

# Industrial Property

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## Contents

	Pages
INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967	
Note by BIRPI . . . . .	154
WORLD INTELLECTUAL PROPERTY ORGANIZATION	
Convention Establishing the World Intellectual Property Organization, Signed at Stockholm on July 14, 1967 . . . . .	155
INTERNATIONAL UNIONS	
Madrid Union (Trademarks). Ratification of the Nice Act, Tunisia . . . . .	161
BIRPI Plan for a Patent Cooperation Treaty (PCT). Explanatory Memorandum . . . . .	161
CORRESPONDENCE	
Letter from Spain (Alberto de Elzaburu) . . . . .	168
CALENDAR	
BIRPI Meetings . . . . .	175
Meetings of Other International Organizations Concerned with Intellectual Property . . . . .	176

## INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

### Note by BIRPI

#### A. Texts Adopted

The "Intellectual Property Conference of Stockholm, 1967" took place from June 11 to July 14, 1967, in the capital of Sweden.

It was organized by the United International Bureau for the Protection of Intellectual Property (BIRPI) and the Government of Sweden.

The following treaties were adopted in the course of the Conference:

- (1) A Convention establishing the World Intellectual Property Organization ("WIPO")<sup>1</sup>.
- (2) The Stockholm Act of the Berne Convention for the Protection of Literary and Artistic Works ("Berne Convention").
- (3) The Stockholm Act of the Paris Convention for the Protection of Industrial Property ("Paris Convention").
- (4) The Stockholm Act of the Madrid Agreement concerning the International Registration of Marks ("Madrid (Marks) Agreement").
- (5) An Additional Act ("the Stockholm Additional Act") to the Madrid Agreement on the Repression of False or Misleading Indications of Source on Goods ("Madrid (False Indications) Agreement").
- (6) A Complementary Act ("the Stockholm Complementary Act") to the Hague Agreement concerning the International Deposit of Industrial Designs ("Hague Agreement").
- (7) The Stockholm Act of the Nice Agreement concerning the Classification of Goods and Services for the Purposes of the Registration of Marks ("Nice Agreement").
- (8) The Stockholm Act of the Lisbon Agreement concerning the Protection of Appellations of Origin and their International Registration ("Lisbon Agreement").

These treaties were signed by a certain number of States at Stockholm on July 14, 1967. They remain open for signature in the Ministry of Foreign Affairs of Sweden at Stockholm until January 13, 1968.

In addition to the said treaties, the following Decisions and Recommendations were adopted in the course of the Stockholm Conference.

- (9) Decision on the ceiling of contributions in the Paris Union.
- (10) Decision on the ceiling of contributions in the Berne Union.

- (11) Recommendation on Priority Fees under the Paris Convention.
- (12) to (14) Three Recommendations in the field of copyright.

The present issue contains the English text of the WIPO Convention. This month's issue of the French edition of this periodical (*La Propriété industrielle*) contains the French text of the WIPO (in French, "OMPI") Convention.

Future issues of these periodicals will contain the text of the WIPO Convention in Russian and Spanish, and the texts of items (3) to (11). Items (2) and (12) to (14) will be published in *Copyright* and *Le Droit d'Auteur*, the monthly periodical of BIRPI specialized in copyright matters and published under the Berne Convention.

#### B. Participation

More than four hundred delegates and observers participated in the Conference. The list of participants will be published in one of the subsequent issues.

BIRPI was represented by its Director, Professor G. H. C. Bodenhausen, accompanied by twenty members of the BIRPI staff.

#### C. Officers

Mr. Herman Kling, Minister of Justice of Sweden, was President of the Conference.

Dr. Arpad Bogsch, Deputy Director of BIRPI, was Secretary General of the Conference. He was assisted by Mr. Claude Masonyé, Counsellor, Head of the Copyright Division of BIRPI, as Assistant Secretary General.

Mr. Torwald Hesser, Counsellor at the Supreme Court of Sweden, was elected First Vice-President of the Conference. There were nineteen more Vice-Presidents.

Each Convention and Agreement had its own Plenary with its own elected officers.

Most of the actual discussion took place in five "Main Committees," chaired respectively by Professor Eugen Ulmer (Federal Republic of Germany), Mr. Sher Singh (India), Mr. L. Marinete (Rumania), Mr. François Savignon (France), and Mr. Eugene M. Braderman (United States of America). Each Main Committee had a rapporteur. They were: Professor Svante Bergström (Sweden), Mr. Vojtech Strnad (Czechoslovakia), Mr. Alfred C. King (Australia), Mr. Valerio De Sanctis (Italy), and Mr. Joseph Voyame (Switzerland). The above order follows the numbering of the Main Committees.

The complete list of officers will be published together with the list of participants.

#### D. Reports

The texts of the Reports of Main Committees I and II will be published in *Le Droit d'Auteur* and *Copyright*, of Main Committee III in the present periodical and in *La Propriété industrielle*, and of Main Committees IV and V in both *Industrial Property / La Propriété industrielle* and *Copyright / Le Droit d'Auteur*.

<sup>1</sup> It was informally agreed at the Conference that, in speech, each letter of this abbreviation should be pronounced separately, thus "Double you, eye, pea, oh."

### E. Documents

The Conference had before it 302 documents of the main series ("S"), and there are uncorrected, provisional minutes of all Plenaries and Main Committee meetings (totalling 80) (series "S/PV"). The main series documents are available in English and French. A collection in each language costs 300 Swiss francs plus postage and can be ordered from BIRPI. The minutes will be available after corrections. They will be on sale. Their availability will be announced in due course.

## WORLD INTELLECTUAL PROPERTY ORGANIZATION

### Convention Establishing the World Intellectual Property Organization Signed at Stockholm on July 14, 1967

The Contracting Parties,

Desiring to contribute to better understanding and cooperation among States for their mutual benefit on the basis of respect for their sovereignty and equality,

Desiring, in order to encourage creative activity, to promote the protection of intellectual property throughout the world,

Desiring to modernize and render more efficient the administration of the Unions established in the fields of the protection of industrial property and the protection of literary and artistic works, while fully respecting the independence of each of the Unions,

Agree as follows:

#### Article 1

##### Establishment of the Organization

The World Intellectual Property Organization is hereby established.

#### Article 2

##### Definitions

For the purposes of this Convention:

- (i) "Organization" shall mean the World Intellectual Property Organization (WIPO);
- (ii) "International Bureau" shall mean the International Bureau of Intellectual Property;
- (iii) "Paris Convention" shall mean the Convention for the Protection of Industrial Property signed on March 20, 1883, including any of its revisions;
- (iv) "Berne Convention" shall mean the Convention for the Protection of Literary and Artistic Works signed on September 9, 1886, including any of its revisions;
- (v) "Paris Union" shall mean the International Union established by the Paris Convention;
- (vi) "Berne Union" shall mean the International Union established by the Berne Convention;
- (vii) "Unions" shall mean the Paris Union, the Special Unions and Agreements established in relation with that

Union, the Berne Union, and any other international agreement designed to promote the protection of intellectual property whose administration is assumed by the Organization according to Article 4(iii);

- (viii) "intellectual property" shall include the rights relating to:

- literary, artistic and scientific works,
- performances of performing artists, phonograms, and broadcasts,
- inventions in all fields of human endeavor,
- scientific discoveries,
- industrial designs,
- trademarks, service marks, and commercial names and designations,
- protection against unfair competition,

and all other rights resulting from intellectual activity in the industrial, scientific, literary or artistic fields.

#### Article 3

##### Objectives of the Organization

The objectives of the Organization are:

- (i) to promote the protection of intellectual property throughout the world through cooperation among States and, where appropriate, in collaboration with any other international organization,
- (ii) to ensure administrative cooperation among the Unions.

