

# Industrial Property

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# INTERNATIONAL UNION

## Working Agreement between BIRPI and the United Nations

A working agreement has been concluded between the BIRPI and the United Nations. The terms of this agreement are contained in a letter by the United Nations to BIRPI of September 28, 1964, and the reply of BIRPI of October 2, 1964. The text of the two letters is as follows:

### I

*“ Mr. G. H. C. Bodenhausen, Director  
United International Bureaux for the Protection  
of Intellectual Property  
32, chemin des Colombettes, Geneva (Switzerland)*

*Dear Mr. Bodenhausen,*

*I have the honour to inform you that on July 27, 1964, the Economic and Social Council of the United Nations adopted a resolution on ‘The Role of Patents in the Transfer of Technology to Under-Developed Countries’ (E/RES/1013 [XXXVII])<sup>1)</sup>, a copy of which is attached. This resolution calls for co-operation between the competent international bodies in this field ‘including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property’. To this effect the resolution ‘requests the Secretary-General to take whatever steps he may consider appropriate, such as arrangements for the reciprocal exchange of information and documentation, and provision for reciprocal representation at meetings...’.*

*In the implementation of this resolution, I should like to propose that our future collaboration should be based on the following practical arrangements:*

*1. The Secretariat of the United Nations and the Bureau of the International Union for the Protection of Industrial Property shall exchange, as may be appropriate, information and documentation relevant to matters of mutual interest.*

*2. Representatives of the Secretariat of the United Nations shall be invited to attend in an observer capacity the negotiating conferences organized by BIRPI, the conferences or other meetings of all BIRPI bodies, and such expert committees, working groups and seminars organized by BIRPI which deal with industrial property questions.*

*Representatives of BIRPI shall be invited to attend in an observer capacity meetings of the General Assembly, the Economic and Social Council and other United Nations bodies, when such meetings deal with industrial property questions.*

*In addition to these formal arrangements, I shall look forward to a collaboration between our two organizations*

*through an informal exchange of publications and appropriate consultation between the Secretariat officials directly concerned.*

*Yours sincerely,  
(Signed) Philippe de SEYNES  
Under-Secretary  
for Economic and Social Affairs ”*

### II

*“ Mr. Philippe de Seynes  
Under-Secretary for Economic and Social Affairs  
United Nations Secretariat  
New York, N. Y. (U. S. A.)*

*Dear Mr. de Seynes,*

*I have the honour to acknowledge receipt of your letter of September 23, 1964, in which you propose that our future collaboration should be based on the following practical arrangements:*

*‘ 1. The Secretariat of the United Nations and the Bureau of the International Union for the Protection of Industrial Property shall exchange, as may be appropriate, information and documentation relevant to matters of mutual interest.*

*2. Representatives of the Secretariat of the United Nations shall be invited to attend in an observer capacity the negotiating conferences organized by BIRPI, the conferences or other meetings of all BIRPI bodies, and such expert committees, working groups and seminars organized by BIRPI which deal with industrial property questions.*

*Representatives of BIRPI shall be invited to attend in an observer capacity meetings of the General Assembly, the Economic and Social Council and other United Nations bodies, when such meetings deal with industrial property questions.’*

*On the basis of the relevant decisions of the Interunion Coordination Committee of BIRPI and the Conference of Representatives of the International Union for the Protection of Industrial Property, I accept with pleasure the above proposal for a working agreement.*

*With reference to the last paragraph of your letter, may I add that, in addition to the above-mentioned formal arrangements, I too shall look forward to a collaboration between our two organizations through an informal exchange of publications and appropriate consultation between the Secretariat officials directly concerned.*

*Yours sincerely,  
(Signed) G. H. C. BODENHAUSEN  
Director ”*

<sup>1)</sup> See page 211 of this issue of *Industrial Property*.

## BELGIUM

### Ratification of the Additional Act to the Agreement of The Hague

In a Note dated October 13, 1964, we have been informed by the Swiss Federal Political Department that the Kingdom of Belgium has deposited its instrument of ratification in respect of the Additional Act, signed at Monaco on November 18, 1961, to the Agreement of The Hague concerning the International Deposit of Industrial Designs of November 6, 1925, revised at London on June 2, 1934.

In compliance with paragraph (3) of Article 7 of the above-mentioned Additional Act, the ratification of Belgium will take effect from November 13, 1964.

At present six countries have now ratified the Additional Act signed at Monaco: Belgium, France, Germany (Fed. Rep.), Monaco, Netherlands and Switzerland.

### International Committee of Novelty Examining Patent Offices

(First Session, Geneva, October 5 and 6, 1964)

#### Note <sup>1)</sup>

The Patent Offices of the following nineteen States Members of the International Union for the Protection of Industrial Property were represented at the First Session of the International Committee of Novelty Examining Patent Offices: Austria, Bulgaria (People's Republic of), Ceylon, Czechoslovak Socialist Republic, Denmark, Finland, France, Germany (Federal Republic of), Hungarian People's Republic, Ireland, Japan, the Netherlands, Norway, Polish People's Republic, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia (Socialist Federal People's Republic of).

The Patent Offices of the following four States not members of the Paris Union were represented by observers: Argentina, Chile, India, Union of Soviet Socialist Republics.

The International Patent Institute, an international inter-governmental organization, as well as the following four non-governmental organizations were represented by observers: Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents.

The list of participants is reproduced at the end of this Note.

The session was held in Geneva, Switzerland, at the Headquarters of BIRPI, on October 5 and 6, 1964.

The session elected as Chairman, Mr. G. Thaler (Austria), and as Vice-Chairmen, Mr. K. Yoshifuji (Japan) and Mr. A. Kiss (Hungarian People's Republic).

The following four topics were discussed:

#### 1. Abandonment of Inventions to the Public by an International Publication of Patent Applications where the Grant of a Patent is no Longer Required

This question was discussed on the basis of an introductory memorandum (PJ/31/1) submitted by the Director of BIRPI.

The memorandum outlined the possibilities of a centralized international publication of patent applications for which the grant of patents is no longer required. The publication would have a retroactive effect and would destroy the novelty of the invention described therein. Since such a publication could generally serve the same purpose as so-called defensive patents, and since the number of such patents is believed to be relatively high, the publication in question might reduce the workload of patent offices and the expenses of applicants. It was with these effects in mind that the plan was submitted for the Committee's consideration.

The members of the Committee, after a thorough discussion, adopted the following recommendation:

*The Committee,*

*Considering the exchange of views between all Members on the subject of abandonment of inventions to the public by an international publication of patent applications where the grant of a patent is no longer required (document PJ/31/1),*

*Noting that a number of Members saw the need for further legal studies of the subject,*

*Observing that a number of Members have not yet had the opportunity of ascertaining the views of interested circles in their countries on this subject,*

*Invites the Director of BIRPI to make such legal studies, with the assistance of the answers to a questionnaire to be addressed to the Member States of the Committee, notably on:*

- (a) the definition of publication of inventions according to existing and contemplated national laws and regional treaties, and the conditions under which publication destroys the novelty of inventions,*
- (b) the effect of double patenting according to existing and contemplated national laws and regional treaties,*
- (c) the relationship between the plan for an international publication of patent applications where the grant of a patent is no longer required and the Council of Europe Convention on the Unification of Certain Points of Substantive Law on Patents for Inventions, the proposed Convention on a European Patent, and other existing or contemplated regional treaties,*

*Urges the Members of the Committee to proceed with the consultation of the interested circles in their respective countries,*

*Recommends that, once the legal studies will be completed, the Director of BIRPI address to each Member of the Committee a report on them together with a circular asking each Member for an expression of opinion on whether a future session of the Committee should continue the study of the possibilities of abandonment of inventions to the public through an international or national publication, and asking for concrete suggestions as to what the main principles of the international legal regulation of such abandonment should be.*

<sup>1)</sup> This Note has been established by BIRPI on the basis of the official documents of the Committee.

