

Industrial Property

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INTERNATIONAL UNION

Entry into force of the Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models on 1st December, 1962

Ratification by the Federal Republic of Germany (25th October, 1962)

We have been informed by the Federal Political Department of the Swiss Government and by the Government of the Principality of Monaco that the Federal Republic of Germany has deposited, on 25th October, 1962, its instrument of ratification of the Additional Act to The Hague Arrangement for the International Deposit of Industrial Designs or Models, signed at Monaco on 18th November, 1961.

In its ratification the Federal Republic of Germany has indicated that its ratification shall apply equally to the *Land* of Berlin, from the date on which the Accord enters into force in the Federal Republic of Germany.

The Federal Republic of Germany thus being the second State¹⁾ to ratify the Additional Act to the Arrangement of The Hague, this Accord will enter into force in accordance with paragraph (2) of Article 7 of the said Act, on 1st December, 1962, the notification by the Swiss Government having been made on the 1st November, 1962.

Joint Meeting of the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union

(Geneva, 15th to 19th October, 1962)

The Permanent Bureau of the Consultative Committee of the Paris Union for the Protection of Industrial Property met in Geneva on the 29th and 30th March, 1962²⁾, to examine the report of three Experts nominated by the Swiss Government in conformity with a request which had been made by the Consultative Committee of the Paris Union at its Meeting at Geneva in May 1961³⁾.

After examining this report, together with an analysis of it, prepared by its President, Mr. Guillaume Finnis, the Permanent Bureau decided to nominate a Working Group com-

posed of the President, Mr. Finnis (France), and Messrs. Němeček (Czechoslovakia), Roscioni (Italy), de Haan (Netherlands), Grant (United Kingdom) and Ladd (U. S. A.). The duty of this Working Group was to prepare documents on certain financial questions (ceiling of contributions of the States Members, financial effects of the possible adoption of a new scale of salaries, etc.), the immediate tasks of the United International Bureaux, the international status of the organs of the Unions, new functions, certain questions of organisation of the Bureaux, etc.

The Resolution adopted by the Permanent Bureau of the Consultative Committee of the Paris Union in March 1962 furthermore invited the Permanent Committee of the Berne Union to hold a Joint Meeting with it for the purpose of studying the proposals which would be contained in the working documents to be prepared, bearing in mind that any suggestion relating to the future organisation of the United International Bureaux was likely to have an effect on the Berne Union.

The Working Group appointed met in Geneva in June 1962¹⁾, and established a general document entitled "Plan of Reorganisation of BIRPI", together with two annexes, one containing Draft Financial Regulations and the other Draft Staff Regulations. One of the six members of this Working Group, Mr. Němeček (Czechoslovakia), being unable to take part in the Meeting of the 10th to 14th June, 1962, made his observations later.

This documentation, together with the observations of Mr. Němeček, was sent to members of the Permanent Bureau of the Consultative Committee of the Paris Union for the Meeting held at Geneva from the 10th to 13th October, 1962. The same documentation was also sent to members of the Permanent Committee of the Berne Union, together with an invitation to meet in Extraordinary Session jointly with the Permanent Bureau of the Consultative Committee of the Paris Union. This Joint Meeting was held in Geneva at the headquarters of the United International Bureaux from the 15th to 19th October, 1962, under the alternate chairmanship of Mr. Guillaume Finnis (France), Chairman of the Permanent Bureau of the Consultative Committee of the Paris Union, and of Mr. José-Antonio García-Noblejas (Spain), Chairman of the Permanent Committee of the Berne Union. The representatives who appear in the list below took part in this Joint Session.

At the conclusion of the Meeting, the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union adopted texts which are set out hereafter.

List of Participants

Abbreviations:

- BP = Member of the Permanent Bureau of the Paris Union.
- CP = Member of the Permanent Committee of the Berne Union.
- BPCP = Member of both.

¹⁾ France ratified the Additional Act on 25th May, 1962 (see *Industrial Property*, No. 7, July 1962, p. 162).

²⁾ See *Industrial Property*, May 1962, p. 112.

³⁾ See *Industrial Property Quarterly*, 1961, No. 3, p. 197.

¹⁾ See *Industrial Property*, June 1962, p. 143.