#### Article 4

##### Functions

In order to attain the objectives described in Article 3, the Organization, through its appropriate organs, and subject to the competence of each of the Unions:

- (i) shall promote the development of measures designed to facilitate the efficient protection of intellectual property throughout the world and to harmonize national legislation in this field;
- (ii) shall perform the administrative tasks of the Paris Union, the Special Unions established in relation with that Union, and the Berne Union;
- (iii) may agree to assume, or participate in, the administration of any other international agreement designed to promote the protection of intellectual property;
- (iv) shall encourage the conclusion of international agreements designed to promote the protection of intellectual property;
- (v) shall offer its cooperation to States requesting legal-technical assistance in the field of intellectual property;
- (vi) shall assemble and disseminate information concerning the protection of intellectual property, carry out and promote studies in this field, and publish the results of such studies;
- (vii) shall maintain services facilitating the international protection of intellectual property and, where appropriate, provide for registration in this field and the publication of the data concerning the registrations;
- (viii) shall take all other appropriate action.

## Article 5

### Membership

(1) Membership in the Organization shall be open to any State which is a member of any of the Unions as defined in Article 2 (vii).

(2) Membership in the Organization shall be equally open to any State not a member of any of the Unions, provided that:

- (i) it is a member of the United Nations, any of the Specialized Agencies brought into relationship with the United Nations, or the International Atomic Energy Agency, or is a party to the Statute of the International Court of Justice, or
- (ii) it is invited by the General Assembly to become a party to this Convention.

## Article 6

### General Assembly

(1) (a) There shall be a General Assembly consisting of the States party to this Convention which are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) The General Assembly shall:

- (i) appoint the Director General upon nomination by the Coordination Committee;
- (ii) review and approve reports of the Director General concerning the Organization and give him all necessary instructions;
- (iii) review and approve the reports and activities of the Coordination Committee and give instructions to such Committee;
- (iv) adopt the triennial budget of expenses common to the Unions;
- (v) approve the measures proposed by the Director General concerning the administration of the international agreements referred to in Article 4 (iii);
- (vi) adopt the financial regulations of the Organization;
- (vii) determine the working languages of the Secretariat, taking into consideration the practice of the United Nations;
- (viii) invite States referred to under Article 5 (2) (ii) to become party to this Convention;
- (ix) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (x) exercise such other functions as are appropriate under this Convention.

(3) (a) Each State, whether member of one or more Unions, shall have one vote in the General Assembly.

(b) One-half of the States members of the General Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b),

if, in any session, the number of States represented is less than one-half but equal to or more than one-third of the States members of the General Assembly, the General Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the following conditions are fulfilled. The International Bureau shall communicate the said decisions to the States members of the General Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of States having thus expressed their vote or abstention attains the number of States which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of subparagraphs (e) and (f), the General Assembly shall make its decisions by a majority of two-thirds of the votes cast.

(e) The approval of measures concerning the administration of international agreements referred to in Article 4 (iii) shall require a majority of three-fourths of the votes cast.

(f) The approval of an agreement with the United Nations under Articles 57 and 63 of the Charter of the United Nations shall require a majority of nine-tenths of the votes cast.

(g) For the appointment of the Director General (paragraph (2) (i)), the approval of measures proposed by the Director General concerning the administration of international agreements (paragraph (2) (v)), and the transfer of headquarters (Article 10), the required majority must be attained not only in the General Assembly but also in the Assembly of the Paris Union and the Assembly of the Berne Union.

(h) Abstentions shall not be considered as votes.

(i) A delegate may represent, and vote in the name of, one State only.

(4) (a) The General Assembly shall meet once in every third calendar year in ordinary session, upon convocation by the Director General.

(b) The General Assembly shall meet in extraordinary session upon convocation by the Director General either at the request of the Coordination Committee or at the request of one-fourth of the States members of the General Assembly.

(c) Meetings shall be held at the headquarters of the Organization.

(5) States party to this Convention which are not members of any of the Unions shall be admitted to the meetings of the General Assembly as observers.

(6) The General Assembly shall adopt its own rules of procedure.

## Article 7

### Conference

(1) (a) There shall be a Conference consisting of the States party to this Convention whether or not they are members of any of the Unions.

(b) The Government of each State shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

- (2) The Conference shall:
- (i) discuss matters of general interest in the field of intellectual property and may adopt recommendations relating to such matters, having regard for the competence and autonomy of the Unions;
  - (ii) adopt the triennial budget of the Conference;
  - (iii) within the limits of the budget of the Conference, establish the triennial program of legal-technical assistance;
  - (iv) adopt amendments to this Convention as provided in Article 17;
  - (v) determine which States not Members of the Organization and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
  - (vi) exercise such other functions as are appropriate under this Convention.
- (3) (a) Each Member State shall have one vote in the Conference.
- (b) One-third of the Member States shall constitute a quorum.
- (c) Subject to the provisions of Article 17, the Conference shall make its decisions by a majority of two-thirds of the votes cast.
- (d) The amounts of the contributions of States party to this Convention not members of any of the Unions shall be fixed by a vote in which only the delegates of such States shall have the right to vote.
- (e) Abstentions shall not be considered as votes.
- (f) A delegate may represent, and vote in the name of, one State only.
- (4) (a) The Conference shall meet in ordinary session, upon convocation by the Director General, during the same period and at the same place as the General Assembly.
- (b) The Conference shall meet in extraordinary session, upon convocation by the Director General, at the request of the majority of the Member States.
- (5) The Conference shall adopt its own rules of procedure.

## Article 8

### Coordination Committee

- (1) (a) There shall be a Coordination Committee consisting of the States party to this Convention which are members of the Executive Committee of the Paris Union, or the Executive Committee of the Berne Union, or both. However, if either of these Executive Committees is composed of more than one-fourth of the number of the countries members of the Assembly which elected it, then such Executive Committee shall designate from among its members the States which will be members of the Coordination Committee, in such a way that their number shall not exceed the one-fourth referred to above, it being understood that the country on the territory of which the Organization has its headquarters shall not be included in the computation of the said one-fourth.
- (b) The Government of each State member of the Coordination Committee shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.
- (c) Whenever the Coordination Committee considers either

matters of direct interest to the program or budget of the Conference and its agenda, or proposals for the amendment of this Convention which would affect the rights or obligations of States party to this Convention not members of any of the Unions, one-fourth of such States shall participate in the meetings of the Coordination Committee with the same rights as members of that Committee. The Conference shall, at each of its ordinary sessions, designate these States.

(d) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) If the other Unions administered by the Organization wish to be represented as such in the Coordination Committee, their representatives must be appointed from among the States members of the Coordination Committee.

(3) The Coordination Committee shall:

- (i) give advice to the organs of the Unions, the General Assembly, the Conference, and the Director General, on all administrative, financial and other matters of common interest either to two or more of the Unions, or to one or more of the Unions and the Organization, and in particular on the budget of expenses common to the Unions;
- (ii) prepare the draft agenda of the General Assembly;
- (iii) prepare the draft agenda and the draft program and budget of the Conference;
- (iv) on the basis of the triennial budget of expenses common to the Unions and the triennial budget of the Conference, as well as on the basis of the triennial program of legal-technical assistance, establish the corresponding annual budgets and programs;
- (v) when the term of office of the Director General is about to expire, or when there is a vacancy in the post of the Director General, nominate a candidate for appointment to such position by the General Assembly; if the General Assembly does not appoint its nominee, the Coordination Committee shall nominate another candidate; this procedure shall be repeated until the latest nominee is appointed by the General Assembly;
- (vi) if the post of the Director General becomes vacant between two sessions of the General Assembly, appoint an Acting Director General for the term preceding the assuming of office by the new Director General;
- (vii) perform such other functions as are allocated to it under this Convention.

(4) (a) The Coordination Committee shall meet once every year in ordinary session, upon convocation by the Director General. It shall normally meet at the headquarters of the Organization.