## 2. Industrial Property Statistics

As is known, BIRPI requests the Governments of the Member States of the Paris Union to furnish statistics on certain operations in their industrial property offices. The information received is published in tabulated form each year in the December issue of *La Propriété industrielle* and *Industrial Property*. In the past, statistics were requested on patents, utility models, designs and trademarks. For all categories, the questionnaire asked for the number of applications (or "deposits") and for the number of grants (or registrations). The questionnaire did not ask for a breakdown showing whether the applicant was a national or an alien, except in the case of trademarks. For none of the categories was there a request for a breakdown according to the country of origin of the applications.

BIRPI proposed to the Committee that these statistics be improved by making them more detailed (document PJ/31/3). It asked for the advice of the Committee as to what details should be included in future statistics.

The Committee expressed the view that future questionnaires on statistics should ask for the following details:

(a) A breakdown, by country of origin, of all applications and grants or registrations. This would apply to all four categories, i. e., patents, utility models, designs and trademarks. The country of origin would generally be determined on the basis of the address of the applicant.

(b) An indication of the number of cases where the right of priority as provided by the Paris Convention was invoked in connection with applications (that is, either at the time of the application or separately, later).

(c) Number of patents in force at the end of the year covered by the report. Number of patents lapsed during the same year, broken down according to the various reasons for their lapse (expiration of the term of protection, non-payment of fees, etc.). In connection with the lapse for non-payment of fees, a breakdown from which would emerge the age of each patent thus lapsed.

(d) The same data as referred to under (c) for utility models, designs, and trademarks, where applicable.

(e) A breakdown of all patents granted during the year according to the nature of the inventions, using the 19 sub-sections of the European Convention on the International Classification of Patents for Invention. Statistics coming from countries not using this classification would be "translated" into the terms of this classification, so that rough comparisons should be possible.

The new statistical questionnaire of BIRPI will be established accordingly, possibly after further consultations with interested circles. The need for coordination with ICIREPAT (Committee for International Cooperation in Information Retrieval Among Examining Patent Offices) was pointed out in this connection.

## 3. Certain Questions in Regard to Patent Office Practice

These questions included: the correction of typographical errors, opposition procedures, appeals from examiners' decisions, second appeals (document PJ/31/5 and *addenda*).

Pursuant to a proposal made by the representatives of the Austrian Patent Office, the Committee decided to give more time to its members to study the question whether these topics are to be kept on the agenda of the Committee.

## 4. Index of Corresponding Patent Applications and Corresponding Patents

In order to facilitate the work of Patent Offices — whose work is constantly and substantially increasing — the Committee decided to institute a study of the possibilities of publishing (i) an index of corresponding patents granted in different countries, and (ii) as far as the secrecy of patent applications does not stand in its way, an index of corresponding patent applications filed in different countries.

A project with partly the same aim was discussed, but not adopted, by the Lisbon Revision Conference of the Paris Union in 1958 (see *Actes de la Conférence de Lisbonne*, pages 460 *et seq.*). The Committee was of the opinion that, in view of the increase in the number of patent applications and the ever greater complexity of prior examination, such a project might be more useful now than it had appeared to be in 1958.

It was decided that BIRPI would consult with interested circles, set up a small working group, and include the question in the agenda of the next session of the Committee.

## LIST OF PARTICIPANTS

### 1. States Members of the Committee

#### Austria

Mr. Gottfried Thaler, Vice-President, Patent Office, Vienna.  
Mr. Thomas Lorenz, Ratssekretär, Patent Office, Vienna.

#### Bulgaria (People's Republic of)

Mr. Penko Penev, Director, Institute of Inventions and Rationalisation, Sofia.

#### Ceylon

Mr. W. M. Sellayah, Registrar of Companies, Trademarks, and Designs, Colombo.

#### Czechoslovak Socialist Republic

Mr. Miloš Ušetečka, Head, Legal Section, Office of Patents and Inventions, Prague.  
Mr. Luboš Lacina, Chief, Examination Department, Office of Patents and Inventions, Prague.

#### Denmark

Mr. Carl Sander, Chief Engineer, Patent Office, Copenhagen.  
Mrs. Dagmar Simonsen, Chief of Section, Patent Office, Copenhagen.

#### Finland

Mr. Paavo Salmi, Chief Engineer, Patent Office, Helsinki.

#### France

Mr. R. Gajac, Legal Counsellor, National Institute for Industrial Property, Paris.

#### Germany (Federal Republic of)

Mr. Klaus Pfanner, Director, Patent Office, Munich.  
Mr. Heribert Mast, Oberregierungsrat, Federal Ministry of Justice, Bonn.

*Hungarian People's Republic*

Mr. András Kiss, Vice-President, National Office of Inventions, Budapest.

Mr. Georges Pálos, Legal Counsellor, National Office of Inventions, Budapest.

*Ireland*

Mr. J. J. Lennon, Controller of Industrial and Commercial Property, Dublin.

*Japan*

Mr. Kosaku Yoshifuji, Director, 2nd Examination Division, Patent Office, Tokyo.

Mr. Muneoki Date, Second Secretary, Permanent Delegation of Japan to International Organizations, Geneva.

Mr. Yoshiro Hashimoto, Examiner, Patent Office, Tokyo.

*Netherlands*

Mr. C. J. de Haan, President, Patent Council, The Hague.

Mr. Willem M. J. C. Phaf, Head, Division of Legislative and Legal Affairs, Ministry of Economic Affairs, The Hague.

*Norway*

Mr. Johan Helgeland, Director, Industrial Property Office, Oslo.

Mr. Arne G. Modal, Chief of Section, Industrial Property Office, Oslo.

*Polish People's Republic*

Mr. Ignacy Czerwinski, President, Patent Office, Warsaw.

Mr. Bronislaw Bulwicki, Lawyer, Patent Office, Warsaw.

Mrs. Natalia Lissowska, Counsellor, Patent Office, Warsaw.

*Sweden*

Mr. Claës Uggla, Counsellor, National Patent Office, Stockholm.

Mr. Saul Lewin, Head of Section, National Patent Office, Stockholm.

*Switzerland*

Mr. Joseph Voyame, Director, Federal Office of Intellectual Property, Berne.

Mr. Ernst Lips, Vice-Director, Federal Office of Intellectual Property, Berne.

*United Kingdom of Great Britain and Northern Ireland*

Mr. Gordon Grant, Comptroller-General of Patents, Designs and Trademarks, Patent Office, London.

