria, and

Mostra nazionale biennale del marmo (Vicenza, 6-16 September, 1962);

Settimana della calzatura e del cuoio — XXVI^o Salone internazionale (Vigevano, 15-23 September, 1962);

XVII^a *Mostra internazionale delle conserve alimentari e dei relativi imballaggi — Salone internazionale per le attrezzature delle industrie alimentari* (Parma, 20-30 September, 1962);

XII^o *Salone internazionale della tecnica* (Turin, 22 September, 1962);

XLIV^o *Salone internazionale dell'automobile* (Turin, 31 October-11 November, 1962);

Biennale italiana della macchina utensile (Milan, 6-15 October, 1962)

shall enjoy the temporary protection provided by laws No. 1127 of 29th June, 1939²⁾, No. 1411 of 25th August, 1940³⁾, No. 929 of 21st June, 1942⁴⁾, and No. 514 of 1st July, 1959⁵⁾.

¹⁾ Official communications from the Italian Administration.

²⁾ See *Prop. ind.*, 1939, p. 124; 1940, p. 84.

³⁾ *Ibid.*, 1940, p. 196.

⁴⁾ *Ibid.*, 1942, p. 168.

⁵⁾ *Ibid.*, 1960, p. 23.

GENERAL STUDIES

(Translation)

Structural Evolution of the International Unions for the Protection of Intellectual Property ¹⁾

Jacques SECRETAN

Avocat honoraire,

Emeritus Professor of the University of Lausanne,
Member of the International Diplomatic Academy,
Director of the United International Bureaux for the Protection
of Industrial, Literary and Artistic Property

CORRESPONDENCE

Letter from Argentina

By Dr. B. SALOMON, Buenos Aires

CONGRESSES AND MEETINGS

Committee of Experts on Patents of the Council of Europe

(Meeting of July, 1962)

The Committee of Experts on Patents of the Council of Europe met in Strashourg, under the chairmanship of Mr. Grant (United Kingdom).

The Committee has prepared a "*Draft Convention on the unification of certain points of substantive law on patents for invention*".

Its purpose is to unify certain basic features of the law on patents. It refers successively to the requirements an invention must fulfil to be patented and to the conditions governing the description of the invention and the claims contained in the patent. In spite of the fundamental differences in national legislations, the Committee reached agreement on most points.

The draft Convention will be submitted to the Committee of Ministers of the Council of Europe for approval. It follows two European Conventions which entered into force on 1st June and 1st August, 1955, respectively, i. e. the "European Convention relating to the Formalities required for Patent Applications" and the "European Convention on the International Classification of Patents for Invention".

The July meeting was attended by experts of all member countries of the Council of Europe. Observers from Israel, Spain and Switzerland, and representatives of the European Economic Community, Euratom and the International Patent Institute of The Hague were also present.

The International Bureaux for the Protection of Industrial Property was represented by its Vice-Director, M. Ch.-L. Magnin.