Belgium

- Pierre Recht (Chef de délégation CP), Président de la Commission nationale belge du droit d'auteur, Bruxelles.
- Jean Beaufays (CP), Administrateur délégué de la Société belge des auteurs (SABAM), Bruxelles.
- Marie-Louise Hannessee (CP), Secrétaire de la Commission nationale belge du droit d'auteur, Bruxelles.

Czechoslovakia

- Jaroslav Němeček (Chef de délégation BP), Président du Bureau national des brevets, Prague.
- Vladimír Průša (BP), Docteur en droit, Diplomate, Prague.
- Otto Kunz (BP), Expert, Académie des sciences tchécoslovaque, Prague.

Denmark

- Torben Lund (Chef de délégation CP), Professeur à l'Université de Aarhus, Risskov.
- Edvard Jeppesen (CP), Head of Section in the Ministry for Cultural Affairs, Copenhagen.

France

- G. M. Finnis (Chef de délégation BP), Directeur de la propriété industrielle au Ministère de l'Industrie, Paris.
- Henry Puget (Chef de délégation CP), Conseiller d'Etat, Président de la Commission de la propriété intellectuelle, Paris.
- Roger M. N. Labry (BP), Conseiller d'Ambassade, Ministère des Affaires étrangères, Paris.
- Mareel Pierre (BP), Administrateur civil, Ministère de l'Industrie, Paris.

Germany (Federal Republic of)

- Herbert Kühnemann (Chef de délégation BP), Président de l'Office allemand des brevets, Munich.
- Eugen Ulmer (Chef de délégation CP), Professeur, Munich.
- Kurt Haertel (BPCP), Ministerialdirigent, Bundesjustizministerium, Bonn.
- Albrecht Krieger (BPCP), Regierungsdirektor, Bundesjustizministerium, Bonn.
- Walther von Marshall (BPCP), Legations-Sekretär, Auswärtiges Amt, Bonn.

Hungary

- Emile Tasnadi (Chef de délégation BP), Président de l'Office national des inventions, Budapest.
- Gynla Pusztai (BP), Chef de la Section juridique de l'Office national des inventions, Budapest.

Italy

- Giuseppe Talamo Atenolfi Brancaccio di Castelnuovo (Chef de délégation BPCP), Ambassadeur d'Italie, Délégué aux accords de propriété intellectuelle, Ministère des Affaires étrangères, Rome.
- Marcello Roscioni (BPCP), Inspecteur général, Directeur de l'Office italien des brevets, Rome.
- Giovanni di Blasi (BPCP), Magistrat, Attaché au Ministère des Affaires étrangères, Rome.

Japan

- Tatsuo Yoshioka (Chef de délégation BP), Troisième Secrétaire de la Délégation permanente du Japon auprès des Organisations internationales à Genève, Genève.

Netherlands

- C. J. de Haan (Chef de délégation BP), Président du Conseil des brevets néerlandais, La Haye.
- Willem M. J. C. Phaf (BP), Directeur du Service juridique du Ministère des Affaires économiques, La Haye.
- H. J. A. M. Vrouwenvelder (BP), Chef de la Division comptable du Ministère des Affaires économiques, La Haye.

Portugal

- José Galhardo (Chef de délégation CP), Président de la «Sociedade de Escritores e Compositores Teatrais Portugueses», Lisbonne.

Spain

- Antonio Fernandez-Mazarambroz (Chef de délégation BP), Chef du Registre de la propriété industrielle, Madrid.
- José-Antonio Garcia-Noblejas (Chef de délégation CP), Abogado, Notario, Ministerio Educación Nacional, Madrid.
- Victor de la Serna (CP), Attaché pour l'information à la Délégation permanente d'Espagne auprès des Organisations internationales à Genève, Genève.

Sweden

- Ake von Zweigbergk (Chef de délégation BP), Director-General, Patent Office, Stockholm.
- Torwald Hesser (BP, Obs. CP), Judge at the Court of Appeal, Ministry of Justice, Stockholm.

Switzerland

- Hans Morf (Chef de délégation BPCP), Avocat, Berne.
- Joseph Voyame (BPCP), Directeur du Bureau fédéral de la propriété intellectuelle, Berne.
- Rodolphe Bühner (BPCP), Représentant du Département politique fédéral, Berne.

United Kingdom

- Gordon Grant (Chef de délégation BPCP), Comptroller-General of Patents, Designs and Trade Marks, Patent Office, London.
- William Wallace (BPCP), Assistant Comptroller, Industrial Property Department, Patent Office, London.