Mr. Ronald Bowen, Principal Examiner, Patent Office, London.

*United States of America*

Mr. Edward J. Brenner, Commissioner of Patents, Washington, D. C.

Mr. Horace B. Fay, Jr., Assistant Commissioner, U. S. Patent Office, Washington, D. C.

Mr. P. J. Federico, Examiner in Chief, U. S. Patent Office, Washington, D. C.

Mr. George A. Tesoro, Counsellor, United States Mission to International Organizations, Geneva.

*Yugoslavia*

Mr. Vladimir Savić, Director, Patent Office, Belgrade.

*II. Observers**A. States**Argentina*

Mr. Enrique Miguel Peltzer, National Director (*ad interim*) of Industrial Property, Buenos Aires.

*Chile*

Mr. Santiago Larraguibel Zavala, Head, Industrial Property Office, Santiago.

*India*

Mr. A. Jogarao, Controller-General of Patents, Designs and Trademarks, Bombay.

*Nicaragua*

Mr. Henry Caldera-Pallais, Patents and Trademarks, Managua.

*Union of Soviet Socialist Republics (USSR)*

Mr. Sergey Komov, Director, State Soviet Patent Institute, Moscow.

Mr. Eugene Pavlov, Second Secretary, Permanent Delegation of the USSR to the European Office of the United Nations, Geneva.

*B. International Intergovernmental Organizations**International Patent Institute*

Mr. Daniel Merle, Financial Controller, The Hague.

*C. International Non-Governmental Organizations**Interamerican Association of Industrial Property*

Mr. Ernesto D. Aracama Zorraquin, Attorney-at-Law, Professor, University of Buenos Aires.

*International Association for the Protection of Industrial Property*

Mr. Pierre-Jean Pointet, Professor, University of Neuchâtel, Zurich.

*International Chamber of Commerce*

Mr. Pierre-Jean Pointet, Professor, University of Neuchâtel, Zurich.

Mr. D. A. Was, Attorney-at-Law, The Hague.

*International Federation of Patent Agents*

Mr. C. Massalski, Patent Agent, Paris.

Mr. Harry Onn, Patent Agent, Stockholm.

*III. Bureau of the Committee*

Chairman: Mr. Gottfried Thaler (Austria).

Vice-Chairman: Mr. Kosaku Yoshifuji (Japan).

Vice-Chairman: Mr. András Kiss (Hungary).

*IV. BIRPI*

Professor G. H. C. Bodenhausen, Director.

Dr. Arpad Bogsch, Deputy Director.

Mr. Charles-L. Magnin, Deputy Director.

Mr. Ross Woodley, Counsellor, Head of Industrial Property Division.

Mr. Vladimir Dolezil, Counsellor, Industrial Property Division.

# UNITED NATIONS

## Resolution 1013 (XXXVII) of the Economic and Social Council of the United Nations

The thirty-seventh session of the Economic and Social Council of the United Nations adopted, on July 27, 1964, a resolution with the title "The Role of Patents in the Transfer of Technology to Under-Developed Countries". The Resolution is of particular interest to BIRPI because of the express reference it contains to the Paris Union. The text of the Resolution is as follows:

*The Economic and Social Council,*

*Recalling General Assembly resolution 1713 (XVI) of December 1961,*

*Reaffirming 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<sup>1</sup>),*

*Reaffirming also that the most wide-spread exchange of knowledge and experience in the field of applied science and technology would facilitate the continued development of industrialization and international economic relations,*

*Noting the report of the Secretary-General on the role of patents in the transfer of technology to under-developed countries<sup>2</sup>),*

*Noting the recommendation contained in Annex A.IV.26 to the Final Act of the United Nations Conference on Trade and Development on the transfer of technology,*

- 1. Requests the Secretary-General to explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries, generally and in co-operation with the competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property, and to provide additional facilities for information on and for the transfer of technical documentation and know-how to the developing countries;*
- 2. Requests the Secretary-General to take whatever steps he may consider appropriate, such as arrangements for the reciprocal exchange of information and documentation, and provision for reciprocal representation at meetings, between the competent international bodies referred to in operative paragraph 1 and to report thereon to the appropriate United Nations bodies, including the Council;*
- 3. Transmits the report of the Secretary-General<sup>2</sup>) to the United Nations General Assembly at its nineteenth session for appropriate action in the light of the recommendation*

<sup>1</sup>) United Nations General Assembly Resolution 1713 (XVI), fourth preambular paragraph. See *Industrial Property*, 1962, p. 40.

<sup>2</sup>) *Official Records of the Economic and Social Council, Thirty-seventh Session, Annexes*, agenda item 13 (E/3861). See *Industrial Property*, 1964, p. 56.

*on this subject contained in Annex A.IV.26 of the Final Act of the United Nations Conference on Trade and Development<sup>3</sup>).*

# LEGISLATION

## Patents Act, 1964

**An Act to make new provision in respect of patents and related matters in substitution for the provisions of the Industrial and Commercial Property (Protection) Act, 1927, relating to patents and of other enactments relating to patents, and to provide for other matters connected with the matters aforesaid**

(Of June 24, 1964)

(Second Part)<sup>1</sup>)

### *Substitution of applicants, etc.*

22. — (1) If the Controller is satisfied, on a claim made in the prescribed manner at any time before a patent has been granted, that by virtue of any assignment or agreement made by the applicant or one of the applicants for the patent, or by operation of law, the claimant would, if the patent were then granted, be entitled thereto or to the interest of the applicant therein, or to an undivided share of the patent or of that interest, the Controller may, subject to the provisions of this section, direct that the application shall proceed in the name of the claimant or in the names of the claimant and the applicant or the other joint applicant or applicants, according as the case may require.

(2) No such direction as aforesaid shall be given by virtue of any assignment or agreement made by one of two or more joint applicants for a patent except with the consent of the other joint applicant or applicants.

(3) No such direction as aforesaid shall be given by virtue of any assignment or agreement for the assignment of the benefit of an invention unless either:

- (a) the invention is identified therein by reference to the number of the application for the patent,
- (b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made, or
- (c) the rights of the claimant in respect of the invention have been finally established by a decision of any court or by a determination of the Controller under the following provisions of this Act.

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted,

<sup>3</sup>) See *Industrial Property*, 1964, p. 141.

<sup>1</sup>) See *Industrial Property*, 1964, p. 188.

the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the personal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent as to whether or the manner in which the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it shall be proceeded with, or for both those purposes, according as the case may require.

(6) An appeal shall lie from any decision of the Controller under this section.

### PART III

#### Grant, Restoration, Revocation and Surrender, etc., of Patent

##### *Grant and sealing of patent*

23. — (1) Subject to the provisions of this Act with respect to opposition, and to any other power of the Controller to refuse the grant, a patent sealed with the official seal of the Controller shall, if the prescribed request is made within the time allowed under this section, be granted to the applicant or applicants within that time or as soon as may be thereafter; and the date on which the patent is sealed shall be entered in the register of patents.

(2) Subject to the following provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of four months from the date of the publication of the complete specification:

Provided that:

- (a) where at the expiration of the said four months any proceeding in relation to the application for the patent is pending in any court or before the Controller, the request may be made within the prescribed period after the final determination of that proceeding;
- (b) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this subsection the request could otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the Controller may allow.

