

# Industrial Property

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# LEGISLATION

## ITALY

### Decrees

concerning the temporary protection of industrial property rights at 14 exhibitions

(Of December 16, 1964, January 11 and 18, February 2, 1965)<sup>1)</sup>

#### Single Article

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

*II° Salone internazionale delle macchine per movimenti di terra e l'edilizia rurale* — S.A.MO.TER (Verona, February 3-18, 1965);

*III° Salone internazionale del giocattolo* (Milan, February 6-13, 1965);

*XX° Salone-mercato internazionale dell'abbigliamento* (Turin, February 19-22, 1965);

*XVII° Fiera Campionaria della Sardegna* (Cagliari, March 6-21, 1965);

*LXVII° Fiera internazionale dell'agricoltura e della zootecnica* — *XVIII° Salone della macchina agricola* (Verona, March 14-22, 1965);

*XLIII° Fiera di Padova* — *Campionaria internazionale* (Padova, March 31 to June 13, 1965);

*XXIX° Mostra-mercato internazionale dell'artigianato* (Florence, April 24 to May 9, 1965);

*II° Mostra internazionale della prefabbricazione e dei materiali e sistemi nuovi per l'edilizia* (Milan, April 30 to May 16, 1965);

*XX° Fiera del Mediterraneo* — *Campionaria internazionale* (Palermo, May 22 to June 6, 1965);

*XIII° Fiera di Roma* — *Campionaria nazionale* (Rome, May 29 to June 13, 1965);

*XII° Mostra internazionale avicola* (Varese, June 26-30, 1965);

*XIX° Fiera-Campionaria nazionale del Friuli-Venezia Giulia* (Pordenone, August 26 to September 18, 1965);

*XXVI° Fiera di Messina* — *Campionaria internazionale* (Messina, August 18-22, 1965);

*La Settimana della calzatura e del cuoio* — *XXIX° Salone internazionale* (Vigevano, September 4-12, 1965)

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>.

<sup>1)</sup> Official communication from the Italian Administration.

<sup>2)</sup> See *Prop. ind.*, 1939, p. 124; 1940, p. 84.

<sup>3)</sup> *Ibid.*, 1940, p. 196.

<sup>4)</sup> *Ibid.*, 1942, p. 168.

<sup>5)</sup> *Ibid.*, 1960, p. 23.

Translation<sup>1)</sup>

## NETHERLANDS

### Patents Act

Act of 7<sup>th</sup> November 1910, S.<sup>2)</sup> 313, for regulating the patent law in respect of inventions, as supplemented and amended by Acts of 15<sup>th</sup> January 1921, S. 15, 15<sup>th</sup> October 1921, S. 1127, 29<sup>th</sup> June 1925, S. 308, 9<sup>th</sup> July 1931, S. 301, 29<sup>th</sup> November 1935, S. 685, 1<sup>st</sup> December 1948, S. I.532, 28<sup>th</sup> June 1956, S. 397, and 30<sup>th</sup> May 1963, S. 260.

(First Part)

#### CHAPTER I

##### General definition of the term "patent"

Subjects for which and persons to whom patents are granted

##### Section 1

A person who has invented a new product, a new process, or a new improvement of a product or process shall, upon his application, be granted sole rights under the name of patent.

##### Section 2

Products, processes or improvements shall be deemed not to be new only when, at the time the application is filed, they may be of sufficient public knowledge, by description or otherwise, as to enable a person skilled in the art to manufacture or use them.

##### Section 3

An invention is patentable only if it procures some result in the field of industry.

##### Section 4

A patent granted for a process for producing a substance or for an improvement of such a process, shall extend to that substance, provided it be produced according to that process or by using that improvement. No patent shall be granted for a substance as such.

##### Section 5

No patent shall be granted for products or processes which are themselves, or whose purpose is, contrary to law, public order or morality.

##### Section 5A

Each application for a patent may seek to procure sole rights in respect of only one invention.

##### Section 6

Subject to the provisions of sections 7, 8, 8A, 9, 10 and 11, that person shall be deemed to be the inventor who first files

<sup>1)</sup> This English translation of the Netherlands Patents Act is reprinted by kind permission of the Institute of Netherlands Patent Agents, The Hague.

<sup>2)</sup> S = *Staatsblad*.

with the Patent Board referred to in section 13 an application for patent which is laid open to public inspection in accordance with section 22C or section 25, subsection 3.

#### Section 7

(1) A person who, in a member country of the International Convention for the Protection of Industrial Property, has applied for a patent or for protection of a utility model in accordance with the laws of that country, shall enjoy in the Kingdom (of the Netherlands) for a period of twelve months from the date of that application, a right of priority for procuring a patent for that in respect of which he has sought the aforesaid protection. Where he has filed more than one application for such protection, only the application first filed shall qualify for the right of priority.

(2) That priority entails that neither the application filed in the Netherlands by the person entitled to priority, nor the patent granted thereon, shall be affected by what has happened in the time between the filing of the application in the foreign country and the filing in the Netherlands, and particularly not by the filing of a similar application by another person or by the invention becoming known within the meaning of section 2.

(3) Priority cannot be refused on the ground that more than one right of priority, within the meaning of this section, is claimed for the invention. Nor can priority be refused on the ground that sole rights were not explicitly claimed in the application filed in the country of origin for the invention or for any part thereof, in respect of which the right of priority is claimed, provided that the said invention or part thereof has been disclosed in the documents pertaining to the application so precisely that, on the basis thereof, a person skilled in the art can understand and use the invention or part thereof.

(4) A person wishing to avail himself of the right of priority must make a written claim to the right at the time of filing his application, or within three months thereafter, stating the date on which and the country where the application to which the claim refers was filed; he must also submit such supporting evidence as may be required by the Patent Board before a date to be fixed by that Board.

(5) The right of priority shall lapse if no claim is made thereto at the time of filing the application, or within three months thereafter, or if the supporting evidence required is not submitted before the specified date.

#### Section 8

(1) A person who displays a product or demonstrates a process at a Government sponsored or recognized exhibition within the Kingdom or at a Government sponsored or recognized international exhibition held in a member country of the International Convention referred to in the foregoing section, shall, if he applies within six months after the opening of that exhibition for a patent in respect of that product

or process or in respect of an improvement comprised in that product or process, be deemed to have already applied for that patent on the day on which, according to an official declaration submitted with the application, that product was present or that process had begun to be demonstrated at the exhibition.

(2) Government recognition of exhibitions held within the European territory of the Kingdom shall be given by the Minister responsible for implementing the present Act, that of exhibitions held in the Colonies and Possessions overseas shall be given by the Governors.

#### Section 8A

An applicant who has been notified by one of the Application or Appeal Divisions of the Patent Board that his application seeks to procure sole rights in respect of more than one invention shall, if he files, within three months after the decision concerned has become irrevocable, a new application for a patent for the part regarded as a separate invention, mentioning the original application, be deemed to have filed this application already on the date of the original application.

#### Section 9

The first applicant is not entitled to a patent in so far as the contents of his application have been taken, without permission, from something already made or used by another person or from another person's descriptions, drawings or models. The other person shall remain entitled to a patent, in so far as what has been so taken is patentable.

#### Section 10

(1) Where the product, process or improvement for which a patent is sought has been invented by a person employed in the service of another person in a position the nature of which entails the application of his special knowledge to the making of inventions of the same kind as that to which the application for a patent refers, the employer shall be entitled to the patent.

(2) Where, in such a case, the inventor cannot be deemed to find in the salary he earns, or in a special payment to be received by him, compensation for the deprivation of a patent, the employer shall be required to pay him an equitable sum, having regard to the pecuniary interest of the invention and the circumstances in which it was invented. Should the employer and the inventor be unable to agree on that sum, they may approach the Patent Board in writing requesting that the sum be determined by that Board. The Patent Board shall comply with that request, and its decision shall be binding on the parties. Should the employer and the inventor not avail themselves of this right, section 56 shall apply. All rights of the inventor to claim under this provision shall lapse after three years have expired from the date of the patent grant.

(3) Any stipulation at variance with the provisions of the foregoing subsection shall be null and void.

## Section 11

Where a product, process or improvement has been invented by several persons, who have collaborated by agreement, they shall be jointly entitled to a patent.