(b) The Coordination Committee shall meet in extraordinary session, upon convocation by the Director General, either on his own initiative, or at the request of its Chairman or one-fourth of its members.

(5) (a) Each State, whether a member of one or both of the Executive Committees referred to in paragraph (1)(a), shall have one vote in the Coordination Committee.

(b) One-half of the members of the Coordination Committee shall constitute a quorum.

(c) A delegate may represent, and vote in the name of, one State only.

(6) (a) The Coordination Committee shall express its opinions and make its decisions by a simple majority of the votes cast. Abstentions shall not be considered as votes.

(b) Even if a simple majority is obtained, any member of the Coordination Committee may, immediately after the vote, request that the votes be the subject of a special recount in the following manner: two separate lists shall be prepared, one containing the names of the States members of the Executive Committee of the Paris Union and the other the names of the States members of the Executive Committee of the Berne Union; the vote of each State shall be inscribed opposite its name in each list in which it appears. Should this special recount indicate that a simple majority has not been obtained in each of those lists, the proposal shall not be considered as carried.

(7) Any State Member of the Organization which is not a member of the Coordination Committee may be represented at the meetings of the Committee by observers having the right to take part in the debates but without the right to vote.

(8) The Coordination Committee shall establish its own rules of procedure.

#### Article 9

##### International Bureau

(1) The International Bureau shall be the Secretariat of the Organization.

(2) The International Bureau shall be directed by the Director General, assisted by two or more Deputy Directors General.

(3) The Director General shall be appointed for a fixed term, which shall be not less than six years. He shall be eligible for reappointment for fixed terms. The periods of the initial appointment and possible subsequent appointments, as well as all other conditions of the appointment, shall be fixed by the General Assembly.

(4) (a) The Director General shall be the chief executive of the Organization.

(b) He shall represent the Organization.

(c) He shall report to, and conform to the instructions of, the General Assembly as to the internal and external affairs of the Organization.

(5) The Director General shall prepare the draft programs and budgets and periodical reports on activities. He shall transmit them to the Governments of the interested States and to the competent organs of the Unions and the Organization.

(6) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the General Assembly, the Conference, the Coordination Committee, and any other committee or working group. The Director General or a staff member designated by him shall be ex officio secretary of these bodies.

(7) The Director General shall appoint the staff necessary for the efficient performance of the tasks of the International Bureau. He shall appoint the Deputy Directors General after

approval by the Coordination Committee. The conditions of employment shall be fixed by the staff regulations to be approved by the Coordination Committee on the proposal of the Director General. The paramount consideration in the employment of the staff and in the determination of the conditions of service shall be the necessity of securing the highest standards of efficiency, competence, and integrity. Due regard shall be paid to the importance of recruiting the staff on as wide a geographical basis as possible.

(8) The nature of the responsibilities of the Director General and of the staff shall be exclusively international. In the discharge of their duties they shall not seek or receive instructions from any Government or from any authority external to the Organization. They shall refrain from any action which might prejudice their position as international officials. Each Member State undertakes to respect the exclusively international character of the responsibilities of the Director General and the staff, and not to seek to influence them in the discharge of their duties.

#### Article 10

##### Headquarters

(1) The headquarters of the Organization shall be at Geneva.

(2) Its transfer may be decided as provided for in Article 6 (3) (d) and (g).

#### Article 11

##### Finances

(1) The Organization shall have two separate budgets: the budget of expenses common to the Unions, and the budget of the Conference.

(2) (a) The budget of expenses common to the Unions shall include provision for expenses of interest to several Unions.

(b) This budget shall be financed from the following sources:

- (i) contributions of the Unions, provided that the amount of the contribution of each Union shall be fixed by the Assembly of that Union, having regard to the interest the Union has in the common expenses;
- (ii) charges due for services performed by the International Bureau not in direct relation with any of the Unions or not received for services rendered by the International Bureau in the field of legal-technical assistance;
- (iii) sale of, or royalties on, the publications of the International Bureau not directly concerning any of the Unions;
- (iv) gifts, bequests, and subventions, given to the Organization, except those referred to in paragraph (3) (b) (iv);
- (v) rents, interests, and other miscellaneous income, of the Organization.

(3) (a) The budget of the Conference shall include provision for the expenses of holding sessions of the Conference and for the cost of the legal-technical assistance program.

(b) This budget shall be financed from the following sources:

- (i) contributions of States party to this Convention not members of any of the Unions;

- (ii) any sums made available to this budget by the Unions, provided that the amount of the sum made available by each Union shall be fixed by the Assembly of that Union and that each Union shall be free to abstain from contributing to the said budget;
- (iii) sums received for services rendered by the International Bureau in the field of legal-technical assistance;
- (iv) gifts, bequests, and subventions, given to the Organization for the purposes referred to in subparagraph (a).

(4) (a) For the purpose of establishing its contribution towards the budget of the Conference, each State party to this Convention not member of any of the Unions shall belong to a class, and shall pay its annual contributions on the basis of a number of units fixed as follows:

Class A . . . .	10
Class B . . . .	3
Class C . . . .	1

(b) Each such State shall, concurrently with taking action as provided in Article 14(1), indicate the class to which it wishes to belong. Any such State may change class. If it chooses a lower class, the State must announce it to the Conference at one of its ordinary sessions. Any such change shall take effect at the beginning of the calendar year following the session.

(c) The annual contribution of each such State shall be an amount in the same proportion to the total sum to be contributed to the budget of the Conference by all such States as the number of its units is to the total of the units of all the said States.

(d) Contributions shall become due on the first of January of each year.

(e) If the budget is not adopted before the beginning of a new financial period, the budget shall be at the same level as the budget of previous year, in accordance with the financial regulations.

(5) Any State party to this Convention not member of any of the Unions which is in arrears in the payment of its financial contributions under the present Article, and any State party to this Convention member of any of the Unions which is in arrears in the payment of its contributions to any of the Unions, shall have no vote in any of the bodies of the Organization of which it is a member, if the amount of its arrears equals or exceeds the amount of the contributions due from it for the preceding two full years. However, any of these bodies may allow such a State to continue to exercise its vote in that body if, and as long as, it is satisfied that the delay in payment arises from exceptional and unavoidable circumstances.

(6) The amount of the fees and charges due for services rendered by the International Bureau in the field of legal-technical assistance shall be established, and shall be reported to the Coordination Committee, by the Director General.

(7) The Organization, with the approval of the Coordination Committee, may receive gifts, bequests, and subventions, directly from Governments, public or private institutions, associations or private persons.

(8) (a) The Organization shall have a working capital fund which shall be constituted by a single payment made by

the Unions and by each State party to this Convention not member of any Union. If the fund becomes insufficient, it shall be increased.

(b) The amount of the single payment of each Union and its possible participation in any increase shall be decided by its Assembly.

(c) The amount of the single payment of each State party to this Convention not member of any Union and its part in any increase shall be a proportion of the contribution of that State for the year in which the fund is established or the increase decided. The proportion and the terms of payment shall be fixed by the Conference on the proposal of the Director General and after it has heard the advice of the Coordination Committee.

(9) (a) In the headquarters agreement concluded with the State on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such State shall grant advances. The amount of these advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such State and the Organization. As long as it remains under the obligation to grant advances, such State shall have an ex officio seat on the Coordination Committee.

(b) The State referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(10) The auditing of the accounts shall be effected by one or more Member States, or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the General Assembly.

## Article 12

### Legal Capacity; Privileges and Immunities

(1) The Organization shall enjoy on the territory of each Member State, in conformity with the laws of that State, such legal capacity as may be necessary for the fulfilment of the Organization's objectives and for the exercise of its functions.

(2) The Organization shall conclude a headquarters agreement with the Swiss Confederation and with any other State in which the headquarters may subsequently be located.