(3) The period within which under the last foregoing subsection a request for the sealing of a patent may be made may from time to time be extended by the Controller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:

Provided that the first-mentioned period shall not be extended under this subsection by more than six months or such shorter period as may be prescribed.

(4) For the purposes of this section a proceeding shall be deemed to be pending so long as the time for any appeal therein (apart from any future extension of that time) has not expired, and a proceeding shall be deemed to be finally determined when the time for any appeal therein (apart from any such extension) has expired without the appeal being brought.

##### *Amendment of patent granted to deceased applicant*

24. — Where at any time after a patent has been sealed in pursuance of an application under this Act, the Controller is satisfied that the person to whom the patent was granted had died, or (in the case of a body corporate) had ceased to exist, before the patent was sealed, he may amend the patent by substituting for the name of that person the name of the person to whom the patent ought to have been granted; and the patent shall have effect, and shall be deemed always to have had effect, accordingly.

##### *Effect and form of patent*

25. — (1) Subject to the provisions of this Act, every patent granted under this Act and sealed with the official seal of the Controller shall operate and have effect and shall be expressed to operate and have effect:

- (a) to confer on the person to whom the same is granted, his executors, administrators and assigns (in this subsection collectively referred to as the grantee) the full, sole, and exclusive right, power and authority by himself, his agents or licensees at all times so long as the patent remains in force to make, use, exercise, and vend in the State the invention in respect of which the patent is granted;
- (b) to confer on the grantee the sole right to have and enjoy the whole profit and advantage from time to time accruing by reason of the said invention during such period as the patent remains in force;
- (c) to prohibit all persons whatsoever in the State while the patent remains in force from making use of or putting in practice the said invention or any part thereof, or in anywise imitating the same or in anywise representing or pretending themselves to be the inventors of the said invention or of the said invention with any addition thereto or subtraction therefrom without the consent, licence or agreement of the grantee in writing under his hand and seal;
- (d) to make all persons who, while the patent remains in force, shall in the State in anywise infringe any right, power, or authority expressed in the patent to be thereby conferred on the grantee or do any act, matter or thing the doing of which is expressed in the patent to be thereby prohibited, answerable according to law to the grantee for such infringement or the doing of such act, matter, or thing.

(2) Every patent shall be in the prescribed form and shall be granted for one invention only, but the specification may contain more than one claim; and it shall not be competent for any person in an action or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.



*Date and term of patent*

26. — (1) Every patent shall be dated with the date of filing of the complete specification:

Provided that no proceeding shall be taken in respect of an infringement committed before the date of the publication of the complete specification:

(2) The date of every patent shall be entered in the register of patents.

(3) Except as otherwise expressly provided by this Act, the term of every patent shall be sixteen years from the date of the patent.

(4) A patent shall cease to have effect, notwithstanding anything therein or in this Act, on the expiration of the period prescribed for the payment of any renewal fee if that fee is not paid within the prescribed period or within that period as extended under this section.

(5) The period prescribed for the payment of any renewal fee shall be extended to such period, not being more than six months longer than the prescribed period, as may be specified in a request made to the Controller if the request is made and the renewal fee and the prescribed additional fee paid before the expiration of the period so specified.

*Extension of term of patent*

27. — (1) A patentee may, after advertising in manner provided by rules of court his intention to do so, present a petition to the Court or the Controller praying that his patent may be extended for a further term.

(2) A petition under this section shall be presented at least six months before the time limited for the expiration of the patent:

Provided that the period within which a petition under this section may be presented may, at the discretion of the Court or the Controller, be extended by the Court or the Controller, as the case may be.

(3) Any person may give notice to the Court or the Controller, as the case may be, of objection to the extension.

(4) On the hearing of any petition under this section the patentee and any person who has given notice of objection shall be made parties to the proceeding, and, if the petition is presented to the Court, the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Court.

(5) The Court or the Controller, in making a decision, shall have regard to the nature and merits of the invention in relation to the public, to the profits made by the patentee as such, and to all the circumstances of the case.

(6) If it appears to the Court or the Controller that the patentee has been inadequately remunerated by his patent, the Court or the Controller, as the case may be, may by order extend the term of the patent for a further term not exceeding five years or, in exceptional cases, ten years, or may order the grant of a new patent for such term as may be specified in the order and containing any restriction, conditions, and provisions the Court or the Controller, as the case may be, may think fit.

(7) The Controller may, at any stage of the proceedings before him under this section, refer the petition to the Court and thereupon the petition shall be deemed to have been presented to the Court by the patentee of the invention to which it refers under subsection (1) of this section.

(8) An appeal shall lie from any decision of the Controller under this section.

*Patents of Addition*

28. — (1) Subject to the provisions of this section, where application is made for a patent in respect of any improvement in or modification of an invention (in this Act referred to as the main invention) and the applicant also applies or has applied for a patent for that invention or is the patentee in respect thereof, the Controller may, if the applicant so requests, grant the patent for the improvement or modification as a patent of addition.

(2) Subject to the provisions of this section, where an invention, being an improvement in or modification of another invention, is the subject of an independent patent and the patentee in respect of that patent is also the patentee in respect of the patent for the main invention the Controller may, if the patentee so requests, by order revoke the patent for the improvement or modification and grant to the patentee a patent of addition in respect thereof, bearing the same date as the date of the patent so revoked.

(3) A patent shall not be granted as a patent of addition unless the date of filing of the complete specification was the same as or later than the date of filing of the complete specification in respect of the main invention.

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which, but for this provision, a request for the sealing of a patent of addition could be made under section 23 of this Act expires before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last-mentioned period.

(5) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as is unexpired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that:

(a) if the term of the patent for the main invention is extended under the last foregoing section of this Act, the term of the patent of addition may also be extended accordingly; and

(b) if the patent for the main invention is revoked under this Act, the Court or Controller, as the case may be, may order that the patent of addition shall become an independent patent for the remainder of the term of the patent for the main invention, and thereupon the patent shall continue in force as an independent patent accordingly.

(6) No renewal fees shall be payable in respect of a patent of addition; but, if any such patent becomes an inde-

pendent patent by virtue of an order under the last foregoing subsection, the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

(7) An appeal shall lie from any decision of the Controller under this section.

#### *Restoration of lapsed patents*

29. — (1) Where a patent has ceased to have effect by reason of a failure to pay any renewal fee within the prescribed period or within that period as extended under section 26 of this Act, and the Controller is satisfied, upon application made within three years from the date on which the patent ceased to have effect, that the failure was unintentional and that no undue delay has occurred in the making or prosecution of the application, he shall by order restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(2) An application under this section may be made by the person who was the patentee or by his personal representative; and where the patent was held by two or more persons jointly, the application may, with the leave of the Controller, be made by one or more of them without joining the others.

(3) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to pay the renewal fee; and the Controller may require from the applicant such further evidence as he may think necessary.

(4) If after hearing the applicant (if the applicant so requires or the Controller thinks fit) the Controller is satisfied that a *prima facie* case has been made out for an order under this section, he shall advertise the application in the Journal; and within the prescribed period any person may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say:

(a) that the failure to pay the renewal fee was not unintentional; or

(b) that there has been undue delay in the making of the application.