## Section 12

(1) A person having applied for, or holding, a patent for a product or process may apply for a patent of addition in respect of an improvement to that product or process.

(2) A patent of addition shall expire at the same time as the main patent and cannot belong to anyone other than the holder of that patent, subject to the provisions of sections 51 and 53 in the event of the main patent being declared null and void or the ownership of one of the patents having been successfully claimed by another person.

(3) Subject to these cases, the fees referred to in section 35 are not payable in respect of a patent of addition. For the grant of such a patent a fee, the amount of which shall be prescribed by Order in Council, shall be paid on the last day of the month following that in which the said patent came into effect.

## Section 12A

(1) The person who has made the invention for which a patent is sought but who, by virtue of section 10, subsection 1, or by virtue of an agreement contracted with the applicant or with his predecessors in title, is not entitled to a patent, shall have the right to be mentioned as inventor in the patent.

(2) Any stipulation at variance with the foregoing subsection shall be null and void.

## CHAPTER II

Procedure on the grant of patents  
Patent Board

## PART I

*The Patent Board*

## Section 13

Applications for patent shall be filed with, and patents shall be granted by, the Patent Board.

## Section 14

(1) The Patent Board forms part of the Industrial Property Office; the relationship between the Board and the Office shall be further regulated by Order in Council.

(2) The Patent Board is subdivided into:

- (a) a Central Division;
- (b) Application Divisions;
- (c) Appeal Divisions.

An Application Division may consist of one member.

(3) The President, one or more vice-presidents and the other members of the Board shall be appointed and dismissed by Us. Before accepting office, the President shall make to Us, and the members to the President, a solemn pledge the contents of which shall be prescribed by Order in Council.

## Section 15

(1) The further organization and the procedure of the Patent Board shall be regulated by Order in Council, having regard to the provisions of this Chapter.

(2) The Order in Council mentioned in the foregoing subsection shall regulate *inter alia*:

- (a) the number of vice-presidents and members of the Patent Board;
- (b) the composition and the competence of the Division to perform the work entrusted to the Patent Board;
- (c) the procedure on deputising for the President;
- (d) the procedure for summoning and hearing, in pursuance of this Act, applicants, opponents and other interested parties, as well as witnesses and experts, and the remuneration payable to the latter two categories;
- (e) the registers to be kept pursuant to this Act, and the procedure for entering therein documents other than applications for patent, and the fee payable for registering such documents;
- (f) the requirements with which documents other than applications for patent, and which are to be registered pursuant to this Act, shall comply;
- (g) the manner of determining the effective time at which the documents mentioned under (f) were filed for registration with the Patent Board;
- (h) the manner in which Patent Board registers may be inspected by the public and the fees that may be charged for furnishing copies and extracts;
- (i) the times at which the Industrial Property Office shall be open to the public for business done under this Act;
- (j) the fee payable for the issue of a certificate of priority;
- (k) the fees payable for the registration of a statement of appeal as mentioned in section 24A, subsection 1, and section 27, and of a statement of opposition as mentioned in section 25 subsection 4;
- (l) the fees payable for extension of the terms prescribed under this Act.

## Section 16

The order of precedence of the rights arising from the entry in Patent Board registers of documents other than applications for patent shall be determined by the exact times at which the Patent Board received the documents for registration.

## Section 17

(1) The Patent Board is empowered to refuse to register a document, other than an application for patent, but only when the document fails to comply with the requirements prescribed by or under this Act in respect of a document of that kind, or when it does not clearly indicate the patent to which it relates, or when any condition to which registration is subjected by this Act has not been fulfilled.

(2) The grounds for refusal shall be communicated in writing to the person seeking the registration.

(3) An appeal shall lie from this refusal to a court of law, as laid down in section 55.

(4) A person who feels aggrieved by the registration of a document, other than an application for patent, is entitled to apply to the court, as laid down in section 55, to declare that registration to be without effect.

#### Section 18

(1) The Patent Board and its Divisions are empowered to hear witnesses and experts. It shall be incumbent on anyone who is summoned as a witness, and who resides in the European Territory of the Kingdom, to comply with that summons, to swear an oath or make a solemn affirmation to the President of the Patent Board, or of the Division, to speak the whole truth and nothing but the truth, and to give evidence, except, where there exists between the witness and an interested party, summoned or present, any one of the relations mentioned in section 1946 of the Civil Code (*Burgerlijk Wetboek*) or where the witness is in the situation specified under (3) of the said section. The experts shall swear an oath or make a solemn affirmation to the President of the Patent Board or of the Division to make their report conscientiously and moreover, should the President so require, to maintain complete secrecy.

(2) The Patent Board and its Divisions are furthermore empowered to order interested parties, resident in the European Territory of the Kingdom, to appear in person.

#### Section 19

All papers and documents addressed to, and sent out by, the Patent Board shall be exempt from stamp duty and the formality of registration with the Public Registry Office.

#### Section 19A

If the Industrial Property Office is closed on the last day on any term to be observed under this Act by or towards the Patent Board, that term for the purposes of this Act shall be extended to the end of the first following day on which the Office is again open.

### PART II

#### *The Grant of Patents*

#### Section 20

(1) The application for a patent shall state the name and place of residence of the applicant; the application shall be signed by the applicant or by his representative authorised in writing.

(2) The application shall be accompanied by a specification of the invention, and both the application and specification shall be worded in the Dutch language. By reason of special circumstances the Patent Office may, for a period which it shall determine, waive the provision that the application and the specification shall be worded in the Dutch language.

(3) In the event of failure to comply with these provisions, the documents filed shall not be regarded as an application for patent.

#### Section 21

Upon filing the application, proof shall be furnished that a fee, the amount of which shall be prescribed by Order in Council, has been paid to the Industrial Property Office.

#### Section 21A

Not until proof has been furnished that a fee has been paid as required under this Act or under the Patent Rules, shall the application and other documents for which the fee is payable be deemed to have been filed.

#### Section 22

(1) The time at which the application was filed at the Patent Board and a serial number shall be marked thereon. On the same day a receipt, stating that date and that serial number, shall be issued to the applicant.

(2) The applications, and their serial numbers, shall be entered in a register in numerical order.

#### Section 22A

(1) The application together with the appertaining specification of the invention and the drawings, shall comply with the formal requirements to be laid down by Order in Council. The application shall contain a brief designation of the subject to which the invention relates. The specification shall conclude with a definition of that for which sole rights are claimed.

(2) The application shall be accompanied by a declaration stating whether, and if so in which countries and on which dates an application in respect of the same invention has been filed earlier than in the Netherlands and, where such other countries are indicated, by an authorisation empowering the Patent Office to make enquiries in those other countries.

(3) In respect of the application a fee to be prescribed by Order in Council shall be paid for each page of the specification and drawings which pertain to the application and comply with the formal requirements referred to in subsection 1 above. Unless subsection 2 or 3 of section 22C are applicable, this fee shall be refunded if the application is withdrawn not later than one month before the expiry of the period specified in subsection 1 of the said section.

(4) Where the applicant does not reside in the Netherlands, he shall elect his domicile therein with an authorised representative, which election shall be deemed to remain in force, even after the grant of the patent, unless the Patent Board be notified in writing of a change in the elected domicile. Where the change in the elected domicile takes place after the grant of the patent, the person with whom domicile is elected need not be an authorised representative.

(5) Where, at the time of filing of the application, the provisions made by or under this section have not been complied with, the Patent Office shall within one month notify the applicant accordingly, stating the provisions which have not been complied with. The application shall lapse if, within five months after it was filed, and without any further change, the stated provisions have still not been complied with.

## Section 22B

(1) The specification of the invention shall be clear and complete; the concluding definition shall be precise. The specification shall, where necessary, be accompanied by corresponding drawings and, if required, be elucidated by models, samples and tests, and for the rest shall be of such a nature as to enable a person skilled in the art to understand and to use the invention on the basis of that specification.

(2) Further formal requirements and further stipulations relating to the presentation of the specification and drawings may be given by Order in Council.