(3) The Organization may conclude bilateral or multilateral agreements with the other Member States with a view to the enjoyment by the Organization, its officials, and representatives of all Member States, of such privileges and immunities as may be necessary for the fulfilment of its objectives and for the exercise of its functions.

(4) The Director General may negotiate and, after approval by the Coordination Committee, shall conclude and sign on behalf of the Organization the agreements referred to in paragraphs (2) and (3).

## Article 13

### Relations with Other Organizations

(1) The Organization shall, where appropriate, establish working relations and cooperate with other intergovernmental



organizations. Any general agreement to such effect entered into with such organizations shall be concluded by the Director General after approval by the Coordination Committee.

(2) The Organization may, on matters within its competence, make suitable arrangements for consultation and cooperation with international non-governmental organizations and, with the consent of the Governments concerned, with national organizations, governmental or non-governmental. Such arrangements shall be made by the Director General after approval by the Coordination Committee.

#### Article 14

##### Becoming Party to the Convention

(1) States referred to in Article 5 may become party to this Convention and Member of the Organization by:

- (i) signature without reservation as to ratification, or
- (ii) signature subject to ratification followed by the deposit of an instrument of ratification, or
- (iii) deposit of an instrument of accession.

(2) Notwithstanding any other provision of this Convention, a State party to the Paris Convention, the Berne Convention, or both Conventions, may become party to this Convention only if it concurrently ratifies or accedes to, or only after it has ratified or acceded to:

either the Stockholm Act of the Paris Convention in its entirety or with only the limitation set forth in Article 20(1)(b)(i) thereof,

or the Stockholm Act of the Berne Convention in its entirety or with only the limitation set forth in Article 28(1)(b)(i) thereof.

(3) Instruments of ratification or accession shall be deposited with the Director General.

#### Article 15

##### Entry into Force of the Convention

(1) This Convention shall enter into force three months after ten States members of the Paris Union and seven States members of the Berne Union have taken action as provided in Article 14(1), it being understood that, if a State is a member of both Unions, it will be counted in both groups. On that date, this Convention shall enter into force also in respect of States which, not being members of either of the two Unions, have taken action as provided in Article 14(1) three months or more prior to that date.

(2) In respect to any other State, this Convention shall enter into force three months after the date on which such State takes action as provided in Article 14(1).

#### Article 16

##### Reservations

No reservations to this Convention are permitted.

#### Article 17

##### Amendments

(1) Proposals for the amendment of this Convention may be initiated by any Member State, by the Coordination Committee, or by the Director General. Such proposals shall be

communicated by the Director General to the Member States at least six months in advance of their consideration by the Conference.

(2) Amendments shall be adopted by the Conference. Whenever amendments would affect the rights and obligations of States party to this Convention not members of any of the Unions, such States shall also vote. On all other amendments proposed, only States party to this Convention members of any Union shall vote. Amendments shall be adopted by a simple majority of the votes cast, provided that the Conference shall vote only on such proposals for amendments as have previously been adopted by the Assembly of the Paris Union and the Assembly of the Berne Union according to the rules applicable in each of them regarding the adoption of amendments to the administrative provisions of their respective Conventions.

(3) Any amendment shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the States members of the Organization, entitled to vote on the proposal for amendment pursuant to paragraph (2), at the time the Conference adopted the amendment. Any amendments thus accepted shall bind all the States which are Members of the Organization at the time the amendment enters into force or which become Members at a subsequent date, provided that any amendment increasing the financial obligations of Member States shall bind only those States which have notified their acceptance of such amendment.

#### Article 18

##### Denunciation

(1) Any Member State may denounce this Convention by notification addressed to the Director General.

(2) Denunciation shall take effect six months after the day on which the Director General has received the notification.

#### Article 19

##### Notifications

The Director General shall notify the Governments of all Member States of:

- (i) the date of entry into force of the Convention,
- (ii) signatures and deposits of instruments of ratification or accession,
- (iii) acceptances of an amendment to this Convention, and the date upon which the amendment enters into force,
- (iv) denunciations of this Convention.

#### Article 20

##### Final Provisions

(1) (a) This Convention shall be signed in a single copy in English, French, Russian and Spanish, all texts being equally authentic, and shall be deposited with the Government of Sweden.

(b) This Convention shall remain open for signature at Stockholm until January 13, 1968.



(2) Official texts shall be established by the Director General, after consultation with the interested Governments, in German, Italian and Portuguese, and such other languages as the Conference may designate.

(3) The Director General shall transmit two duly certified copies of this Convention and of each amendment adopted by the Conference to the Governments of the States members of the Paris or Berne Unions, to the Government of any other State when it accedes to this Convention, and, on request, to the Government of any other State. The copies of the signed text of the Convention transmitted to the Governments shall be certified by the Government of Sweden.

(4) The Director General shall register this Convention with the Secretariat of the United Nations.

## Article 21

### Transitional Provisions

(1) Until the first Director General assumes office, references in this Convention to the International Bureau or to the Director General shall be deemed to be references to the United International Bureaux for the Protection of Industrial, Literary and Artistic Property (also called the United International Bureaux for the Protection of Intellectual Property (BIRPI)), or its Director, respectively.

(2) (a) States which are members of any of the Unions but which have not become party to this Convention may, for five years from the date of entry into force of this Convention, exercise, if they so desire, the same rights as if they had become party to this Convention. Any State desiring to exercise such rights shall give written notification to this effect to the Director General; this notification shall be effective on the date of its receipt. Such States shall be deemed to be members of the General Assembly and the Conference until the expiration of the said period.

(b) Upon expiration of this five-year period, such States shall have no right to vote in the General Assembly, the Conference, and the Coordination Committee.

(c) Upon becoming party to this Convention, such States shall regain such right to vote.

(3) (a) As long as there are States members of the Paris or Berne Unions which have not become party to this Convention, the International Bureau and the Director General shall also function as the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, and its Director, respectively.

(b) The staff in the employment of the said Bureaux on the date of entry into force of this Convention shall, during the transitional period referred to in subparagraph (a), be considered as also employed by the International Bureau.

(4) (a) Once all the States members of the Paris Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

(b) Once all the States members of the Berne Union have become Members of the Organization, the rights, obligations, and property, of the Bureau of that Union shall devolve on the International Bureau of the Organization.

# INTERNATIONAL UNIONS

## Madrid Union (Trademarks)

### Ratification of the Nice Act

#### TUNISIA

According to a communication received from the Swiss Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

*(Translation)*

"In compliance with the instructions of the Federal Political Department, dated July 28, 1967, the Swiss Embassy has the honor to inform the Ministry of Foreign Affairs that:

On April 27, 1967, Tunisia deposited with the French Government an instrument of ratification by that State of the Madrid Agreement for the International Registration of Trademarks of April 14, 1891, as last revised at Nice on June 15, 1957. According to a communication addressed to the French Ministry of Foreign Affairs, Tunisia has moreover, invoked the benefits of paragraph (1) of Article 3<sup>bis</sup> of the above-mentioned Act.

In conformity with Article 16 of the Paris Convention for the Protection of Industrial Property, to which Article 12 of the Madrid Agreement refers, the said ratification will take effect on August 28, 1967. In accordance with Article 3<sup>bis</sup> (2), second sentence, the reservation made by Tunisia will take effect on the same date as the ratification."

## BIRPI Plan for a Patent Cooperation Treaty (PCT)

### Editor's Note

Reference is made to the Note published in the March 1967 issue of *Industrial Property* (pages 58 and 59). It was stated there that BIRPI was working on a detailed proposal for a Patent Cooperation Treaty and that a Committee of Experts would meet in the fall of 1967 to discuss the proposal.