United States of America

- Arpad Bogsch (Chef de délégation BP), Legal Advisor, Copyright Office, Washington, D. C.
- George A. Tesoro (BP), Counsellor, U. S. Permanent Mission, Genève.
- Harvey J. Winter (BP), Assistant Chief, International Business Practices Division, Department of State, Washington, D. C.

Yugoslavia

- Vladimir Savić (Chef de délégation BP), Directeur de l'Office des brevets, Belgrade.

Secretariat: BIRPI

- Ross Woodley, Counsellor, Head of the Industrial Property Division, Secretary-General of the Consultative Committee of the Paris Union.
- Claude Masouyé, Counsellor, Head of the Copyright Division, Secretary of the Permanent Committee of the Berne Union.
- Roland Walther and Georges-Richard Wipf, Secretaries.

Representatives of BIRPI

Professor Jacques Secretan, Director.

Charles-L. Magnin, Vice-Director.

Georges Béguin, Counsellor, Head of the Administrative Division.

Giulio Ronga, Counsellor, Head of the Legal Division.

Texts adopted

The Permanent Bureau of the Consultative Committee of the International (Paris) Union for the Protection of Industrial Property (hereafter the Permanent Bureau) and the Permanent Committee of the International (Berne) Union for the Protection of Literary and Artistic Works (hereafter the Permanent Committee) met jointly at the headquarters of BIRPI at Geneva, Switzerland, from October 15th to October 19th, 1962, and agreed as follows¹):

1. Financial Matters

1. — It is recommended that the Swiss Government as Supervisory Authority:

- (a) invite the Governments of the States Members of the Paris Union to accept that the ceiling of the expenses of that Union be raised to 900,000 Swiss francs per year and to pay their contributions on this basis from January 1st, 1963;
- (b) (i) continue the present consultation in order that the Governments of the States Members of the Berne Union raise the ceiling of the expenses of that Union to 400,000 Swiss francs per year and that the contributions be paid on this basis from January 1st, 1962;
- (ii) call to the attention of those Governments which have not yet accepted this new ceiling that their prompt acceptance is important for the efficient working of the services of the Berne Union.

2. — The Permanent Bureau and the Permanent Committee recommend that the new salary system, the new activities, and other measures having financial implications be put into effect step by step, as soon as possible, always provided that, by reason of the increase of the contributions of the Member States, a more economic organisation of BIRPI, or the increase of BIRPI's revenues from other sources, the necessary funds are available.

3. — The Permanent Bureau and the Permanent Committee invite their respective Chairmen to appoint one or more experts who will, on behalf of the Paris and Berne Unions, work with the expert appointed by the Committee of Directors of National Industrial Property Offices (Madrid Union) in order to give an opinion on the following questions:

- (a) what constitutes the proper expense of each Union;
- (b) what constitutes the common expense of several Unions and what would be the fair share of each Union in it;
- (c) what books and records should be kept, particularly for budgetary and accounting purposes, in order to assure

the accurate determination of the replies to the above questions.

2. Staff and Financial Regulations

The Permanent Bureau and the Permanent Committee are of the opinion that it would be advisable if the Swiss Government as Supervisory Authority promulgates new staff and financial regulations on the basis of Documents BP/GT/2, Annex B, BPCP/I/14a, BPCP/I/10a, provided that such draft rules which, in their present form, might have been formulated in a manner conveying the impression that they give more than advisory powers to the Interunion Coordination Committee, should be changed in a manner which makes it clear that the functions of that Committee are purely advisory.

3. New Director

The Permanent Bureau and the Permanent Committee are of the opinion that it would be advisable if the Swiss Government as Supervisory Authority appoints Professor G. H. C. Bodenhausen as Director of BIRPI with effect from January 1st, 1963.

4. Employment of Dr. Bogsch

The Permanent Bureau and the Permanent Committee are of the opinion that it would considerably facilitate the carrying out of future tasks of BIRPI if, at the earliest possible time in accordance with point 1 (2), the services of Dr. Arpad Bogsch could be secured as Vice-Director. Under the orders of the Director, he would be in charge of the Paris Union and general organisational matters of common interest and, in matters of the latter kind, would act in cooperation with the other Vice-Director and those officials of BIRPI who are in charge of matters of the Berne and other Unions.