## Section 22C

(1) As soon as possible after the expiry of eighteen months from the filing of the application, or after the first date of priority where the application is one in respect of which one or more rights of priority have been claimed, the Patent Office shall give notice of the application in the Journal referred to in section 25 and shall lay open the application with the appertaining specification and drawings, and other documents to be indicated by Order in Council, to public inspection at the Industrial Property Office<sup>1)</sup>.

(2) Where the applicant so requests in writing, the procedure stated in subsection 1 shall be implemented as soon as possible after that request.

(3) In respect of a new application within the meaning of section 8A, the procedure stated in subsection 1 shall be implemented as soon as possible after the filing of that application, but not earlier than in respect of the original application.

(4) This section shall not apply to applications made under Part III of this Chapter.

## Section 22D

(1) As long as no patent has been granted on an application, a fee to be prescribed by Order in Council shall be paid in respect thereof to the Industrial Property Office two years after the filing of the application on the last day of the month in which the application was filed, and further on that day in every successive year. On fees paid after the due date an additional sum shall be payable, which shall be prescribed by Order in Council.

(2) The application shall lapse if the fees referred to in subsection 1 foregoing are not paid within six months from the due date. Fees may be paid no more than six months before the due date. The Patent Office shall record the lapse in the public registers and shall give notice thereof in the Journal referred to in section 25.

(3) If payment has not been made on the due date, the Patent Office shall send a written reminder to the applicant within fourteen days. If payment has not been made three

<sup>1)</sup> According to the revised Patents Act which came into force on 1st January, 1964, patent applications are issued twice by the Patent Office, viz. the first time after a period of eighteen months from the filing date or the priority date (section 22C), and the second time after acceptance (section 25 [3]). — In order to avoid confusion and in accordance with the Netherlands text of the Act, the first issuance (before acceptance) is called "laying open to public inspection" while the second one (after acceptance) is indicated as "publication".

months after the due date, copies of the said reminder shall be sent by the Patent Office to all persons who, as shown by documents entered in the public registers, have acquired rights or have instituted legal proceedings in respect of the application. The absence of a reminder cannot be invoked in law.

## Section 22E

(1) The withdrawal of an application which has been laid open to public inspection or published shall have no effect vis-à-vis third parties:

- (a) as long as four months have not elapsed since the application was laid open to public inspection or published;
- (b) as long as no final decision has been given on a petition filed under section 22G or on a statement of opposition filed under section 25 and based on section 9, 10 or 11;
- (c) as long as no final decision has been given on legal proceedings which, as shown by documents entered in the public registers of the Patent Office, have been instituted in respect of the application.

(2) Where, pursuant to a final decision as envisaged in the foregoing subsection (1) under (b) or (c), a person other than the applicant is entitled or partly entitled to the patent, the withdrawal shall be deemed not to have been effected.

(3) The Patent Office shall record a withdrawal in the public registers and shall give notice thereof in the Journal referred to in section 25 as soon as the withdrawal takes effect in relation to third parties.

## Section 22F

Any person may notify the Patent Board in writing of data relating to an application laid open to public inspection. In so far as the Patent Board deems there are no objections to the public inspection of these data, or of such data relating to the application as it may otherwise acquire, the Patent Board shall without delay add the said data to the application laid open to public inspection, and shall notify them to the applicant in so far as they do not originate from him.

## Section 22G

(1) A person with a direct interest within the meaning of section 9, 10 or 11 may, after the applicant has been laid open to public inspection but not later than four months after publication in the Journal referred to in section 25 of a petition under section 22J, request the Patent Office in writing, on the grounds of the sections first mentioned, to rule that he is entitled or partly entitled to the patent. Upon the filing of a petition to this effect a fee to be prescribed by Order in Council shall be paid.

(2) A petition under subsection (1) shall state the reasons on which it is based and shall be signed by the petitioner or by his representative authorised in writing. Where the petitioner does not reside in the Netherlands, he shall elect his domicile with an authorised representative in the Netherlands.

(3) After a petition under subsection (1) has been filed, the prosecution of the relevant application pursuant to sec-

tions 23—24A shall be suspended until a final decision has been given in respect of the said petition, and the Patent Board shall without delay form an Application Division consisting of three members to deal with the petition. The Division shall afford the applicant an opportunity to take cognizance of the petition and shall give its decision after having heard the applicant and the petitioner, or at least after having duly summoned them.

(4) A decision pursuant to subsection (3) shall state the grounds on which it is based and the Patent Board shall within fourteen days give written notice thereof to the applicant and the petitioner. In respect of such a decision the provisions of section 27 shall apply *mutatis mutandis*.

(5) Where it is decided that the petitioner is entitled or partly entitled to the patent, he shall to that extent be substituted for the applicant.

(6) A petition within the meaning of subsection (1) shall be attached by the Patent Board to the application laid open to public inspection. As soon as the decision on such a petition has become final, the Patent Board shall likewise attach thereto the documents relating to the consideration of the petition.

#### Section 22H

(1) Upon a written petition to that effect by an interested party, the Patent Board may without delay order a preliminary hearing of witnesses in respect of facts which may affect any decision to be rendered by the Patent Board in respect of an application laid open to public inspection. Upon the filing of a petition to that effect a fee to be prescribed by Order in Council shall be payable.

(2) Section 22G, subsection (2), shall apply *mutatis mutandis*.

(3) The hearing shall be held by an Application Division of the Patent Office. The petitioner and the applicant, where the petition has been filed by a person other than the applicant, shall be afforded an opportunity to be present at the hearing.

#### Section 22I

(1) Where the applicant or, after the application has been laid open to public inspection another person files a written petition to that effect, the Patent Office shall institute an examination as to the objections that may be raised under this Act against the grant of a patent on the application. Upon the filing of such a petition a fee to be prescribed by Order in Council shall be payable.

(2) A petition under subsection (1) shall be signed by the petitioner or by his representative authorised in writing. Where the applicant does not reside in the Netherlands, he shall elect his domicile therein with an authorised representative.

(3) The Patent Office shall notify the applicant of a petition under subsection (1) which does not originate from him. Where or as soon as the application has been laid open to public inspection, the Patent Board shall give notice of the petition in the Journal referred to in section 25 and shall attach the petition to the said application.

(4) For the purposes of the examination the Patent Board may seek the advice of the International Patent Institute as defined in the Agreement concerning the establishment of an International Patent Institute, signed in The Hague on the 6<sup>th</sup> of June 1947.

(5) After the examination the person who filed the petition under subsection (1) and the applicant, where the petition was filed by a person other than the applicant, shall be notified in writing by the Patent Board of any objections that have come to light. Where or as soon as the application has been laid open to public inspection, the Patent Board shall publish this notification in the Journal referred to in section 25 and shall attach a copy thereof to the said application.

(6) Where the applicant or, after the application has been laid open to public inspection, another person files a written petition to that effect, the Patent Office shall pursue the examination with regard to any part of the application in respect of which it appears from the relevant notification that the examination in connection with the provisions of section 5A has not been carried out or has not been complete in respect of objections deriving from other sections of this Act. Upon the filing of such a petition a fee to be prescribed by Order in Council shall be payable. Subsections (2), (3), (4) and (5) shall apply *mutatis mutandis*.

(7) Where the applicant submits a written defence in answer to the objections, or on the grounds thereof revises his application, the Patent Board shall attach the relevant documents to the application laid open to public inspection.

#### Section 22J

(1) Following the notification in respect of the examination under section 22I, subsection 5, the applicant or, after a copy of that notification has been attached to the application laid open to public inspection, another person, may petition the Patent Office in writing to give a decision regarding the grant of a patent on the application. Upon the filing of such a petition a fee to be prescribed by Order in Council shall be payable.

(2) Section 22I, subsections (2) and (3), shall apply *mutatis mutandis*.

#### Section 22K

(1) An application shall lapse where a petition under section 22J has not been filed within seven years after the filing of the application.

(2) Where a petition for instituting or continuing an examination under section 22I, subsection (1) or (6), has been filed in respect of an application before the expiry of the period specified in the foregoing subsection (1), but the notification regarding the examination under subsection (5) of section 22I has not been published in the Journal referred to in section 25 at least four months before the expiry of that period, the said period shall be extended up to four months after the publication of the said notification in the Journal mentioned in section 25.