The BIRPI proposal was published on May 31, 1967, and the Committee of Experts is convened for October 2 to 10, 1967. Five working papers were prepared for that Committee (Documents PCT/I/1 to 5). One of them (PCT/I/3) entitled

*“Explanatory Memorandum,” is published below. The others may be ordered from BIRPI. All documents exist in English and French.*

## EXPLANATORY MEMORANDUM

### CONTENTS

	Paragraphs
The Present Document . . . . .	1 to 5
Aim of the Proposed Agreement . . . . .	6 to 9
Brief Summary of the Proposed Agreement . . . . .	10 to 21
Some Special Features of the Proposed System . . . . .	22 to 41
Length of Procedure . . . . .	22 to 25
Searching and Examining Authorities . . . . .	26 to 29
Languages . . . . .	30 to 32
Fees . . . . .	33 to 41
Agreement, Regulations, and Other Instruments . . . . .	42 to 51
Main Advantages of the Proposed System . . . . .	52 to 78
For Examining Offices . . . . .	52 and 53
For Non-Examining and Examining Offices . . . . .	54 to 56
For the Inventor or Applicant . . . . .	57 to 65
For Developed Countries . . . . .	66 and 67
For Developing Countries . . . . .	68 to 73
For Technological Information in General . . . . .	74
For the Public . . . . .	75
For the Patent System in General . . . . .	76 to 78
Other Efforts for International Cooperation in the Patent Field . . . . .	79 to 84

### The Present Document

1. The present document is an explanatory memorandum concerning the system of international patent cooperation which would result from the proposed Agreement.
2. It states the aim of the proposal, briefly describes the proposed Agreement, calls attention to some of the special features of the proposed system, describes the instruments which — in addition to the Agreement itself — would have to be drawn up, enumerates the main advantages of the proposed system, and examines its relation to other existing or planned systems of international cooperation in the patent field.
3. A draft text of the proposed Agreement is to be found in document PCT/I/4.
4. A memorandum on the proposed Regulations is to be found in document PCT/I/5.
5. It is to be noted that, unless otherwise shown by the context, whenever the expression “patent” is used in this document, “inventors’ certificates” should also be understood for the purposes of such countries (mainly the Soviet Union) where inventions may be protected through patents or through inventors’ certificates.

### Aim of the Proposed Agreement

6. The aim of the proposed Agreement is to facilitate the filing and examination of applications for the protection of the same invention in a number of countries.
7. *Filing* would be facilitated by prescribing the form and the elements of the content of applications for patents

and by providing that a single application filed in one place (the International Bureau) and accompanied by a search report would have the effect of national applications in all the participating countries in which the applicant desires such effect.

Such central (“international”) filing would save work, time, and money, primarily for the applicant, but also for national Offices.

8. *Examination* would be facilitated by requiring the establishment of an international search report and also, when desired by the applicant, of an international certificate of patentability.

Such international reports and certificates would save work — particularly by technically skilled personnel — time and money for the national Offices<sup>1)</sup> and the applicants.

9. It is to be expected that, in addition to the direct economical effects of the proposed system, it would have *important consequences* on the international patent situation as a whole. The system would, in particular

improve the quality of patents in many cases, enable countries not having examining systems to have more meaningful patents that they have today, geographically spread the respect for rights in inventions, technical knowledge, and the willingness for industrial investment, since it may be expected that more inventions will be introduced in more countries.

### Brief Summary of the Proposed Agreement

10. The proposed Agreement distinguishes between two phases in the pursuit of protection for inventions. Cooperation in the first phase would be obligatory for all Contracting States and all applicants wishing to file internationally. Cooperation in the second phase would be optional for the Contracting States, and each applicant could decide for himself whether he wanted to take advantage of the possibilities offered under it.

11. The First Phase — which could be called “*central filing PLUS search report*” — would consist of the following steps: the applicant would file an international application with the International Bureau; the International Bureau would check the application to see whether it was in order as to form; a search report would be established by the International Bureau after preparation by one or more national Offices, or it would be established by the International Patent Institute<sup>2)</sup>; the applicant would be given an opportunity to amend the claims; the application and the search report would be communicated to the national Offices of the Contracting States designated by the applicant; the International Bureau would publish the application and the international search report; the two would normally be published together.

<sup>1)</sup> “National Office,” throughout this document, means the government authority of each Contracting State which is entrusted with the issuance of patents.

<sup>2)</sup> The International Patent Institute participated in the preliminary consultations leading to the present proposal, but this proposal does not necessarily reflect the views of the Institute.

12. Any international search report would have to conform to the same standards, whether originating in national Offices or in the International Patent Institute. It would be based on the principle of worldwide novelty. The minimum documentation to be taken into consideration in all searches would be specified. A division of the labor of searching in respect of the same application between two or more national Offices which are searching Authorities<sup>3)</sup> would be possible and could be useful, particularly if each searching Authority could not establish identical documentation or could not use it fully because of language difficulties.

13. As to the effect of international applications, it must be noted that international filing, in itself, would have no effect, except that it might establish a priority date. Only applications for which a search report has been established would have effect.

14. *The effect of an international application communicated, together with the search report, to the national Offices of Contracting States designated by the applicant ("designated States")* would, in each of those States, be that of a regular national filing.

15. This would be the only necessary effect of an international application which complies with the requirements of the Agreement; and, although the International Bureau would process only those international applications concerning which it is satisfied that they comply with the said requirements, each Contracting State would be the sole judge, as far as its own State is concerned, whether the international application has, in its view, complied with the international requirements. It could disagree with the view of the International Bureau and deny the effect of an international application even if the International Bureau found the international application in order, or it could give effect to the international application even if the International Bureau found the international application defective.

16. Whether a national patent will or will not issue on the basis of an international application not refused as being defective as to its form will depend on the law — and the application of the law in the given case by the national Office and the courts — of each designated State. In other words — and to repeat what has already been said — the only *necessary* effect of an international application (unless found defective as to its form) in each interested State is that of a regular national application, and nothing more.

17. In any Contracting State *not bound by Chapter II*, an international application *cum* search report *may* have an additional effect too, namely, that of a national patent if, within the time limit and for the reasons provided for in the Agreement, the national Office of the State does not deny such effect, that is, simply remains inactive. Such effect could be avoided in fields in which novelty examination is practised on the national level. Examining countries could avoid such additional effect.

18. The Second Phase — the phase of the *international certificate of patentability* — would consist of the following steps: the applicant (probably only if the search report is not unfavorable) would request the issuance of an international certificate of patentability; such certificate would be issued, or its issuance denied, after an examination carried out by a national Office or by the International Patent Institute, during which the applicant would have direct access to the Authority making the examination<sup>4)</sup>; if there is intent to deny, the applicant would be given a chance to be heard by an international review board of highly qualified examiners which may cause the international certificate to be issued; each issued international certificate would be communicated to the national Offices of the Contracting States which the applicant has elected as States in which he wishes to use it ("elected States"); the International Bureau would publish these certificates.

19. International certificates of patentability would have to conform to the same standards, whether drawn up by national Offices, by the International Patent Institute, or by a review board. The Agreement defines the conditions which each invention would have to meet in order to be entitled to an international certificate. They would be rather severe: worldwide novelty, non-obviousness or inventive step, usefulness or industrial applicability.

20. *The effects of an international certificate* would be practical and legal. Among the many *practical* effects, only one will be mentioned here in order to emphasize its extraordinary importance: national Offices administering an examining system could, in most cases where they receive an international certificate, reduce their work of examination to a small fraction of its present volume. Or, if their laws enabled them to do so, they could completely forgo examination in such cases. In States in which the law provides for an opposition procedure, national Offices, would have to go into the merits of each application attacked by opposition. But since international certificates would presumably be "strong," opposition would probably be rare.