(5) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant, and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(6) If no notice of opposition is given within the period aforesaid or if, in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, make the order in accordance with the application.

(7) An order under this section for the restoration of a patent:

(a) may be made subject to such conditions as the Controller thinks fit, including in particular a condition requiring the registration in the register of patents of any matter in respect of which the provisions of this Act as to

entries in that register have not been complied with; and

(b) shall be subject to such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the patented invention between the date when the patent ceased to have effect and the date of the application under this section;

and if any condition of an order under this section is not complied with by the patentee, the Controller may, after giving to the patentee an opportunity to be heard, revoke the order and give such directions consequential on the revocation as he thinks fit.

(8) An appeal shall lie from any decision of the Controller under this section.

#### *Restoration of lapsed applications for patents*

30. — (1) Where a patent has not been sealed by reason only that the prescribed request was not made within the time allowed for that purpose by or under section 23 of this Act, then if the Controller is satisfied, upon application made within six months after the expiration of that time by the applicant for the patent, that the failure to make the request was unintentional, he may order the patent to be sealed notwithstanding that the prescribed request was not made as aforesaid.

(2) An application under this section shall contain a statement (to be verified in such manner as may be prescribed) fully setting out the circumstances which led to the failure to make the prescribed request; and the Controller may require from the applicant such further evidence as he may think necessary.

(3) If after hearing the applicant (if the applicant so requires or the Controller thinks fit) the Controller is satisfied that a *prima facie* case has been made out for an order under this section, he shall advertise the application in the Journal; and within the prescribed period any person may give notice to the Controller of opposition thereto on the ground that the failure to make the prescribed request was not unintentional.

(4) If notice of opposition is given within the period aforesaid, the Controller shall notify the applicant and shall give to him and to the opponent an opportunity to be heard before he decides the case.

(5) If no notice of opposition is given within the period aforesaid, or if in the case of opposition the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of the fee prescribed in respect of the making of the request for sealing and of such additional fee as may be prescribed, make the order in accordance with the application.

(6) An order under this section for the sealing of a patent shall be subject to such provision as may be prescribed for the protection of persons who may have begun to avail themselves of the invention between the date when the time allowed by or under section 23 of this Act for making the prescribed request expired and the date of the application under this section.

(7) An appeal shall lie from any decision of the Controller under this section.

*Amendment of specification with leave of Controller*

31. — (1) Subject to the provisions of section 33 of this Act, the Controller may, upon application made under this section by a patentee, or by an applicant for a patent at any time after the acceptance of the complete specification, allow the complete specification to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not allow a specification to be amended under this section upon an application made while any action before the Court for infringement of the patent or any proceeding before the Court for the revocation of the patent is pending.

(2) Every application for leave to amend a specification under this section shall state the nature of the proposed amendment and shall give full particulars of the reasons for which the application is made.

(3) Any application for leave to amend a specification under this section, and the nature of the proposed amendment, shall be advertised in the prescribed manner:

Provided that where application is made before the publication of the complete specification, the Controller may, if he thinks fit, dispense with advertisement under this subsection or direct that advertisement shall be postponed until the complete specification is published.

(4) Within the prescribed period after the advertisement of an application under this section, any person may give notice to the Controller of opposition thereto; and where such a notice is given within the period aforesaid, the Controller shall notify the person by whom the application under this section is made and shall give to that person and to the opponent an opportunity to be heard before he decides the case.

(5) An appeal shall lie from any decision of the Controller under this section.

(6) This section shall not apply in relation to any amendment of a specification effected in proceedings in opposition to the grant of a patent or in pursuance of any provision of this Act authorising the Controller to direct a reference to another specification or patent to be inserted, or to refuse to grant a patent, or to revoke a patent, unless the specification is amended to his satisfaction.

*Amendment of specification with leave of the Court*

32. — (1) In any action for infringement of a patent or any proceeding before the Court for the revocation of a patent the Court may, subject to the provisions of the next following section, by order allow the patentee to amend his complete specification in such manner, and subject to such terms as to costs, advertisements or otherwise, as the Court may think fit: and if in any such proceedings for revocation the Court decides that the patent is invalid, the Court may allow the specification to be amended under this section instead of revoking the patent.

(2) Where an application for an order under this section is made to the Court, the applicant shall give notice of the application to the Controller, and the Controller shall be entitled to appear and be heard, and shall appear if so directed by the Court.

*Supplementary provisions as to amendment of specification*

33. — (1) After the acceptance of a complete specification, no amendment thereof shall be effected except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where, after the date of the publication of a complete specification, any amendment of the specification is allowed or approved by the Controller or the Court under this Act, the right of the patentee or applicant to make the amendment shall not be called in question except on the ground of fraud; and the amendment shall in all courts and for all purposes be deemed to form part of the specification:

Provided that in construing the specification as amended reference may be made to the specification as originally published.

(3) Where, after the date of the publication of a complete specification, any amendment of the specification is allowed or approved as aforesaid, the fact that the specification has been amended shall be advertised in the Journal.

*Revocation of patent by Court*

34. — (1) Subject to the provisions of this Act, a patent may, on the petition of the Attorney General or any person authorised by him, or of any person interested, be revoked by the Court on any of the following grounds, that is to say:

- (a) that the invention, so far as claimed in any claim of the complete specification, was claimed in, or included in matter disclosed in the descriptive part of, another specification published on or after the priority date of the claim and filed in pursuance of an application for a patent in the State, the priority date of the relevant claim or of the matter disclosed in the descriptive part of the other specification being earlier than that of the claim;
- (b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor;
- (c) that the patent was obtained in contravention of the rights of the petitioner or any person under or through whom he claims;
- (d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;
- (e) that the invention, so far as claimed in any claim of the complete specification, is not new having regard to what was published before the priority date of the claim;
- (f) that the invention, so far as claimed in any claim of the complete specification, is obvious and does not involve

any inventive step having regard to any matter claimed or disclosed in the manner specified in paragraph (a) of this subsection or to any matter published in the manner specified in paragraph (e) of this subsection;

- (g) that the invention, so far as claimed in any claim of the complete specification, is not useful;
- (h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, or does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;
- (i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;
- (j) that the patent was obtained on a false suggestion or representation;
- (k) that the primary or intended use or exercise of the invention is contrary to public order or morality.

(2) Without prejudice to the provisions of subsection (1) of this section, a patent may be revoked by the Court on the petition of any Minister of State if the Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Minister to make, use, exercise or vend the patented invention for the service of the State upon reasonable terms.

(3) Every ground on which a patent may be revoked shall be available as a ground of defence in any proceeding for the infringement of the patent.

#### *Revocation of patent by Controller*

35. — (1) At any time within twelve months after the sealing of a patent, any person interested who did not oppose the grant of the patent may apply to the Controller for an order revoking the patent on any one or more of the grounds upon which the grant of the patent could have been opposed:

Provided that when an action for infringement, or proceedings for the revocation, of a patent are pending in any court, an application to the Controller under this section shall not be made except with the leave of the court.