(3) A new application under section 8A which is filed at least one month before the expiry of the period which, under

subsection (1) or (2), is applicable to the original application, shall lapse if a petition under section 22J is not filed within the period last mentioned, with the proviso that subsection (2) shall apply *mutatis mutandis*.

(4) A new application under section 8A which is filed less than one month before the expiry or after the expiry of the period applicable under subsection (1) or (2) to the original application, shall lapse if a petition for instituting an examination under section 22I, subsection (1), has not been filed within one month after the filing of the new application, and further if a petition under section 22J has not been filed within four months after the publication in the Journal referred to in section 25 of the notification under subsection (5) of section 22I, relating to the examination.

(5) The Patent Office shall record the lapse in the public registers and shall give notice thereof in the Journal referred to in section 25.

### Section 23

(1) After a petition under section 22J has been filed, the Patent Board shall make preparations to deal with the application as under subsection (4) below. Section 22I, subsection (4), shall apply *mutatis mutandis*.

(2) Where an application in respect of the same invention has been filed in another country, the applicant is bound to state, if the Patent Office so requires, the objections raised against his application for a patent in its prosecution in that country.

(3) Should the Patent Office consider that an application fails to comply with the statutory requirements, it shall notify the applicant accordingly, stating the objections raised and offering him the opportunity to remove the said objections, either by submitting, within a reasonable term, a written defence, or by supplementing or amending the original application.

(4) After completing the preparations referred to in subsection (1) above, the Patent Office shall place the application and pertaining documents in the hands of an Application Division which it shall form to deal with the application.

(5) After the applicant has been heard by the Application Division, or at least duly summoned to appear, and has been afforded due opportunity, where necessary, to remove the objections raised, the Division shall give its decision as soon as possible.

(6) Before deciding on whether or not the application should be published, the Application Division may request the Patent Board to institute a further examination.

### Section 24

(1) If the Application Division considers that the application fails to qualify for a full or partial patent grant, it shall decide not to publish the application. In the contrary case it shall decide that the application be published.

(2) The applicant shall be notified of the decisions of the Application Division within 14 days thereof; where the application is not wholly published he shall be informed of the grounds for the decision.

### Section 24A

(1) Within three months from the final decision, the applicant may lodge appeal with the Patent Board by filing a statement specifying the grounds of appeal.

(2) The decision on appeal shall be given by an Appeal Division of the Patent Office, after hearing the applicant or at least duly summoning him to appear. Before deciding, the Appeal Division may request the Patent Office to institute a further examination.

(3) The members who were concerned with the examination of the application, or with the preparations for dealing with the application as under subsection (1) of section 23, or who constituted the Application Division, shall not be included in the Appeal Division mentioned in the foregoing subsection.

(4) The applicant shall be notified of a decision of the Appeal Division within 14 days thereof.

### Section 24B

The applicant and the person entitled under section 12A to be mentioned as inventor in the patent may, not later than before the fulfilment of the conditions for publication of the application as laid down in section 25, jointly submit a written request to the Patent Board for the said person to be mentioned as inventor in the patent. The request shall be dealt with by the Division which is judging of the publication. If the Division accedes to the request, it shall direct that the mention be entered in the patent application upon its being published.

### Section 25

(1) Provided an appeal no longer lies, or when the applicant has renounced his right to appeal, and as soon as the applicant has furnished proof that a fee, the amount of which shall be prescribed by Order in Council, has been paid to the Industrial Property Office, the Patent Board shall allow the application by promulgating the relevant decisions in a Journal to be issued by the Industrial Property Office. Within fourteen days after the appearance of the said Journal the Patent Office shall record the publication of the application under a consecutive number in the relevant public register. Subject to the provisions of the next subsection, the application shall be deemed to have been withdrawn if proof of payment has not been furnished by the day on which the decision to publish the application, taken by an Application Division, becomes final, or within one month after the taking of a like decision by an Appeal Division.

(2) Provided the applicant gives good notice of so wishing, and furnishes proof that a sum equal to half the fee payable under the foregoing subsection has been paid to the Industrial Property Office, the Patent Board shall allow the payment laid down in the foregoing subsection to be deferred for a term of not more than three months. Where such a case applies, the application shall be deemed to have been withdrawn if the proof of payment specified in the foregoing subsection has not been furnished by the last day of the term of deferment granted by the Patent Board.

(3) At the same time as the Journal appears in which the decision to publish the application is announced, the Patent Office shall lay open the documents mentioned under sections 22C, 22I and 22J to public inspection, if the laying open to public inspection referred to in section 22C has not yet been effected and shall attach to these documents the decision to publish the application, the appertaining specification and drawings in the form in which it is decided to publish them, and the relevant correspondence which has been exchanged after the filing of a petition under section 22J. The Patent Office shall furthermore issue the above-mentioned specification and drawings as soon as possible<sup>1)</sup>.

(4) Within a term of four months from the date of the Journal referred to in subsection (1), any person may object to the grant of the patent applied for by filing with the Patent Board a statement of opposition, stating the grounds therefor; the statement shall distinctly bear the name and place of residence of the opponent and shall be signed by him or by his representative authorised in writing. Subject to replacement or revocation, the authorised representative shall act for the opponent in all matters arising from the statement of opposition. If the opponent does not reside in the European Territory of the Kingdom, he shall elect his domicile therein with an authorised representative. The objections shall be founded on the provisions of this Act and, in so far as they affect a directly interested party, within the meaning of sections 9, 10 and 11, they may be lodged by that party only.

(5) A person entitled under section 12A to be mentioned as inventor in the patent may petition the Patent Board in writing either that he be mentioned as the inventor in the patent to be granted, or that the entry mentioning a person as the inventor in the application, as published, be rectified or omitted in the patent to be granted. The foregoing subsection shall apply *mutatis mutandis*.

#### Section 26

(1) Statements of opposition or petitions filed pursuant to sections 25 or 32 shall be passed to the Application Division which judged of the publication of the application. If that Division consisted of one member, its membership shall be increased to three. This Division shall afford the applicant an opportunity to take cognizance of the said statements or petitions, and after expiry of the period specified in section 25, subsection (4), and having heard the applicant, opponents and petitioners, or at least after duly summoning them, it shall decide on the partial or full grant of the patent and on the petitions. Where a petition is filed under subsection (5) of section 25 to rectify or omit the entry mentioning a person as the inventor in the published application, the Application Division shall also afford the person so mentioned an opportunity to take cognizance of the petition and shall give no decision before also hearing him, or least duly summoning him.

<sup>1)</sup> See footnote p. 26.

(2) Where an objection is made to the grant of a patent on the ground that the opponent is entitled to a patent under section 9 or section 10, or is entitled to a right of joint ownership under section 11, either in respect of the entire contents of the original application or in respect of such a part as is separately patentable, the Division may proceed to examine that objection; if it finds the objection to be well founded it shall grant the patent applied for wholly or partly to the opponent, or shall accord him the right of joint ownership to which he is entitled, in so far as the opponent has informed the Patent Board of his wishes in the matter before the decision. This decision shall not preclude the right of action pursuant to section 53.

(3) The applicant, the opponents, and the petitioners shall be notified in writing, within 14 days, of the Division's decision, which shall state the grounds on which it is based.

(4) If no statements of opposition or petitions under sections 25 or 32 have been received within the period specified in subsection (4) of section 25, the patent shall be deemed to have been granted in the form in which the application was published.

#### Section 27

(1) Within three months from the final decision the applicant, the opponents, the petitioners and the person mentioned as inventor in the application as published, may lodge an appeal by filing with the Patent Board a statement of appeal, which shall state the grounds therefor and be signed by the appellants or by their representative authorised in writing. The Patent Board shall afford the other interested parties an opportunity to take cognizance of the statement of appeal.

(2) Having heard, or least duly summoned, the applicant, the opponents, the petitioners and the person mentioned as inventor in the application as published, an Appeal Division of the Patent Board shall decide on the appeal. In regard to the composition and the decision of the said Division the provisions of section 24A apply.