21. As to the *legal* effects, it should first be noted that an international certificate is not a national patent. Normally, and as already indicated, a certificate is merely an aid, possibly a virtual substitute, for national examination. It is a practical basis for issuing national patents, and presumably "strong" patents at that. The Agreement would expressly provide that Contracting States will, within stated time limits, either grant or deny the grant of a national patent on an international application accompanied by an international certificate. Only if the national Office remains inactive during the stated period (minimum one year, but in certain cases it might be longer), then, but only then, will the international certificate have the same effect as if a national patent had been issued. Any national Office may, of course, find that the invention — notwithstanding the issuance of an international certificate of patentability — does

<sup>3)</sup> National Offices and the International Patent Institute are referred to as "searching Authorities" in connection with the establishment of international search reports.

<sup>4)</sup> National Offices and the International Patent Institute are referred to as "examining Authorities" in connection with the drawing up of international certificates of patentability.

not comply with the required criteria of patentability or, for certain other reasons (for example, the existence of a prior national right or the non-patentability in that State of certain classes of subject matter) is unpatentable under the national law and, if it so finds and says so within the prescribed time limits, the certificate will not be able to acquire the effect of a national patent.

### Some Special Features of the Proposed System

#### *Length of Procedure*

22. It is expected that an international search report would be established and the international application with the international search report would be communicated to the designated national Offices within *six to twelve months* from the filing of the international application. This would mean, where an international application invokes the priority of an earlier national filing, eighteen to twenty-four months from the date of the first national filing. Publication of the international application could not be effected before eighteen months from first filing (except on the request of the applicant) and would have to be effected before twenty-four months from first filing. If the proposed time limits are respected, no international application will be published without an international search report. Since the applicant would see the international search report as soon as it is established, he might prevent the communication and publication of his international application by withdrawing it, particularly if the international search report is not encouraging.

23. It is expected that the procedure under the second phase — issuing or denial of a certificate — would require a period from *eleven to seventeen months*.

24. When an application goes through both phases, the time required for both will be *between eleven and twenty-six months*, depending on how much of the work required in the two phases is simultaneously performed (is "tele-scoped") and on other circumstances.

25. The periods in paragraphs 23 and 24 are counted from the filing of the international application. If priority is invoked, up to one year must be added to those periods.

#### *Searching and Examining Authorities*

26. It is expected that the International Patent Institute will be one of the searching and examining Authorities, that is, it will both establish international search reports and draw up international certificates of patentability.

27. It is expected that some of the national Offices will be searching and examining Authorities. The proposed Agreement does not prescribe criteria: in principle, any national Office could become such an Authority. In practice, however, only very few would be able to meet the requirements of search and examination because of the great volume of documentation which each Authority would have to possess and keep up to date, because many national Offices are unable to work in any of the languages accepted for international filing, and because each Authority would need a large number of highly

qualified examiners. Having very few searching and examining Authorities is not without advantages: it will be relatively easier to secure similar procedures and quality. It is expected that the system would be viable even if the number of searching and examining Authorities were only three or four (for example, among the International Patent Institute, Moscow, Munich, Tokyo, Washington). Naturally, any other national Office which wishes and is able would be equally welcome to become a searching and examining Authority. Some national Offices might wish to act as searching Authorities only or examining Authorities only.

28. Becoming a searching or examining Authority would not be a matter for unilateral declaration. It would require the conclusion of a working agreement between the Authority and the International Bureau, and the latter would require endorsement by the Assembly of the States parties to the proposed Agreement.

29. The plan to have practically the whole technical work performed by existing bodies is the cornerstone of the whole system. International search reports and international certificates would, in fact, originate in the searching and examining Authorities themselves. All the potential searching and examining Authorities not only exist but are experienced, and the high quality of their work is generally recognized. The setting up of an international examining corps capable of handling tens of thousands of applications per year would seem to be unrealistic<sup>5</sup>). The proposed system avoids this. Entrusting, as one would, the work of searching and examining to authorities which are geographically dispersed has also the advantages that most of the applicants will be able to deal with authorities which they know from experience, which work in their language, and which are geographically near.

#### *Languages*

30. Depending on which States will participate in the system, it is expected that international *applications* would have to be drawn up in English, French, German, or Russian.

31. International *search reports* and international *certificates of patentability* would have to be drawn up in the language of the international application. In most cases, this will present no problems since the US, German, and Soviet Patent Offices — if they become searching and examining Authorities — would work in English, German, and Russian, and the International Patent Institute is able to work in French as well as in English and German. In some cases, for example if the Japanese Patent Office is one of the searching and examining Authorities, translations will have to be made.

32. Since most countries will require that any paper which they have to deal with must be in their own national languages, applicants would have to file the corresponding translations. But they would have to file them only after having

<sup>5</sup>) Estimates based on 1965 statistics show that the number of inventions for which applications have been filed in more than one country was at least 60,000. Extrapolating the trends observed on the basis of the statistics for the last 15 years, this number is likely to rise to at least 100,000 by 1980.

obtained the international search report or the international certificate, that is, at a time when it is more probable that it is worth while spending the money on translations.

### Fees

33. It is expected that the applicant would have to pay two kinds of fees in the *first phase*: an international filing fee and "designation fees." The first would include the cost of the establishment of the search report and of general handling, including publication. Part of the international filing fee could be refunded if the application is withdrawn before it is searched. Designation fees would be a fixed amount of money payable for each State designated by the applicant as a State in which he desires that the international application produce effects.

34. In the *second phase*, the applicant would have to pay an international examination fee and "election fees." The first would include the cost of the examination, the drawing up of the international certificate, and general handling, including the cost of the publication of the latter. Election fees would be a fixed amount of money payable for each State elected by the applicant as a State in which he plans to use the international certificate (if he succeeds in obtaining it).

35. The fees payable by the applicant would be the same, irrespective of which examining Authority — a national Office or the International Patent Institute — will work on his case.

36. The International Bureau will pay to each examining Authority an agreed amount for the work performed.

37. The designation and election fees would be paid over *in toto* by the International Bureau to the designated and elected national Offices.

38. The national Offices could not collect anything from the applicant except: (i) a national examination fee if examination is required and if, on the international level, the applicant has gone only as far as the first phase, (ii) the actual cost of publication of a national patent, (iii) renewal fees ("annuities") for the maintenance of the national patent.

39. The amount of the fees requires further study. It depends on a basic question, namely, whether the payments made for international search and international examination to the searching and examining Authorities by the International Bureau must cover the cost of the services performed or may be below such cost, as they are today in most examining Offices. A further, similar question is whether the cost of the services performed by the International Bureau itself should be covered by the international fees or whether Contracting States should pay contributions to the International Bureau. Below-cost payments and fees could, in both cases, be justified not only by present practices in most countries but also by the fact that the international system will considerably reduce the costs of operating the national systems and it is only logical to "pay" for the savings by agreeing to subsidize the international system, for example out of national renewal fees.

40. Naturally, it could be decided that the international system, including the work of the searching and examining

Authorities, must be entirely self-supporting, i. e., paid out of the fees and other income, mainly the income derived from the sale of publications. It is believed that, even in a self-supporting system, the fees will be such that it will generally cost less to the applicant to "go the international way" than to file separately in each country in which he is interested. But there might be exceptions, particularly if the applicant is interested in only two or three countries.

41. National Offices will not lose income under the system as long as the designation and election fees are the same as or more than the difference between the present national filing fee and the value of the savings thanks to the international system. The main source of income for most national Offices — the renewal fees — would continue as at present.

### Agreement, Regulations, and Other Instruments

42. The basic rules of the proposed system would be embodied in a multilateral treaty ("Agreement") and two annexes, one on international search reports, the other on international certificates of patentability. Some of the details would be embodied in regulations.

43. The *Agreement* should deal with only the most important matters: the limits of the obligations of the States; guarantees of their basic rights; basic obligations and guarantees of rights of applicants; main duties of the International Bureau. The ideal would be to write into the *Agreement* itself only rules which are unlikely to change for decades, because the coming into effect of each change would require a certain number of ratifications, and ratifications are by nature slow because, in many States, they have to be processed through the legislative bodies.