(2) Where an application is made under this section, the Controller shall notify the patentee and shall give to the applicant and the patentee an opportunity to be heard before deciding the case.

(3) If on an application under this section the Controller is satisfied that any of the grounds aforesaid are established, he may by order direct that the patent shall be revoked either unconditionally or unless within such time as may be specified in the order the complete specification is amended to his satisfaction:

Provided that the Controller shall not make and order for the unconditional revocation of a patent under this section unless the circumstances are such as would have justified him in refusing to grant the patent in proceedings under section 19 of this Act.

(4) An appeal shall lie from any decision of the Controller under this section.

#### *Surrender of patent*

36. — (1) A patentee may at any time by notice given to the Controller offer to surrender his patent.

(2) Where such an offer is made the Controller shall advertise the offer in the prescribed manner; and within the prescribed period after such advertisement any person interested may give notice to the Controller of opposition to the surrender.

(3) Where any such notice of opposition is duly given the Controller shall notify the patentee.

(4) If the Controller is satisfied, after hearing the patentee and any opponent, if desirous of being heard, that the patent may properly be surrendered, he may accept the offer and by order revoke the patent.

(5) An appeal shall lie from any decision of the Controller under this section.

#### PART IV

#### **Voluntary and Compulsory Endorsement, Anticipation, and Provisions as to Rights in Inventions**

##### *Endorsement of patent "licences of right"*

37. — (1) At any time after the sealing of a patent the patentee may apply to the Controller for the patent to be endorsed with the words "licences of right"; and where such an application is made, the Controller shall notify the application to any person entered on the register as entitled to an interest in the patent, and if satisfied, after giving any such person an opportunity to be heard, that the patentee is not precluded by contract from granting licences under the patent, cause the patent to be endorsed accordingly.

(2) Where a patent is endorsed under this section:

- (a) any person shall, at any time thereafter, be entitled as of right to a licence under the patent upon such terms as may, in default of agreement, be settled by the Controller on the application of the patentee or the person requiring the licence;
- (b) the Controller may, on the application of the holder of any licence granted under the patent before the endorsement, order the licence to be exchanged for a licence to be granted by virtue of the endorsement upon terms to be settled as aforesaid;
- (c) if in proceedings for infringement of the patent (otherwise than by the importation of goods) the defendant undertakes to take a licence upon terms to be settled by the Controller as aforesaid, no injunction shall be granted against him, and the amount (if any) recoverable against him by way of damages shall not exceed double the amount which would have been payable by him as licensee if such a licence had been granted before the earliest infringement;
- (d) the renewal fees payable in respect of the patent after the date of the endorsement shall be one half of the renewal fees which would be payable if the patent were not so endorsed.

(3) In settling the terms of any such licence the Controller:

- (a) shall endeavour to secure the widest possible user of the invention in the State consistent with the patentee's deriving a reasonable advantage from his patent rights,
- (b) shall endeavour to secure to the patentee the maximum advantage consistent with the invention being worked by the licensee at a reasonable profit in the State,
- (c) shall endeavour to secure equality of advantage among the several licensees, and for this purpose may, on due cause being shown, reduce the royalties or other payments accruing to the patentee under any licence previously granted,
- (d) may so frame the terms as to preclude the licensee from importing into the State any goods the importation of which, if made by persons other than the patentee or those claiming under him, would be an infringement of the patent, and in such a case the patentee and all licensees under the patent shall be deemed to have mutually covenanted against such importation.

(4) The licensee under any licence granted by virtue of the endorsement of a patent under this section shall (unless, in the case of a licence the terms of which are settled by agreement, the licence otherwise expressly provides) be entitled to call upon the patentee to take proceedings to prevent any infringement of the patent; and if the patentee refuses or neglects to do so within two months after being so called upon, the licensee may institute proceedings for the infringement in his own name as if he were patentee, making the patentee a defendant:

Provided that a patentee so added as defendant shall not be liable for any costs unless he enters an appearance and takes part in the proceedings.

(5) An application for the endorsement of a patent under this section shall contain a statement (to be verified in such manner as may be prescribed) that the patentee is not precluded by contract from granting licences under the patent; and the Controller may require from the applicant such further evidence as he may think necessary.

(6) An application made under this section for the endorsement of a patent of addition shall be treated as an application for the endorsement of the patent for the main invention also, and an application made under this section for the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the endorsement of the patent of addition also; and where a patent of addition is granted in respect of a patent already endorsed under this section, the patent of addition shall also be so endorsed.

(7) All endorsements of patents under this section shall be entered in the register of patents and shall be published in the Journal and in such other manner as the Controller thinks desirable for bringing the endorsement to the notice of manufacturers.

(8) An appeal shall lie from any decision of the Controller under this section.

### *Cancellation of endorsement*

38. — (1) At any time after a patent has been endorsed under the last foregoing section, the patentee may apply to the Controller for cancellation of the endorsement; and where such an application is made and the balance paid of all renewal fees which would have been payable if the patent had not been endorsed, the Controller may, if satisfied that there is no existing licence under the patent or that all licensees under the patent consent to the application, cancel the endorsement accordingly.

(2) Within the prescribed period after a patent has been endorsed as aforesaid, any person who claims that the patentee is, and was at the time of the endorsement, precluded by a contract in which the claimant is interested from granting licences under the patent may apply to the Controller for cancellation of the endorsement.

(3) Where the Controller is satisfied, on application made under the last foregoing subsection, that the patentee is and was precluded as aforesaid, he shall cancel the endorsement; and thereupon the patentee shall be liable to pay, within such period as may be prescribed, a sum equal to the balance of all renewal fees which would have been payable if the patent had not been endorsed, and if that sum is not paid within that period the patent shall cease to have effect at the expiration of that period.

(4) Where the endorsement of a patent is cancelled under this section, the rights and liabilities of the patentee shall thereafter be the same as if the endorsement had not been made.

(5) The Controller shall advertise in the prescribed manner any application made to him under this section; and within the prescribed period after such advertisement:

- (a) in the case of an application under subsection (1) of this section, any person interested; and
- (b) in the case of an application under subsection (2) of this section, the patentee,

may give notice to the Controller of opposition to the cancellation.

(6) Where any such notice of opposition is given, the Controller shall notify the applicant, and shall give to the applicant and the opponent an opportunity to be heard before deciding the case.

(7) An application made under this section for the cancellation of the endorsement of a patent of addition shall be treated as an application for the cancellation of the endorsement of the patent for the main invention also, and an application made under this section for the cancellation of the endorsement of a patent in respect of which a patent of addition is in force shall be treated as an application for the cancellation of the endorsement of the patent of addition also.

### *Compulsory endorsement or licence*

39. — (1) At any time after the expiration of four years from the date of application for a patent or three years from the date of sealing the patent, whichever is the later, any person interested may apply to the Controller for a licence under the patent or for the endorsement of the patent with

the words "licences of right" on the ground that there has been an abuse of the monopoly rights under the patent.