#### Section 28

(1) The patent granted on a published application shall be dated and shall enter into force, without prejudice to the provisions of section 44, on the day after that on which the period specified in subsection (4) of section 25 has expired without statements of opposition or petitions having been filed; or, if such have been filed, on the day after that on which the period specified in section 27 has expired without an appeal having been lodged or on which all persons entitled to appeal have waived their right thereto; or, if an appeal has been lodged, on the day after that on which the patent was granted by an Appeal Division.

(2) Within fourteen days from that date the Patent Office shall record the grant of the patent in the register mentioned in subsection (1) of section 25, and shall, as soon as possible, give notice thereof in the Journal referred in the said section. The specification and drawings pertaining to the application in the form in which a patent was granted thereon shall, at

the same time as the said Journal appears, be issued by the Patent Office by way of letters patent, and it shall attach these documents to the application laid open to public inspection together with the decision to grant the patent and all relevant correspondence exchanged since the publication of the application.

(3) Within fourteen days from the date of the aforesaid Journal the Patent Board shall issue to the person to whom the patent is granted a certificate of his right.

(4) The refusal of an application, where an appeal no longer lies or where the Patent Board has decided upon refusal after appeal, shall be recorded by the Patent Board, likewise within fourteen days, in the register mentioned in subsection (1) of section 25, and shall be notified by the Board as soon as possible in the Journal referred to in that section.

#### Section 29

The rules for implementing the provisions of this and the next Part of this Act shall be laid down by Order in Council, which shall regulate inter alia:

- (a) the requirements with which applications and their supporting documents shall comply;
- (b) the procedure by which, for implementing section 22, the date mentioned therein shall be determined;
- (c) the procedure by which the applications under section 22 shall be entered in the registers of the Patent Board;
- (d) the name, the form and the manner of publishing the Journal referred to in section 25;
- (e) the notification of the application and the laying open thereof to public inspection, together with appertaining documents pursuant to section 22C, and also the laying open to public inspection of documents pursuant to sections 22F, 22G, 22I, 22J, 25 or 28;
- (f) the form of the petitions, statements of opposition and statements of appeal within the meaning of this Act, the procedure by which they shall be brought to the notice of interested parties, and the form of the certificate under subsection (3) of section 28;
- (g) the conditions for admission as the authorised representative of the applicant or the opponent;
- (h) the cases in which a record shall be made in the public registers of the Patent Office in respect of the filing or laying open to public inspection of documents other than applications;
- (i) of which documents attached to the application laid open to public inspection copies shall be made generally available, and the charge to be made for such copies.

#### PART III

*The Grant of Patents where the Secrecy of the Invention may be in the interest of the Defence of the Realm*

#### Section 29A

The provisions of the foregoing Part shall apply to the grant of patents under this Part, in so far as not otherwise provided hereunder.

#### Section 29B

(1) Where the examiner considers that the secrecy of the invention may be in the interest of the defence of the Realm, he shall notify the applicant accordingly, through the intermediary of the Patent Board.

(2) Notification within the meaning of the foregoing subsection shall bind the applicant for his part to maintain complete secrecy in regard to his invention, which shall include not applying for a patent abroad and not assigning the rights accruing from the application to any other party than the State. Where it is no longer possible to keep the invention secret, the applicant is bound to inform the Patent Board of the reasons therefor as soon as possible after receipt of the notification.

(3) The obligation to maintain secrecy shall end as soon as the application is published, or when a decision not to publish the application has become irrevocable, or when the applicant has been notified by the Patent Board that there is no further need for secrecy.

(4) The provisional examination and the further prosecution of applications in respect of inventions, the secrecy of which may be in the interest of the defence of the Realm, shall be undertaken promptly, if necessary by deferring other applications.

(5) In respect of an application under this section the advice shall not be sought of the International Patent Institute mentioned in subsection (1) of section 23.

#### Section 29C

(1) As soon as an appeal no longer lies from a decision to publish an application within the meaning of this Part of the Act, the Division which last dealt with the application shall, if it considers that the secrecy of the application is in the interest of the defence of the Realm, inform the Patent Board accordingly, which shall stay the decision to publish the application and forward the application with all speed to Our Minister for Naval Affairs or War or both. Receipt of such an application shall bind the Minister, and the persons whom he consults on the application, to maintain secrecy.

(2) Our Minister, to whose notice such an application has been brought, shall return the application to the Patent Board, as soon as possible, and at the latest within three months, together with:

- (a) a written declaration that he will not avail himself of the opportunity offered to procure the assignment to the State of the rights accruing from the application, or
- (b) the deed of assignment of the rights accruing from the application, where such a deed has been executed between the State and the applicant, or
- (c) a copy of Our decree pronouncing the desirability of expropriation.

#### Section 29D

(1) The deed by which the applicant's rights are assigned to the State shall be recorded, as soon as possible after receipt thereof, in the appropriate register.

(2) The copy, to be forwarded to the Patent Board, of Our decree pronouncing the expropriation of the rights accruing from an application shall be recorded by the Patent Board in the appropriate register.

(3) In regard to the rights accruing from the application, the copy referred to in subsection (2) shall have the same effect as a deed of assignment to the State would have had in respect of the application.

(4) In the cases contemplated in subsections (1) and (2), the decision to publish the application shall not be put into effect and the patent shall be deemed to have been granted in the name of the Kingdom of the Netherlands, and shall be dated and enter into force on the day following the entry made in the register under subsections (1) and (2).

(5) Within 14 days from that day the grant of the patent shall be entered in the appropriate register.

#### Section 29E

Patents granted under this Part of the Act, and the appertaining specifications of the invention, shall not be published in the Journal referred to in section 25.

#### Section 29F

Where the State has filed an application for a patent on an invention, the secrecy of which is deemed by the State to be in the interest of the defence of the Realm, the rules for ordinary applications shall apply, with the proviso that the advice of the International Patent Institute mentioned in subsection (1) of section 23 shall not be sought on the application and that, instead of a decision to publish the application, a decision to grant a patent shall be taken.

*(To be continued)*

## GENERAL STUDIES

### **New Procedure for the Grant of Patents in the Netherlands**

By Dr. C. J. de HAAN, President of the Patent Office, The Hague





**REPORTS  
OF INTERNATIONAL ORGANISATIONS**

**International Association for the Protection  
of Industrial Property (IAPIP)**

**Meetings of the Conference of Presidents  
and of the Executive Committee**

(Salzburg, September 14-18, 1964; Tel Aviv, January 31  
to February 3, 1965)

The Executive Committee of the International Association for the Protection of Industrial Property (hereinafter referred to as "the Association" or as "IAPIP") and its Conference of Presidents (i. e., the chairmen of some twenty-five "National Groups" of the Association) met in Salzburg, Austria, from September 14 to 18, 1964.

The Conference of Presidents met again, in Tel Aviv, Israel, from January 31 to February 3, 1965.

All the meetings were presided over by Mr. Alexander Nagai (Japan), Mr. Paul Mathély (France) being *rapporteur général*, Mr. Stephen P. Ladas (U. S. A.), treasurer, and Mr. Rudolf E. Blum (Switzerland), Secretary-General.

BIRPI was represented by Professor G. H. C. Bodenhausen, Director, and Dr. A. Bogsch, Deputy Director, in the Salzburg meetings, and by the latter only in the Tel Aviv meetings.

**Work of the Executive Committee (Salzburg)**

Six Sub-committees and two special working groups considered the following questions:

Sub-committee No. 1, presided over by Professor P. J. Pointet (Switzerland), studied two questions concerning trade-

marks: acquisition of the right to a trademark; incontestability of registered trademarks.

Sub-committee Nr. 2, presided over by Mr. G. Marconnet (France), discussed questions relating to the unification of the law of industrial designs: subject matter, nature, conditions, and effects, of protection.

Sub-committee No. 3, presided over by Mr. R. Moser von Filseck (Germany), drew up a statement on the incidence of national and international provisions guaranteeing free competition on the protection of industrial property rights.

Sub-committee No. 4, presided over by Mr. C. M. R. Davidson (Netherlands) drafted proposals for the amendment of Article 5 A of the Paris Convention concerning the limits and conditions of restricting the rights of patentees.

Sub-committee No. 5, presided over by Professor B. Godenhelm (Finland), dealt with the question of inventions made by employees.

Sub-committee No. 6, presided by Mr. K. Holm-Nielsen (Denmark), studied the question of the protection of commercial names.