44. It is quite likely that the requirements set down for international search reports and international certificates of patentability will change as experience in their establishment is gathered. This is why such requirements are not in the body of the *Agreement* itself, but in *Annexes*. It is planned that such *Annexes*, although drawn up, in their original form, by the same diplomatic Conference as would draw up the *Agreement* as signed, should be modifiable without the need of ratification, by the vote of the States concerned, probably subject to the requirement of unanimity in some cases. Such procedure would considerably shorten the time between vote and entry into effect.

45. For similar reasons, it is contemplated that the *Regulations* will be modifiable by a vote, probably by various qualified majorities, and without the need for ratifications.

46. Document PCT/I/4 contains a draft of the proposed *Agreement*. The draft is complete as far as its first three Chapters (Articles I to 36) are concerned. As far as Chapters IV and V (administrative provisions and final clauses) are concerned, no text is yet proposed. Their possible contents are merely alluded to. It would be premature, until views are clarified on the basic questions regulated by Chapters I, II, and III, to go into administrative details and provisions concerning signatures, ratifications, and the like. On the other hand, full draft texts are included for *Annexes I and II*

because intentions in respect to the two basic questions dealt with therein — international search reports and international certificates of patentability — require the earliest possible clarification.

47. Document PCT/I/5 contains a summary of what could become part of the Regulations. The form of memorandum, rather than full texts, was chosen because here too one needs to see more clearly first as to the Agreement itself, the Regulations being merely an elaboration on the rules contained in the Agreement.

48. If work proceeds along the lines suggested, it will be necessary to make detailed estimates as to the volume and cost of work to be undertaken by the International Bureau and by the searching and examining Authorities under the proposed system.

49. It will also be necessary to engage in preliminary discussions with the International Patent Institute and with the national Offices likely to become searching and examining Authorities, and to draw up draft agreements between, on the one hand, the International Bureau and, on the other hand, the International Patent Institute and each of the national Offices able and ready to become searching Authorities or examining Authorities, or both searching and examining Authorities.

50. It will also be necessary to draft statutes and rules of procedure for the proposed review boards and for the panel from which each of them would be drawn.

51. Finally, it will be necessary to plan for the establishment of machinery (particularly advisory committees) for ensuring constant contact between all searching and examining Authorities and the International Bureau, to achieve the maximum possible degree of uniformity in the procedures and quality in respect of international search reports, international certificates of patentability, and international classification.

#### Main Advantages of the Proposed System

##### *For Examining Offices*

52. Examining national Offices would be able to make substantial economies since the proposed system would render superfluous all or most of the work of searching, and also — when an international certificate of patentability has been requested — most of the work of examination, for most applications filed by foreigners. In the overwhelming majority of countries, such applications exceed in number applications filed by nationals. Japan, the United States, and the Federal Republic of Germany, are among the rare exceptions but, in these countries, the absolute number of foreign applications is in itself impressive (21 000, 22 000, and 28 000, respectively, in 1965) and has been approached or exceeded only in three countries (31 000 in the United Kingdom, 30 000 in France, and 28 000 in Canada). Some of the Socialist countries are also among the exceptions but, due presumably to the recent intensification of East-West trade and expanding scientific and technical cooperation, the number of foreign applications filed in these countries is constantly and rapidly growing. In the Soviet Union, for example, the number doubled from 1965 to 1966.

53. Even national Offices which were distrustful — and in the beginning, they might be — as to the quality of the international search reports and international certificates of patentability, and which subjected each of them to a complete or partial verification, would have a “flying start” in their work, since such work would be in the nature of completing, checking, criticizing, rather than starting from scratch in complete isolation, as national Offices do at present.

##### *For Non-Examining and Examining Offices*

54. Both kinds of national Offices would make economies in the cost of handling applications, since the work of their verification as to compliance with prescriptions of form and payment of fees would become practically superfluous.

55. Both kinds of Offices could save part of the cost of publishing. If the international publication is in their national language, they could forgo republication altogether, or they could decide to publish only the abstracts in their national gazettes. This solution could be chosen even by countries which have a different language: they might find it sufficient to publish, in their national language, only abstracts, and to keep the complete translations in their files, copies of which could be ordered by anyone who, on the basis of the abstracts or the full foreign texts, becomes interested.

56. The proposed system would not diminish the revenues of Patent Offices, or would diminish them only in areas where the savings in expenditure would more than offset the decrease in income. The most “profitable” revenue of most national Offices comes from the renewal fees. The system would not touch these fees. They would be collected as before and their total product would probably increase, since the number of patents would probably grow when it becomes simpler and cheaper to apply for them. The national filing fee would be replaced by the “designation fee” but, for many national Offices, the latter would be higher than their present filing fee (if what is meant is a fee for handling the application and not also for the cost of examination). The national examination fee — in the case where a certificate of patentability is presented — would have to fall away but, since “election fees” would be a new source of revenue, and since examination in national Offices generally costs more than the fee they charge for it, the result would be favorable, as deficits on this count would be eliminated.

##### *For the Inventor or Applicant*

57. Applicants — that is, inventors or their employers or assignees — would have more time to make up their minds as to the foreign countries in which they want to seek protection, and they would have to spend much less money in the pre-grant (or pre-denial) stage than at present.

58. Today, an applicant must start preparations for filing abroad three to nine months before the expiration of the priority period. He must prepare translations of his application and must have them put in a different form for each country. Under the proposed system, the applicant, within the priority year, would make only one application (the international application), which may be identical both as to language and



form with his own national application, or which involves one — and only one — translation and redrafting. True, the cost of further translations will eventually have to be met, but only a year or so later than under the present conditions, and only if the applicant is still interested in the countries concerned. On the other hand, the — even greater — cost of redrafting (recasting as to form and expression) for each and every country would not arise, not even later.

59. The international search report would help the applicant to make up his mind whether it is worth while continuing his efforts. If he decides that it is not, he will save all subsequent costs, including the fee for a request for an international certificate of patentability.

60. The international certificate of patentability would help the applicant to make up his mind whether to press for national patents. And if the international certificate is denied, he will think twice before pressing for national patents.

61. In any Contracting State, the applicant — unless he runs into complications because of refusals or oppositions — would obtain a national patent for the mere “designation fee.”

62. Even in countries where complications arise, costs would start only when the complications start and would never include the cost of preparing national applications.

63. All the applicants residing in a country whose national Office is an examining Authority would be able to conduct their dialogue concerning the issuance of the international certificate of patentability with the Office with which they are most *familiar* and which is geographically *near*, and in their own *language*.

64. Even those applicants not residing in such a country would frequently be able to use an Authority in which they have special confidence (e. g., the International Patent Institute), which may be nearer than most of the countries in which they seek protection, and in a language which may be their own but, in any case, is a world language, generally known in scientific and technological circles.

65. It is true that, where complications arise, the applicant might have to operate as he does today, in unfamiliar and distant Offices and in languages with which he is totally unfamiliar. But by that time he would have in his arsenal an international search report and possibly an international certificate of patentability, both of international standing. He, too, would have a “flying start.”

#### *For Developed Countries*

66. Developed countries have relatively many inventors. They would constitute the majority of applicants. The savings achieved for the applicant, described above, would thus save outflow of money from their countries.

67. By allowing stronger patents (particularly in non-examining, developing countries) to be obtained with less effort and cost, the proposed system would probably induce inventors to seek protection in more countries, and for more inventions than at the present time. This would expand the export and investment potential of the developed countries to which they belong.

#### *For Developing Countries*

68. Most developing countries have a non-examining system. Whereas in developed countries the chances of granting worthless patents are diminished by the expertise of the patent attorneys or agents assisting the applicant and by the expertise of the courts, in many developing countries these safeguards are to a large extent missing. The need for examination is thus greater in developing countries but because of the scarcity of technically trained persons and of adequate documentation, and because of the high cost of examination, such countries are even less in a position to introduce an examining system — even if they joined efforts on a regional basis — than developed countries.