5. Interunion Coordination Committee

1. — The Permanent Bureau and the Permanent Committee decide that in matters of common interest to BIRPI they will deliberate in what should be known as the Interunion Coordination Committee.

2. — The nature of the functions of the Committee is advisory. It will, in particular, advise the Swiss Government as Supervisory Authority on the administrative and financial problems of BIRPI including the matters referred to in the recommended new financial and staff regulations.

3. — The Committee is composed of the countries members of the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union. The representation, on the Committee, of the other Unions should be assured by representatives designated by the representative bodies of such other Unions from among their members which are also members of the Permanent Bureau.

4. — The Committee will vote as follows:

- (a) Each country shall have one vote.
- (b) In order that advice be considered as that of the Committee, there must be a simple majority of those present and voting. Abstentions do not count as votes.

¹ On the adoption of the texts, the Czechoslovak, Hungarian and Yugoslav Delegations abstained on Points Nos. 1, 2, 3, 5, 6 and 9 and voted against on Point No. 4.

- (c) However, any country may demand that the votes of the Permanent Bureau and Permanent Committee countries be recorded separately. Unless there is a simple majority of each, the advice is not that of the Interunion Co-ordination Committee. In this case, if a country is a member of both Committees, its vote has effect in each.
- (d) In any case, the debates, including the opinion of the minority, will be reported, with the results of the vote, to the Swiss Government.
- (e) In other respects, the Committee itself will establish its procedural rules.

5. — The first meeting of the Committee will be called by the Swiss Government. That meeting will decide on the manner of convocation of future meetings.

6. New Activities

The Permanent Bureau and the Permanent Committee agree with plans laid down in document BP/GT/2 concerning:

- (a) territorial expansion of the various Unions,
- (b) cooperation with the United Nations,
- (c) technical legal assistance to industrially less developed countries,

and is of the opinion that, within the limits of budgetary possibilities, these activities be given high priority by BIRPI.

7. Problems interesting industrially less developed countries

The Permanent Bureau decides the convocation of a small committee of experts to study the problems of industrially less developed countries in the field of industrial property. This committee should be convened by the Director early in 1963 and should consist of experts coming from 3 or 4 industrially highly developed countries, and the same number of experts of industrially less developed countries. The travel and subsistence of the experts shall be borne by the Governments which appoint them.

8. African Seminars

The Permanent Committee reaffirms its approval of the plan of an African Seminar on Copyright co-sponsored by BIRPI and UNESCO. The Permanent Bureau expresses the hope that at the same time and place, BIRPI will be able to organise an African Seminar on Industrial Property.

9. Diplomatic Conference

1. — The Permanent Bureau and the Permanent Committee are of the opinion that the supervisory functions of the Swiss Government should be transferred to the Assembly of the Member States of the Unions, and that the system of contributions of Member States towards the expenses of BIRPI should be modernized.

2. — The Permanent Bureau and the Permanent Committee note with gratitude that the Swedish Government is prepared to act as host to a Diplomatic Conference, to be held at the same time as the revision conference of the Berne Union, to draw up an administrative convention designed to accomplish the objectives referred to in the preceding para-

graph, and, for that purpose, to revise some of the administrative clauses of the existing Conventions and Arrangements.

3. — The Permanent Bureau and the Permanent Committee are of the opinion that the preparation for such a Conference should start immediately. The relations with the United Nations should be among the questions to be examined.

4. — As first steps in this preparatory work, it is recommended that

- (a) a working party consisting of representatives, subject to the approval of their respective Governments, of Czechoslovakia, Federal Republic of Germany, France, Japan, United Kingdom and the United States of America meet early next year; Switzerland and Sweden being members *ex officio*;
- (b) a committee of experts meet later in 1963 to examine the working documents to be drawn up by the said working party. This Committee will consist of experts from all countries members of the Paris and Berne Unions which wish to participate.

The expenses of the Members of the working party and the committee of experts will be borne by their respective Governments.

10. Address to Professor Jacques Secretan, Director of BIRPI

At the time when Professor Jacques Secretan is about to retire, after having fulfilled for the past nine years, the duties of Director of the United International Bureaux, the Permanent Bureau of the Paris Union and the Permanent Committee of the Berne Union, at their Joint Meeting in Geneva on the 19th October, 1962, wish to express their gratitude for the valuable services which he has rendered as Director of the Bureaux and also with regard to the transfer of the headquarters from Berne to Geneva which involved the building, on his initiative and under his directives, of a magnificent office worthy of the important International Unions.