A special working group considered BIRPI's draft model law for developing countries on the protection of inventions and technical know-how. This group was presided over by Mr. C. Robinson (Canada) and its members were Messrs. Gansser (Switzerland), Ladas (U. S. A.) and O'Farrell (Argentina).

Another special working group, consisting of Mr. M. Braschi (Italy), as Chairman, and Messrs. A. Briner (Switzerland) and L. E. Ellwood (United Kingdom), considered BIRPI's proposals on the question of abandonment, through centralized publication, of patent applications for which the grant of patents is no longer desired by the applicants.

The reports of each of these sub-committees and working groups were eventually submitted to the plenary meetings of the Executive Committee which, then, formulated the official views of the Executive Committee on the various questions referred to above.

Finally, the Executive Committee decided that the Association should publish in 1965, as a contribution to the celebration of the 20<sup>th</sup> anniversary of the foundation of the United Nations, a brochure on the history, aims, present activity and future plans of IAPIP. Mr. P. Mathély, *rapporteur général* of the Association, has been asked to prepare the manuscript of such a publication.

#### Work of the Conference of Presidents in Salzburg

The Conference of Presidents set up a special committee to examine industrial property questions in relation to developing countries. This committee is expected to report to the Tokyo Congress of the Association in 1966.

The Conference of Presidents also discussed the question of what proposals for amending the Paris Convention the IAPIP should recommend for inclusion in the agenda of the next substantive revision conference of the Paris Union, tentatively scheduled for 1969 in Vienna, Austria.

Finally, the Conference of Presidents decided that the agenda of the Tokyo Congress of IAPIP, scheduled for April 1966, should include the six questions examined by the six

sub-committees referred to above and the problem of industrial property in developing countries.

#### Work of the Conference of Presidents of Tel Aviv

In Tel Aviv, the Conference of Presidents was mainly dealing with the formulation of guidelines to its representatives who, as observers, will participate in two meetings of BIRPI in March 1965: the Committee of Experts on Inventors' Certificates, and the Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property.

The Conference of Presidents decided to include these two questions on the agenda of its Tokyo Congress of 1967<sup>1)</sup>.

### International Chamber of Commerce (ICC)

(Paris, September 10 and 11, 1964)

The Commission on the International Protection of Industrial Property of the International Chamber of Commerce met in Paris on September 10 and 11, 1964, under the Chairmanship of Dr. Stephen Ladas (United States). BIRPI was represented at the meeting by its Director, Professor G. H. C. Bodenhausen.

The Commission took the following decisions:

#### Technological Needs of the Developing Countries

The Commission noted the results of the discussions on this question held at the United Nations Conference on Trade and Development (Doc. No. 450/258). The Commission felt that the appeal issued to the developed countries on this occasion should be discussed at the New Delhi Congress; furthermore it was decided that the recommendations made in this connection by the developing countries should be discussed within the Working Party studying the system of patent, trademark and know-how licensing, whose membership should accordingly be enlarged.

The Officers were instructed to follow developments with a view to studying any problems which the Commission would have to deal with as part of its program of work.

#### Re-Arrangement of the Paris Convention

The Commission entrusted the Rapporteur with the task of drawing up a note for circulation to National Committees — if possible before the end of the year — with a view to submitting to the International Bureau the ICC's recommendations on the matter — particularly on certain amendments to the Union Convention — which although rejected at the Lisbon Conference would be likely to be adopted at the Re-arrangement Conference.

#### Dedication of Inventions to the Public

National Committees will be consulted on the basis of the note prepared by the Working Party and completed by the

<sup>1)</sup> The Salzburg meetings are fully reported upon in *AIPPI-Annuaire* 1964/II. Official records on the Tel Aviv meeting were not yet available when the above note was written.

Chairman, Dr. Was, in the light of the results of the meeting to be held in October by the International Bureau in Geneva.

#### Certificates of Authorship

Noting that a further meeting of experts on this question is to be held by the International Bureau, next February<sup>1)</sup>, in Geneva, the Commission entrusted a Working Party under the Chairmanship of Dr. Ladas — which also includes Messrs. Monnet (France) and Pretnar (Yugoslavia) — with the task of preparing a statement of the ICC's position.

#### Model Patent Law

After holding a preliminary exchange of views on a number of the provisions of the draft model law, the Commission expressed the wish that these directives to the ICC observers at the next meeting of experts in Geneva, at which the draft would be considered, be supplemented by National Committees' observations on any other points on which they might think fit to comment.

#### Review of Patent, Trademark and Know-how licensing

Mr. Peter Weiss (United States) was appointed Chairman of the Working Party.

In accordance with the Commission's decision to enlarge this Working Party, Mr. A. Correa (Mexico) was appointed as a member, and the Africa and Madagascar National Committee was also requested to nominate an expert.

The Working Party was requested to tackle its study from the specific angle of the technological needs of the developing countries, along the lines laid down by the United Nations Conference on Trade and Development.

#### Applied Arts

National Committees, to whom the Report and Draft Resolution (Doc. No. 450/259) have already been submitted for comment, will be requested in an additional note by the Rapporteur to the Commission, to submit their views in the light of the present state of legislation in their respective countries.

#### New Delhi Congress and Working Program for 1965-1967

The Commission welcomed the provisional program for the Congress, which contained, with regard to industrial property, arrangements for a worthwhile discussion of the results of the United Nations Conference on Trade and Development.

It noted that with the collaboration of Dr. Ladas, a brochure on the main problems in this field dealt with by the ICC was being prepared for the Congress.

#### Miscellaneous

##### a) Bogota Congress on Industrial Property in Latin America

The Commission expressed its satisfaction at the success obtained by Professor Bodenhausen, Director of the BIRPI,

in that this Congress would probably result in adherence to the Paris Union by three Latin American countries, viz. Argentina, Colombia and Venezuela.

##### b) Diplomatic Conferences in Stockholm, 1967, and Vienna, 1969

The Commission took note of the provisional programs for these two Conferences.

## BOOK REVIEWS

Die wirtschaftlichen Grundlagen des Patentrechts (The economic bases of patent law), by Prof. Dr. h. c. Fritz Machlup, Princeton, USA. Reprinted from the review "Gewerblicher Rechtsschutz und Urheberrecht, Auslands- u. internationaler Teil", 1962. Verlag Chemie GmbH, Weinheim/Bergstrasse. (In German.)

Although the basis and starting point of inventions and of the protection awarded to them are economic, it is none the less somewhat surprising to find so few works which consider them from the standpoint of economics or, more directly, as representing an economic category of their own. A book review is not a suitable occasion to examine the reasons for this situation. We can merely note that even writers on political economy who have devoted careful study to the theory of economic development (among numerous other works, for instance, that of Schumpeter, often referred to by Prof. Machlup himself, *Theorie der wirtschaftlichen Entwicklung* [Theory of economic development], 1912; among more recent works, that of Fourastié, *Le grand espoir du XX<sup>e</sup> siècle*, Paris 1962, which does in fact include the development of technology among production factors) scarcely mention the economic role of inventions and their protection; still less have they made a theoretical study of the subject. Protection by patent appears to be more a subject of controversy than an occasion for serious study for the numerous economists referred to by Prof. Machlup, both in older works and in later ones. Over the last few decades the admirable work of Louis Le Grand<sup>1)</sup> is to my knowledge the only one, at least in Europe, to subject all categories concerned with the protection of industrial property to detailed and systematic study from the viewpoint of political economy. On the other hand, legal authors who have also considered the economic aspects of patent protection have certainly been far more numerous, but in most cases they have done so for the purpose of vindication, and therefore without a sufficiently critical approach.

It is all the more fortunate, therefore, that such an eminent theorist in the field of political economy as Prof. Machlup should have devoted critical study to the economic bases of patent law. The publishers of the review *Gewerblicher Rechtsschutz und Urheberrecht* are also to be congratulated on having arranged to publish this study (in parts 8 to 11, 1961, of the section devoted to foreign and international law) and on having, by means of a separate reprint, made it available to European readers.