(2) The grounds, deemed to constitute an abuse of monopoly rights, upon which application may be made for an order under this section are as follows, that is to say:

- (a) that the patented invention, being capable of being commercially worked in the State, is not being commercially worked therein or is not being so worked to the fullest extent that is reasonably practicable;
- (b) that a demand for the patented article in the State is not being met on reasonable terms, or is being met to a substantial extent by importation;
- (c) that the commercial working of the invention in the State is being prevented or hindered by the importation of the patented article;
- (d) that by reason of the refusal of the patentee to grant a licence or licences on reasonable terms:
  - (i) a market for the export of the patented article manufactured in the State is not being supplied; or
  - (ii) the working or efficient working in the State of any other patented invention which makes a substantial contribution to the art is prevented or hindered; or
  - (iii) the establishment or development of commercial or industrial activities in the State is unfairly prejudiced;
- (e) that by reason of conditions imposed by the patentee upon the grant of licences under the patent, or upon the purchase, hire or use of the patented article or process, the manufacture, use or sale of materials not protected by the patent, or the establishment or development of commercial or industrial activities in the State is unfairly prejudiced;
- (f) that a condition which by virtue of section 54 of this Act is null and void has been inserted in a contract made after the commencement of this Act in relation to the sale or lease of, or licence to use or work, any article or process protected by the patent:

Provided that, for the purpose of determining whether there has been any abuse of the monopoly rights under a patent, it shall be taken that patents for new inventions are granted not only to encourage invention but to secure that new inventions shall so far as possible be commercially worked in the State without undue delay.

(3) Subject as hereinafter provided, the Controller may, if satisfied that any of the grounds aforesaid are established, make an order in accordance with the application; and where the order is for the grant of a licence, it may require the licence to be granted upon such terms as the Controller thinks fit:

Provided that:

- (a) where the application is made on the ground that the patented invention is not being commercially worked in the State or is not being worked to the fullest extent that is reasonably practicable and it appears to the Controller that the time which has elapsed since the sealing of the patent has for any reason been insufficient to enable it to be so worked, he may by order adjourn

the application for such period as will in his opinion give sufficient time for the invention to be so worked;

- (b) an order shall not be made under this section for the endorsement of a patent on the ground that a market for the export of the patented article is not being supplied, and any licence granted under this section on that ground shall contain such provisions as appear to the Controller to be expedient for restricting the countries in which the patented article may be sold or used by the licensee;
- (c) no order shall be made under this section in respect of a patent on the ground that the working or efficient working in the State of another patented invention is prevented or hindered unless the Controller is satisfied that the patentee in respect of that other invention is able and willing to grant to the patentee and his licensees a licence in respect of that other invention on reasonable terms;
- (d) any licence granted shall be non-exclusive and non-transferable;
- (e) the terms of any licence granted may be so framed as to preclude the licensee from importing into the State any goods the importation of which, if effected by persons other than the patentee or those claiming under him, would be an infringement of the patent, and in such case the patentee and all licensees under the patent shall be deemed to have mutually covenanted against such importation.

(4) The Controller shall, in determining whether to make an order in pursuance of any such application, take account of the following matters, that is to say:

- (a) the nature of the invention, the time which has elapsed since the sealing of the patent and the measures already taken by the patentee or any licensee to make full use of the invention;
- (b) the ability of any person to whom a licence would be granted under the order to work the invention to the public advantage; and
- (c) the risks to be undertaken by that person in providing capital and working the invention if the application is granted;

but shall not be required to take account of matters subsequent to the making of the application.

(5) An application under this section may be made by any person notwithstanding that he is already the holder of a licence under the patent; and no person shall be estopped from alleging any of the matters specified in subsection (2) of this section by reason of any admission made by him, whether in such a licence or otherwise, or by reason of his having accepted such a licence.

(6) In this section "patented article" includes any article made by a patented process.

*(To be continued)*

## ITALY

## Decrees

concerning the temporary protection of industrial property  
rights at 6 exhibitions

(Of April 20, May 4, July 6, 15 and 21, 1964)<sup>1)</sup>

## Single Article

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

*XXIV<sup>a</sup> Fiera di Ancona — Mostra-mercato internazionale della pesca, degli sports nautici ed attività affini* (Ancona, June 20-July 5, 1964);

*VIII<sup>a</sup> Mostra convegno internazionale dell'automazione e strumentazione* (Milan, November 19-25, 1964);

*IV<sup>a</sup> Mostra delle apparecchiature chimiche "MAC 64"* (Milan, November 26-December 4, 1964);

*XVII<sup>a</sup> Fiera di Bolzano — Campionaria internazionale* (Bolzano, September 11-21, 1964);

*I<sup>a</sup> Esposizione Europea elettrodomestici* (Milan, September 12-20, 1964);

*XIX<sup>o</sup> Salone-mercato internazionale dell'abbigliamento* (Turin, September 3-6, 1964)

shall enjoy the temporary protection provided by laws No. 1127 of June 29, 1939<sup>2)</sup>, No. 1411 of August 25, 1940<sup>3)</sup>, No. 929 of June 21, 1942<sup>4)</sup>, and No. 514 of July 1, 1959<sup>5)</sup>.

**CORRESPONDENCE****Letter from Belgium<sup>1)</sup>**

By Antoine BRAUN, Lawyer, Brussels















## BOOK REVIEWS

**Teoria generale a contractelor economice** (General theory of economic contracts), by Professor *Traian Ionascu* and M. *Eugen A. Barasch*. One volume of 430 pages, 21 × 16 cm., published by the Academy of the Rumanian People's Republic. Bucarest, 1963. In Rumanian.

This work will be published in two volumes. The first volume deals with the formation of economic contracts, that is to say, the origin of obligations.

The aim of the work is to set out what is common to different contracts, i. e., the rules which are applied to a specific contract, in the absence of special rules or with which rules they must be completed, if any.

Economic contracts are, in the views of the authors, those contracts, subject to payment, concluded between socialist organizations for the delivery of goods, the execution of work or the performance of services which, whatever may be their object, aim at carrying out the tasks set by the Socialist State.

The subject-matter is dealt with in the following order: chapter one, the role, justification and the obligatory nature of the economic contract; chapter two, the obligation to conclude a contract; chapter three, the conclusion of the contract which may be carried out by agreement between the parties or through the intermediary of the State arbitration organs; chapter four, the form and the content of the contract and finally, chapter five, the nullity of the economic contract. G. R.

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**Civil Code of the Hungarian People's Republic**, translated into French by *Pál Sebestyén*. One volume of 192 pages, 24 × 16 cm., published by "Corvina", Budapest.

Attention is drawn to this volume which contains the Hungarian Civil Code, as approved by Law IV of 1959, the explanatory note and

<sup>36)</sup> *Jurisprudence commerciale Bruxelles*, 1961, p. 321.

the address by M. Ferenc Nezval, Minister of Justice, to the National Assembly, on July 30, 1959, on the occasion of the parliamentary debate.

The Code contains 685 Articles. Article 84, under Title IV, deals with the protection granted to persons by civil law. Chapter VII, on moral rights states the following general rule: "The special rules for the protection of moral rights for intellectual creations are determined by copyright, the law on inventions and innovations and by the rules governing the protection of trademarks and models". I. S.

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**The Vine and Wine Lexicon.** One bound volume of 674 pages, 24 × 15 cm. The International Vine and Wine Office, 11, rue Roquépine, Paris 8, 1963. Price: Fr. 85.—.