The Committees wish to express here their hope that Professor Jacques Secretan will enjoy a happy and peaceful retirement for many long years to come.

LEGISLATION

IRELAND

Notice

concerning the temporary protection of inventions and designs at an exhibition

(15th October, 1962)

We are informed by the Comptroller of the Industrial and Commercial Property Registration Office in Dublin that, pursuant to a certificate signed by the Minister for Industry

and Commerce on 15th October, 1962, inventions and designs published at the "Spring Show and Industries Fair" to be held in Dublin on 7th to 11th May, 1963, will enjoy the temporary protection provided by Section 60 and Section 76 of the Industrial and Commercial Property (Protection) Act, 1927.

ISRAEL

Patents and Designs Ordinance (Amendment) Law (5721 - 1960) ¹⁾

Amendment of section 21

1. — In section 21 of the Patents and Designs Ordinance ²⁾:

(1) the proviso to subsection (3) shall be replaced by the following proviso:

"Provided that

- 1° a petition for a compulsory licence shall not be referred to the court before the expiration of three years from the date of the sealing of the patent;
- 2° that an order revoking a patent shall not be made before the expiration of two years from the date of the grant of the first compulsory licence for the use of the invention in respect of which the patent was granted;
- 3° that a compulsory licence or an order revoking a patent shall not be granted or made if the patentee has shown reasonable cause why the reasonable requirements of the public have not been satisfied";

(2) the following paragraph shall be added after paragraph (b) of subsection (5):

"(c) if the patentee does not manufacture in Israel the product in respect of which or in respect of the processes of whose manufacture he has been granted a patent, and he refuses to grant to a local manufacturer, on reasonable terms, a licence to manufacture the product or to use the process."

Applicability

2. — This Law shall apply also in the cases of inventions in respect of which a patent has been granted before the coming into force of this Law.

¹⁾ Passed by the Knesset on the 7th Tevet, 5721 (26th December, 1960) and published in *Sefer Ha-Chukkim* No. 323 of the 16th Tevet, 5721 (4th January, 1961), p. 16; the Bill and an Explanatory Note were published in *Hatza'ot Chok* No. 429 of 5721, p. 143.

²⁾ *Laws of Palestine* vol. II, cap. 105, p. 1076 (English Edition).

GENERAL STUDIES

Antitrust Law in the Common Market with special reference to Industrial Property Agreements *)

by Stephen P. LADAS

BOOK REVIEW

Le droit du breveté d'invention — contribution à une analyse objective
(The right of the patentee — contribution to an objective analysis),
by *Jean-Marc Mousseron*. 333 pages, 25 × 16 cm. Librairie générale
de droit et de jurisprudence R. Pichon et Durand-Auzias, Paris, 1961.

More and more, it is to firms and not to isolated inventors that patents are granted; in France, for example, this is the case with respect of 65 to 70 % of patents granted. In our time, therefore "the patentee is no longer the inventor" as is emphasised by M. Mousseron.

This fact obliges us to revise our conception of industrial property legislation which, in the end, must regulate the rights of the patentee rather than those of the inventor. It is to this end that M. Mousseron's work is devoted.

In the first part of his study, the author scrutinises the *object* of the legal rules in order to determine the criteria adopted for defining the patentable inventions and the evolutionary trend in this field of protection, and thus to specify the overall conception which governs the intervention of the law; in reality, for M. Mousseron, the invention, which is covered by the law, is the acquired solution of a technical problem as defined by its useful characteristics and the rarity and therefore by its economic value, the owner and status of which must be determined by the law.

In the second part, the author studies the *birth of the patentee's right*, by determining the conditions, forms and techniques of this birth, with a view to defining the owner of such rights and establishing the respective roles of the inventor, applicant and the public authority.

In the third part, he analyses the *content* of the patentee's right in the framework of the obligations and prerogatives, both original and common.

Once in possession of this material, the author ends by attempting to find a definition of the legal nature of the patentee's rights.

He concludes that it is a question of a truly "incorporeal property right" similar, with respect to its content, to that which the French Law of 1957 recognises in a literary or artistic work.

Because of the detailed analysis of the more recent case law and legislation, of facts and of the different trends in theory, the work of M. Mousseron constitutes an extremely important contribution to the development of industrial property law.

G. R. W.