The author has written his study *ad usum delphini*. In point of fact, his study of the economic problems raised by patent protection was the result of an invitation extended to him by the sub-committee of the American Senate on Patents, Trademarks and Copyright. This circumstance should be borne in mind, since both the contents and the scope of the work were determined by the task thus entrusted to the author. It would be interesting, therefore, in order to understand more fully Prof. Machlup's study, to know in more detail the reasons which prompted the Senate of a country with a highly developed system of protection to examine the question of the economic motives underlying patent protection. Judging by the contents, it is tempting to conclude that the

<sup>1)</sup> March 15-19, 1965. (Ed.)

<sup>1)</sup> *Etude économique de la propriété industrielle*, Paris, 1937.

intention was to acquire information, at a time when technology has made unexpected and prodigious progress, of the purely economic arguments for or against patent protection, always, of course, from the particular viewpoint of the United States economy.

Of the four chapters in his study the author devotes no less than two (I. Historical survey; II. Economic doctrines) to an exposé of the historical development of patent protection and to the theoretical concepts hitherto current. Not until he reaches the last two chapters (III. Elucidation of basic ideas and notions; IV. Economic theories) does he come to the hard core of the problem.

The arguments developed by Dr. Machlup reveal an impressive knowledge not only of the problems considered but also, in particular, of works, both old and new, fully cited by the author on the problems he examines. It is to be regretted, however, that the distinguished author did not have more space to devote to the theoretical aspect of political economy — the fact is that in no country do politicians care to read long reports. Hence, unfortunately, aspects of the economic problems raised by patent protection have not been dealt with, although literally every page impresses on the reader how much information Prof. Machlup could have given us about them.

The basic question which the author tries to answer is quite simply whether patent protection does or does not constitute, collectively and individually, a determining factor in progress in the national economy and in technical development. The reply is likely to disappoint all who enjoy protection conferred by a patent and who are accustomed to repeat as an axiom, and in tones of vindication, their ideas as to the use of patent protection, from a progressive point of view. Prof. Machlup concludes sceptically that the system created by the patent for invention does not necessarily, as such and *per se*, constitute a factor in economic progress. The author himself realizes the disappointment he may cause (p. 139). His findings, however, do not by any means lead him to advocate out of hand the abolition of the present system in the USA, founded on the patent for invention. Indeed, the author is fully conscious (p. 140) of the dangers which such abolition would bring about.

The author of the present study has no hesitation in claiming at the outset that economic development constitutes a characteristic and universal feature of the history and society of our time and that, as a result, the productive forces, combined with a deliberate economic policy, have made this development an integral part, or even the substance of, modern economy. Hence, for a long time, progress in technology and economy has ceased to be purely a matter for legal considerations by theorists on the law of patents for invention; rather does it represent a fundamental problem in all modern theory of economics or even of simple sociology<sup>2</sup>). Moreover, we lawyers have also realized that patent protection is no longer the only means of safeguarding all new technical achievements. Equally important from the standpoint of technical developments are technical improvements, and, more particularly, scientific discoveries in the field of technology. Lastly, more recently, know-how has also come to be regarded as the subject of protection, with its own legal characteristics. Prof. Machlup mentions specially the first two elements as important factors in development. On p. 105 we read: "A large part of technical progress, in particular the millions of small improvements in manufacturing technique which probably account for *the greater part of the increase in productivity* have nothing to do which protection by patents" (our italics). Moreover, the author devotes particular attention to the economic efficiency of scientific work and concludes that, applying the sole criterion of national economic interest, it is more advantageous to the economic development of a state to finance scientific research than to invest capital in research into particular inventions (e. g. p. 76).

In the scope of the present review it is not possible to refer in detail to the numerous arguments and conclusions contained in Prof. Machlup's study. To do this would mean reproducing them literally page by page. Generally speaking, the author devotes his main attention to the wider economic aspect of patent protection, i. e. he points out the advantages and defects in the light of the national economy regarded as a whole. The more immediate aspect of patent protection, judged from the viewpoint of the individual interest of undertakings holding patents,

has indeed been considered, but more in order to elucidate the problem as a whole, showing in particular the relationship between individual interests and the national interest. From this comparison (see in particular, pp. 91 to 94) the author proceeds to show that there is often a conflict of interests and that the individual interests of an undertaking are not necessarily consonant with those of the national economy.

The author makes a critical analysis of certain arguments in particular which are held to be self-evident truths; for example, the theory of competition created by research (pp. 78 *et seq.*) — he shows that competition exercised by means of patents (again regarded from the viewpoint of national economy) sometimes even constitutes a waste (p. 80). Nor does he spare the long-held theory that the patent constitutes a recompense, a fact which would justify its being granted. Relying on perfectly valid arguments, he enquires whether the recompense awarded by society to the first person to lodge an application — and not to the first inventor — in the form of the grant of a patent does not rather represent a "loss to society", since other devoted research workers or inventors, endowed with the same talents, and devoted to the study of the same technical problem, are discouraged in their work by denial of all protection.

The following three major questions, which are also included among those now raised by the law on patents for inventions — i. e. the shortening or extension of the period of protection, the institution or refusal of compulsory licences and the prohibition or admissibility of restrictive licences — are dealt with in Chapter IV, under headings C, D and E. in the form of an analysis of the expenditure and profits arising from inventions.

In spite of all criticisms levelled at the patent system in general and advanced in connection with different individual problems, Prof. Machlup fully realizes two facts which favour this system; first, the increased number of inventions must be attributed to the protection afforded them by patents (p. 103); second, the number of patents in a given country is related strictly to the general state of technical development (p. 105).

The study under review affords wide scope for critical thought on the effects and functions of patent protection from the standpoint of present day economic policy, even though the author's reasoning would in actual fact have to take into account only conditions prevailing in the USA. Regret must again be expressed that limitations of space did not enable the author to apply his critical mind and tested method to other questions in the same field too. We would refer especially to the following; in the first place, a general comparison with the system of patent protection existing to-day in socialist states, especially the certificate of authorship system and its role in relation to the national economy would be desirable; secondly, another interesting task would be to study the patent, or the invention it protects, from its aspect as capital or as a constituent part of capital, more especially since modern legislation has recognized this as one of its qualifications (as a special category of "goodwill" in French law, or of "azienda" in Italian law, or in various legal systems, as investment in a commercial company); thirdly, a question also connected with the national economy concerns the part played by a patent in the creation of special profit ("extra profit" referred to by Prof. Machlup on p. 66 as "quasi rente"); the present author deals with it only in the context of formation of a monopoly.

A further problem of potential interest discussed by the author is the immunity of large undertakings to new inventions, which another author (Ernst Neuberger, *Der Lizenzvertrag und die internationale Patentverwertung* — "The licensing agreement and international exploitation of patents", 1951, pp. 24-25) has emphasized, finding that "... their monopoly position has no need to support industrial property rights; the power of their capital is sufficient to ensure it".

In view of the increasing importance of know-how<sup>3</sup>), which forms a separate category in the patent field, it would be very instructive to deal with this too as a factor in technical development in any theoretical study of patent law.

Although the present study of patent law is well stocked with quotations from and references to opinions expressed by a number of authors, it is none the less to be regretted that a number of opinions and con-

<sup>2</sup>) In this connection I refer, for instance, to the work of Raymond Aron, *Dix-huit leçons sur la société industrielle*, Paris, 1962, and to the work of Fourastié mentioned above.

<sup>3</sup>) See Ladas, "Legal Protection of Know-how", *Industrial Property*, October 1963, p. 222.

clusions are not supported by empirical and statistical data. It would be very interesting to know, for example, the role played by patents in the development of certain branches of industry, especially those which have made a decisive contribution to progress in technology and economics (metallurgy, chemistry, electrical technology etc.).

A study of the following questions would also serve to elucidate still more the whole problem, seen purely from the national economic angle, of the economic bases of patent law:

(a) What influence may be exerted on the balance of trade of various states by the purchase or sale of patents, or by the granting or refusal of licences? Recent publications by the *Institut national de la propriété industrielle* ("La protection des inventions en France et à l'étranger", the last dated 1964) contain some very interesting data on the subject.

(b) What role is played by patents in economic crises or recessions, necessitating economies in production costs but also imposing a reduction in investment?