This Lexicon in seven languages (French, Italian, Spanish, German, Portuguese, English and Russian) succeeds the lexicon in four languages published in 1940.

It is an important work to which a number of international specialists have contributed. It is divided into four parts: the first contains some 2000 terms and their definitions in seven languages, the second part is composed of seven alphabetical indices with a complementary index of Latin terms cited, the third part lists the main units of measurement including a table of equivalents (temperature scales, densities, alcoholic degrees etc.), and the fourth part is composed of 17 plates of illustrations.

This carefully prepared volume is a valuable instrument of work both for translators and interpreters and for professionals dealing with problems connected with wine. I. S.

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**Abuso di brevetti d'invenzione e norme di disciplina della libertà di concorrenza** (Abuse of patents for inventions and rules on freedom of competition), by *Mario Fabiani*. A booklet of 29 pages, extracted from the volume published in honour of Professor Alberto Asquini, 29 × 18 cm. Edition CEDAM, Padua, 1962.

Professor Fabiani first establishes the concept of abuse of patents in order to define the sphere of application of rules prohibiting patent abuse and to distinguish them from rules which, while different, are equally effective in preventing abuses in economic activities, where inventors' patents play a highly important part.

In the author's view, an abuse is committed when there is an abnormal use of the patent, which disturbs the balance of public and private interests which underlies the rule of the recognition of law. Such an abuse occurs more especially in all cases where the titular holder of the patent, in exercising the power of autonomy conferred on him by the right to the exclusive use of the invention, exploits his right by committing acts which, while apparently conforming to the substance of this right, aim at producing effects inconsistent with the objects of patent legislation.

The abuse of a patent may relate to the circulation or use of the patent. In the former case, only transfers or licences containing clauses which hinder the economic progress or industrial development which could and should be obtained from exploiting a protected invention can be regarded as abuses. Certain territorial restrictions or temporary limitations do not constitute an abuse. On the other hand, any clause regarding the sale or licensing of the patent which tends to place restrictions on output, or to bind the sale of the product covered by the patent or arising therefrom constitutes an abuse. An abuse is committed by any titular holder of the principal patent who refuses to authorize its use for the exploitation of a subsidiary patent, or who makes the authorization dependent on conditions which are unduly onerous in relation to the restricted use of his patent.

An abuse also exists if the titular holder uses his patent exclusively to reserve for himself technical possibilities, not in order to exploit them but purely to debar others from so doing, as in the case of failure to exploit the invention or to exploit it sufficiently.

Excluded from the category of patent abuses is any irregularity in the exercise of the right, such as imposing conditions which do not

properly concern the exercise of the patent right, and which go beyond what is purely a sale or licensing relationship. In such cases there is an abuse of the right of economic freedom. These acts contravene the anti-monopoly laws and are therefore illegal.

The author concludes that patent legislation already constitutes a departure — even if justified — from the principles of free competition. Activities connected with uses of a patent which go beyond the substance of the patent and are aimed at securing an unwarranted privileged position on the market come within the sphere of regulation of competition. As they are infringements of this legislation, they distort its function. Accordingly, the author regards it as proper, even as a problem of legislative policy, to provide for and forbid instances of such infringement as an abuse of the right of economic freedom.

In this study, which contains numerous quotations, the distinction between the two categories of abuse — of patents and of free competition — it set out with convincing clarity. G. R.

## NEWS ITEMS

### PORTUGAL

#### *Appointment of new Head of the Industrial Property Office*

We are informed that Mr. Rui Álvaro da Costa Morais Serrão has been appointed Head of the Industrial Property Office as from September 29, 1964.

We take this opportunity of congratulating Mr. Morais Serrão on his new appointment.

### NOTICE

#### *The Hague Agreement for the International Deposit of Industrial Designs*

In response to a number of requests, the United International Bureaux have, in the past, agreed to record in the Designs Register and to publish notices relating to working licences notified to them.

It would seem, however, that such records and publications, which are not provided for by The Hague Agreement for the International Deposit of Industrial Designs, had only a limited legal effect in the countries parties to this Agreement.

For this reason, the United International Bureaux have considered it preferable to discontinue recording and publishing notices relating to working licences for industrial designs.

### NOTICE

#### *African and Malagasy Industrial Property Office (OAMPI)*

We have been requested by the Director General of the African and Malagasy Industrial Property Office to draw the attention of our readers to the following Notice:

(Translation)

"It is recalled that the prescribed period for accomplishing the formalities relating to the transitional provisions of the Accord of Libreville of September 13, 1962, will expire on December 31, 1964.

The owners of industrial property rights and depositors concerned are therefore invited to address their declarations and applications immediately to the OAMPI, in accordance with the conditions provided in the annexes to the Accord and the Regulations of the Office.

For further information, write to: OAMPI, P.B. 887, Yaoundé (Cameroon). »

(Signed) Emmanuel James MOUKOKO  
Director General

## Calendar of BIRPI Meetings

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	November 30 to December 4, 1964	Committee of African Experts, convened jointly with Unesco, to study a draft model copyright law	Study of a draft model copyright law for African countries	Congo (Brazzaville), Ethiopia, Ghana, Ivory Coast, Liberia, Morocco, Nigeria	Individual consultants from the European Broadcasting Union, International Confederation of Societies of Authors and Composers, International Literary and Artistic Association
Geneva	March 15 to 19, 1965	Committee of Experts on inventors' certificates	To study the problem of inventors' certificates in relation to the Paris Convention	All Member States of the Paris Union	United Nations, International Patent Institute, Council of Europe, Organization of American States, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents, Interamerican Association of Industrial Property
Geneva	March 22 to April 2, 1965	Committee of Experts on the administrative structure of international co-operation in the field of intellectual property	To study a draft Convention on administrative structure	All Member States of the Paris and Berne Unions	United Nations, World Health Organization, United Nations Educational, Social and Cultural Organization, International Labour Organization, International Patent Institute, Council of Europe, Organization of American States, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents, Interamerican Association of Industrial Property, International Literary and Artistic Association, International Confederation of Societies of Authors and Composers, International Bureau for Mechanical Reproduction

## Meetings of other International Organizations concerned with Intellectual Property\*)

Place	Date	Organization	Title
Tunis	December 16 to 20, 1964	Union of African National Radio and Television Broadcasters (URTNA)	Administrative and Legal Study Group
Tel Aviv	January 31 to February 2, 1965	International Association for the Protection of Industrial Property (IAPIP)	Conference of Presidents
New Delhi	February 6 to 12, 1965	International Chamber of Commerce (ICC)	Congress
Paris	March 1 to 5, 1965	International Confederation of Societies of Authors and Composers (CISAC)	Legislative Committee
Stockholm	August 23 to 28, 1965	International Literary and Artistic Association (ALAI)	Congress

\*) With this issue, *Industrial Property* introduces a second calendar of meetings which will be continued in future issues. This calendar lists meetings the agenda of which consists of or includes items concerning intellectual property (industrial property, copyright, neighbouring rights, etc.). Organizations which convene such meetings are invited to notify them to BIRPI as soon as their dates are fixed for possible inclusion in this calendar.