69. The proposed system offers a clear and simple solution to this problem which a notable report of the United Nations Secretariat called the “dilemma [of the Governments of most developing countries] between the dangers of a distorted patent system and the practical difficulty, if not impossibility, of marshalling the broad range of highly qualified technicians and scientific source materials which would be needed to permit an adequate novelty search” (UN document E/4319 of March 27, 1967, page 24).

70. The solution resides in the fact that, under the proposed system, the developing countries will not need the persons and materials to make a novelty search because that search — and, even more, the examination — would be procured by the International Bureau from the searching and examining Authorities; the solution further resides in the fact that their patent systems will not be “distorted” because applications accompanied by international certificates of patentability would give a high degree of reliability to their patent grants. In fact, their patents would generally be just as reliable, justified, and strong, as those of the most developed countries with the most sophisticated corps of patent examiners.

71. Naturally, the proposed system would not only protect developing countries from granting patents to foreign applicants who do not deserve them and who could thus have imposed “unjustified monopoly restrictions” (*ibidem*) on their national economy, but it would also ensure that their own inventors and industrialists receive patents on which they can rely and which will not crumble when foreign competitors attack them or appear on the market.

72. Developing countries, by being able to offer meaningful protection to foreign entrepreneurs owning patented technology, would find such foreign entrepreneurs more willing to transfer (sell or license) the said technology and would, in general, attract more foreign investment. They would thereby accelerate the industrialization of their countries.

73. Developing countries would derive a special benefit from the proposed system as far as technical documentation is concerned. Assembling, and using, the world's patent literature — a source *par excellence* of recent and valuable technological information — is costly, unwieldy, and presents practically insuperable language problems. The proposed system would present, in the form of certificates of patentability and easy-to-handle technical abstracts, the cream of the inventions,



classified according to branches of technology, and in world languages.

#### *For Technological Information in General*

74. For developed countries, the problems referred to in the preceding paragraph are perhaps not insuperable. But even for them, the proposed system would, as a kind of by-product, make access to most of the patent literature very much easier and cheaper than under existing conditions.

#### *For the public*

75. The proposed system would give substance to the much quoted principle according to which applicants are granted patents in exchange for disclosure. Such disclosure, in the present system, frequently occurs only many years after the date of the application, that is, at a time when the disclosure no longer reveals anything new. In the proposed system, such disclosure would take place within a reasonable time — eighteen to twenty-four months after the priority date.

#### *For the Patent System in General*

76. The patent system, as it exists today, is much criticized. It is said to be wasteful of human talent, expensive, slow, and yielding in the different countries patents of such different value that they do not even deserve to be called by the same name.

77. No attempt is made here to form a judgment on these accusations. But it is beyond doubt that the proposed system, by eliminating considerable duplication in work, would avoid useless operations, and diminish the cost of prosecuting patent applications. It is also certain that, through the time limits it would prescribe, the proposed system would generally shorten the period during which the applicant, would-be licensees, and competitors, live in uncertainty, not knowing whether a patent will issue or not. It is also to be foreseen that the proposed cooperation would make the value of patents more uniform.

78. Should one therefore succeed in making the seeking and granting of patents simpler and cheaper, and in making the value of patents issued by different countries more equal and, generally, stronger, one would not only have answered the criticisms leveled against the existing situation, but one would have made the patent system more useful. It would then be accepted in countries which are skeptical about its general usefulness, and it would be put to a better use in countries where it exists. All this should contribute to the development of technological progress, which is so urgently needed to improve the living conditions of most of mankind.

#### **Other Efforts for International Cooperation in the Patent Field**

79. BIRPI and its consultants found much inspiration in the plans and achievements of the last two decades in the field of international patent cooperation.

80. The International Patent Institute and the International Patent Classification are, in themselves, elements without which it would be much more difficult to imagine the proposed system.

81. Work on the "European Patent" plan, and on the Nordic Patent System, as well as the work of the Council of Europe, were constantly kept in mind when working on the present proposals. Much is due, in these proposals, to the years of study which have been carried out in these circles.

82. It should be emphasized, however, that the proposed system is fundamentally different from the plan of the six member States of the European Economic Community. Whereas the draft Convention of the "Six" establishes an international patent, an international court procedure for judging the validity of the patent, and other provisions *after* the patent is granted (rules on duration, nullity, compulsory and other licenses, on infringement and on its repression), the BIRPI draft deals with none of these subjects. It establishes no international patent, it establishes no international court, it contains no rules whatsoever for matters arising after the grant. The grant itself would remain under the exclusive sovereignty of each Contracting State.

83. Thus, the scope of the BIRPI proposal is much narrower. The proposed Agreement deals only with the phases of application and examination. For its implementation, it relies mainly on existing facilities. The work of searching and examination would be decentralized.

84. Notwithstanding the differences between the BIRPI proposal and the plans of the European "Six" and the Nordic countries, the former is not in conflict with either of the latter and both could be put into effect before or after the treaty now proposed.

## **CORRESPONDENCE**

### **Letter from Spain**

1960-1966 \*)

By Alberto de ELZABURU, Madrid















## CALENDAR

### Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
October 2 to 10, 1967 Geneva	Committee of Experts on a Patent Cooperation Treaty (PCT)	Examination of the proposed BIRPI plan for facilitating the filing and examination of applications for the protection of the same invention in a number of countries	<i>Countries in which over 5000 patent applications were filed in 1965:</i> Argentina, Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), India, Italy, Japan, Mexico, Netherlands, Norway, Poland, South Africa, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	<i>Intergovernmental Organizations:</i> United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of the General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Europe; European Economic Community; European Free Trade Association; African and Malagasy Industrial Property Office <i>International Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Council of European Industrial Federations; European Industrial Research Management Association; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; Union of European Patent Agents; Union des Industries de la Communauté européenne

Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 12 to 15, 1967 Geneva	Permanent Committee of the Berne Union (13 <sup>th</sup> Session)	Consideration of various questions concerning copyright	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom	All other Member States of the Berne Union; interested international inter-governmental and non-governmental organizations
December 18 and 19, 1967 Geneva (Headquarters of ILO)	Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly by BIRPI, ILO and UNESCO (1 <sup>st</sup> Session)	Adoption of the rules of procedure; election of officers; various questions	Congo(Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom	All other States parties to the Rome Convention (1961)
December 18 to 21, 1967 Geneva	Internion Coordination Committee (5 <sup>th</sup> Session)	Program and Bndget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Rumania, Spain, Sweden, Switzerland, Union of Soviet Socialist Repnh-lics, United Kingdom, United States of America, Yngoslavia	All other Member States of the Paris Union or of the Berne Union
December 18 to 21, 1967 Geneva	Conference of Representatives of the International Union for the Protection of Industrial Property (2 <sup>nd</sup> Session)	Program and Bndget for the next three-year period	All Member States of the Paris Union	—
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3 <sup>rd</sup> Session)	Program and Bndget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom, United States of America, Yugo-slavia	All other Member States of the Paris Union
December 18 to 21, 1967 Geneva	Council of the Lishon Union for the Protection of Appellations of Origin and their International Registration (2 <sup>nd</sup> Session)	Annnaal Meeting	All Member States of the Lishon Union	All other Member States of the Paris Union

## Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
Helsinki	August 28 to September 1, 1967	International Association for the Protection of Industrial Property (IAPIP)	Executive Committee
Stockholm	September 18 to 29, 1967	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	7 <sup>th</sup> Annual Meeting
Cannes	September 26 to 29, 1967	International Federation of Patent Agents (FICPI)	Congress
Paris	November 20 and 21, 1967	International Patent Institute (IIB)	94 <sup>th</sup> Session of the Administrative Council