(c) What is the value of a patent, or the inventions it protects, in relations between industrialized and developing countries? This question is now in the forefront of international discussions and has been studied very closely in the United Nations itself, having appeared on the agenda of the UN Conference on Trade and Development.

In regretting that Prof. Machlup's study has not considered all these questions, we do not in any way wish to criticize the work itself. We are referring to a series of questions which can only be dealt with in a comprehensive, systematic work and not in an *ad hoc* study. If we have mentioned them in this review, it is only because the study has convinced us that Professor Machlup himself and his colleagues would be ideally fitted to write the systematic work which we have in mind and which would be of such value to-day.

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I. La protection des inventions en France et à l'étranger (The protection of inventions in France and abroad). (In French.)

II. Brevets déposés en France 1956-1962: Analyse par secteur technique (Patents applied for in France from 1956 to 1962: Analysed according to technical sector). (In French.)

Institut national de la propriété industrielle, Paris.

These are two statistical surveys published in 1964 by the *Institut national de la propriété industrielle* (which comprises the French Patent Office) in Paris.

I. The first starts with a table of statistics concerning 23 countries. For every one of these countries, this table shows the number of patent applications originating in each of the other countries. In France, for example, the total number of applications was 38,292, of which 15,221 were domestic (i. e. French), 6,121 originated in Germany, 1,010 in Italy, 1,054 in the Netherlands, 3,247 in Great Britain, 6,947 in the United States and 1,748 in Switzerland. The numerical data in this table have been translated into graphs which show, among other things, the number of all the applications (national and foreign) filed in the various countries (the United States tops the list), the number of foreign applications (the highest figures are those of Great Britain and Canada), the number of domestic applications (the United States has more under this heading than any other country), the number of domestic applications in proportion to the population of the country (Switzerland has the highest proportion), the number of foreign applications filed in the countries of the Union as a whole by the main exporting countries (if the total number of foreign applications originating in the 7 countries with the highest export figures is taken to correspond to 100%, the following approximate percentages are obtained: United States, 38%; Germany, 23%; Great Britain, 14%; France, 9%; Switzerland, 8%; Netherlands, 5%; Italy, 4%), the number of applications of French origin filed in other countries (approximately half of these are divided among four countries: Germany, Great Britain, United States and Italy).

The second table shows the position of the principal countries of the Union in 1961 compared with 1956. During this period, the average increase in the number of applications was 20.1% (8.8% in Germany,

31.8% in France, 22.4% in Italy, 17.8% in Great Britain, 6.7% in the United States).

The report concludes with three tables concerning the transfer of funds relating to patents between France and other countries. The first of these tables shows the amounts transferred for the *sale and purchase* of patents; the second provides data on the amounts transferred for the grant of *licenses*, and the third shows the variation in the relation between receipts and expenditure in France with regard to other countries. The figures in all these tables relate to the years 1960, 1961 and 1962.

II. The second survey presents an analysis of patents, classified according to technical sector, which have been applied for in France between 1956 and 1962. The system used is the International Classification.

Table I gives the percentages of patents classified according to section and subsection (in 1962: human necessities, 13.19%; performing operations, 23.47%; chemistry and metallurgy, 17.51%; textiles and paper, 4.97%; fixed constructions, 4.93%; mechanics, lighting and heating, 12.50%; physics, 12.62%; electricity, 10.71%). Another table shows developments since 1910 (e. g. physics: 7.38% in 1910, and 13.57% in 1955). One table indicates the life-span of the patents. This is shortest in the case of patents for medicine, etc. (35% are renewed after the seventh year) and longest in the case of nucleonics (70%).

The other tables give fuller details, both as regards the classes and the differentiation between the patents according to the country of origin of the applicant. The tables and graphs are supplemented by interesting commentaries. Here, for example, is the translation of the comment on Section C (Chemistry and Metallurgy):

"Section C is undoubtedly the Section which shows the greatest increase in the number of patents classified.

The most important Subsection here is the one devoted to chemistry. Furthermore, the life-span of patents classified in this Section is one of the longest on record in 1956; it is also in this Section that the percentage of applications of foreign origin is among the highest: 80% of all patents registered in this sector. These applications are mainly of American and German origin (see Class C 08, where 43% of the patents are American).

It may finally be noted that more than 85% of patents classified originate in five countries only: France, United States, Germany, Great Britain and Switzerland."

It is obvious, even from this very brief review, that these two surveys are remarkable not only for the abundant detail they provide but also for the ingenuity and discernment displayed in the selection of the questions which the statistics are intended to answer. They facilitate the approach to problems which are of genuine interest to the national economy and to administrators of patent laws. (A. Bogsch)

The Role of Patents in the Transfer of Technology to Developing Countries. Report of the Secretary-General of the United Nations. 95 pages. \$ 1.50.

Our readers will recall that on a number of occasions in recent months we have mentioned in our pages the Report of the Secretary-General of the United Nations on the Role of Patents in the Transfer of Technology to Developing Countries.

The Report itself was issued in March 1964, under reference Nos. E/3861-E/C.5/52/Rev.1 and has now been reproduced in an attractively bound printed form as a United Nations publication.

The Report, which was the subject of a lengthy note in our March 1964 issue at page 56 *et seq.*, is a valuable study on the legal and economic aspects of the patent system, with special reference to developing countries. It consists of 50 pages of text with 5 Annexes, one of which contains a synoptic table based on analyses prepared by BIRPI, of the patent laws of 34 countries.

The Report can be obtained from the Sales Section of the United Nations, New York, N. Y., U. S. A., or the European Office of the United Nations, Palais des Nations, Geneva, Switzerland, or may be ordered through any bookseller.

# CALENDAR

## Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
March 11 and 12, 1965 Geneva	Advisory Group of the International Committee of Novelty-Examining Patent Offices	Industrial property statistics; index of parallel patents	Austria, Canada, France, Germany (Fed. Rep.), Japan, Poland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America	International Patent Institute, Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)
March 15 to 19, 1965 Geneva (Headquarters of ILO)	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	Union of Soviet Socialist Republics, United Nations, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
March 22 to April 2, 1965 Geneva (Headquarters of ILO)	Committee of Experts on the Administrative Structure of International Cooperation in the Field of Intellectual Property	To study a draft Convention on administrative structure	All Member States of the Paris and Berne Unions	Union of Soviet Socialist Republics, United Nations, International Labour Organization, United Nations Educational, Scientific and Cultural Organization, World Health Organization, Council of Europe, International Patent Institute, Organization of American States, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Bureau for Mechanical Reproduction, International Chamber of Commerce, International Confederation of Societies of Authors and Composers, International Federation of Patent Agents, International Literary and Artistic Association
May 4 to 7, 1965 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	
May 18, 1965 Geneva (Headquarters of ILO)	Constitution of the Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly with ILO and Unesco	Application of Article 32 (1), (2) and (3) of the Rome Convention	Czechoslovakia, Congo (Brazzaville), Ecuador, Mexico, Niger, Sweden, United Kingdom of Great Britain and Northern Ireland	
July 5 to 14, 1965 Geneva	Committee of Governmental Experts preparatory to the Revision Conference of Stockholm (Copyright)	Examination of the amendments proposed by the Swedish/BIRPI Study Group for the revision of the Berne Convention	All Member States of the Berne Union	Certain Non-Member States of the Berne Union, Interested international intergovernmental and non-governmental organizations
September 28 to October 1, 1965 Geneva	Interunion Coordination Committee (3 <sup>rd</sup> Session)	Program and budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union; United Nations

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1 <sup>st</sup> Session)	Program and activities of the International Bureau of the Paris Union	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations

### Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
New Delhi	February 6 to 12, 1965	International Chamber of Commerce (ICC)	Congress
Paris	February 19, 1965	International Literary and Artistic Association (ALAI)	Executive Committee and Annual General Assembly
Paris	March 1 to 6, 1965	International Confederation of Societies of Authors and Composers (CISAC)	Federal Bureaux, Legislative Committee and Confederal Council
Strasbourg	April 5 to 9, 1965	Council of Europe	Committee of Experts on Patents
Namur	May 23 to 27, 1965	International League Against Unfair Competition	Congress
Stockholm	August 23 to 28, 1965	International Literary and Artistic Association (ALAI)	Congress
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress