

Industrial Property

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Nice Agreement

Application of the Transitional Provisions (Five-Year Privilege) of the Stockholm Act

AUSTRALIA

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union of the notification deposited by the Government of Australia in which that Government indicates its desire to avail itself of the provisions of Article 16(2) of the Stockholm Act of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks.

This notification entered into force on the date of its receipt, that is, on September 21, 1971.

Pursuant to the said Article, Australia, which is a member of the Nice Special Union, may, for five years from April 26, 1970, the date of entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), exercise the rights provided under Articles 5 to 8 of the Stockholm Act of the said Agreement, as if it were bound by those Articles.

Nice Notification No. 18, of September 22, 1971.

Patent Cooperation Treaty (PCT)

Accession

CENTRAL AFRICAN REPUBLIC

The Director General of the World Intellectual Property Organization has notified the Governments of the member countries of the Paris Union that the Government of the Central African Republic deposited on September 15, 1971, its instrument of accession, dated July 10, 1971, to the Patent Cooperation Treaty (PCT).

A separate notification will be made of the date of the entry into force of the Treaty, when the required number of ratifications or accessions, in accordance with Article 63, is reached.

PCT Notification No. 1, of September 17, 1971.

Strasbourg Agreement

Signatory Countries

The Director General of the World Intellectual Property Organization (WIPO) has notified the Governments of the member countries of the Paris Union that at the expiration of

the required period (that is, on September 30, 1971) the following countries had signed the Strasbourg Agreement Concerning the International Patent Classification:

- Belgium, Denmark, Finland, Germany (Federal Republic), Greece, Holy See, Italy, Liechtenstein, Luxembourg, Norway, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia, on March 24, 1971;
- Iran, on June 22, 1971; Brazil, on June 28, 1971; Austria, on September 9, 1971; Japan, on September 13, 1971; France, on September 20, 1971; Netherlands, on September 22, 1971; Monaco, on September 27, 1971.

The Director General of WIPO has drawn attention to the fact that all the signatures were affixed subject to ratification. Furthermore, at the time of signature, the Spanish Government declared that it intended to avail itself of the right provided for under the provisions of Article 4(4) of the Agreement.

Strasbourg Notification No. 1, of October 6, 1971.

Nice Union

Use of the International Classification

We are publishing below a table of countries which use the International Classification of Goods and Services for the Purposes of the Registration of Marks, established by the Nice Agreement of June 15, 1957.

This table is based on the results of an inquiry made by the International Bureau with the Offices of all States.

I. Member Countries of the Nice Union¹

(as on September 1, 1971)

Australia	Liechtenstein
Austria	Monaco
Belgium	Morocco
Czechoslovakia	Netherlands
Denmark	Norway
France ²	Poland
German Democratic Republic ³	Portugal
Germany (Fed. Rep.)	Soviet Union
Hungary	Spain
Ireland	Sweden
Israel	Switzerland
Italy	Tunisia
Lebanon	United Kingdom
	Yugoslavia

¹ The member countries of the Nice Union are obliged to use the International Classification under Article 2 of the Nice Agreement.

² Including the Departments of Guadeloupe, Giana, Martinique and Reunion and all Overseas Territories.

³ The validity of the instruments deposited by the German Democratic Republic is contested by a number of member countries.

**II. Other Countries which Use
the International Classification for Goods and Services
(and date on which use began)**

Algeria	1966
Cuba ⁴	October, 1969
Finland	June 1, 1964
Malawi	1964
Romania	June 29, 1968
Sudan	May 15, 1969
United States of America	March 5, 1968

**III. Other Countries which Use
the International Classification for Goods Only
(and date on which use began)**

Bahrain	1955
Cameroon ⁵	January 1, 1964
Central African Republic ⁵	January 1, 1964
Chad ⁵	January 1, 1964
Colombia	January, 1971
Cyprus	November 1, 1951
Dahomey ⁵	January 1, 1964
Gabon ⁵	January 1, 1964
India	June 1, 1942
Ivory Coast ⁵	January 1, 1964
Libya	end of 1957
Luxembourg	January 1, 1971

⁴ Use as a subsidiary classification. Use as sole classification is planned for the end of 1972.

⁵ Member countries of the African and Malagasy Industrial Property Office.

Madagascar ⁵	January 1, 1964
Mauritania ⁵	January 1, 1964
New Zealand	December 11, 1941
Niger ⁵	January 1, 1964
Pakistan	
People's Rep. of the Congo ⁵	January 1, 1964
Senegal ⁵	January 1, 1964
Singapore	1966
South Africa ⁶	January 1, 1964
Togo ⁵	January 1, 1964
Upper Volta ⁵	January 1, 1964

Note: The Territory of Hong Kong has also been using the International Classification for goods — since January 1, 1955.

**IV. Countries Intending to Use
the International Classification
(and date envisaged)**

Bolivia	1971/1972
Brazil	
China (Republic of)	
Costa Rica	
Egypt	1975
Philippines	
Syria	1973
Thailand	1974
Trinidad and Tobago	1974
Venezuela	

⁶ South Africa intends to use the International Classification for services as from January 1, 1972, when service marks will be recognized by national law.

LEGISLATION

FRANCE—SOVIET UNION

Agreement

**Concerning the Reciprocal Protection and the Exploitation
of Industrial Property Rights
(signed at Moscow on May 19, 1970)**

Article 1

Legalization shall not be required of documents, including powers of attorney, accompanying applications for inventors' certificates or patents for invention, for industrial design certificates or patents, and for trademark registrations filed by French persons or legal entities in the USSR. The same

shall apply in the case of applications for patents or utility certificates and for industrial design and trademark registrations filed in France by Soviet persons or legal entities.

Article 2

The National Institute of Industrial Property in France and the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR shall take the necessary steps to facilitate the filing and examination of the applications referred to in Article 1 of this Agreement. In particular, in the case of a given application and at the express request of the applicant concerned, the steps shall be taken to extend the time limits given to French and Soviet applicants for replying to examiners' objections.

Article 3

For inventions made jointly by French and Soviet nationals, in the course of scientific, technical and economic cooperation between France and the USSR, the French and Soviet cooperating organs shall jointly decide on the form of protection (inventor's certificate or patent in the USSR, patent or utility certificate in France).

Article 4

Applications for titles of protection relating to joint inventions, industrial designs or trademarks, devised or created by French or Soviet nationals in the course of scientific, technical and economic cooperation between France and the USSR shall be filed with the National Institute for Industrial Property of France and with the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR by the cooperating organ in the country of the application, which shall have been given the necessary power by the cooperating organ of the other country.

As a general rule, the first application shall be made with the Industrial Property Office of the country on whose territory the invention was devised or the design or trademark created.

Article 5

The cooperating organs of the two countries may exploit the results of work effected under cooperation agreements or contracts concluded between them where inventions, industrial designs or trademarks, know-how, technical documentation or any other information relating to inventions, industrial designs and trademarks are concerned, whether made jointly or separately.

The terms for exploitation of the results of the cooperation shall be set out in the agreements or contracts referred to.

Article 6

The National Institute of Industrial Property of France and the Committee for Inventions and Discoveries attached to the Council of Ministers of the USSR shall communicate to each other any information that they may have concerning infringements of rights in inventions, industrial designs and trademarks which are the subject of licenses under agreements or contracts concluded between the French and Soviet cooperating organs.

Within the limits of their powers and in accordance with their domestic legislation, the Offices referred to shall take the necessary steps to end such infringements and shall keep each other informed of the steps taken.

Article 7

Any dispute relating to inventions, industrial designs and trademarks, arising in the course of the cooperation, shall be settled by negotiation between the cooperating organs of the two countries.

Where no settlement can be reached and unless otherwise stipulated in the agreements or contracts concluded between the French and Soviet cooperating organs, the parties may

resort to the special conciliation procedure provided for in the Provisions relating to the Solution of Questions of Protection and Exploitation of Industrial Property Rights, in connection with the Scientific, Technical and Economic Cooperation between France and the USSR, approved by the Joint Franco-Soviet Commission for Scientific, Technical and Economic Cooperation.

Where the conciliation procedure is not adopted or has not resulted in a settlement, the dispute shall be decided by arbitration in accordance with the European Convention on International Commercial Arbitration, signed at Geneva on April 21, 1961.

Article 8

Each Contracting Party shall notify the other of the fulfillment of the legal procedures required to implement this Agreement. The Agreement shall take effect after thirty days following the date of the later of the two notifications¹.

This Agreement shall have the same duration as the Agreement on Scientific, Technical and Economic Cooperation between the Government of the French Republic and the Government of the Union of Soviet Socialist Republics of June 30, 1966.

Done at Moscow, on May 19, 1970, in two copies, in French and Russian, both texts being equally authentic.

¹ The Agreement entered into force on December 20, 1970 (*Editor's Note*).

FRANCE

Decree

concerning the Committee for the Protection of New Plant Varieties

(No. 71-454 of June 7, 1971)

.....

Chapter I — Tasks

1. — The Committee for the Protection of New Plant Varieties established under Section 4 of the Law mentioned above¹ of June 11, 1970, shall have the following tasks:

to issue new plant variety certificates where the corresponding applications satisfy the requirements of the Law mentioned above and to issue all official documents concerning such applications and certificates;

to ascertain the forfeiture of breeders' rights in the circumstances set out in Section 22 of the Law referred to.

2. — The Committee for the Protection of New Plant Varieties may make proposals to the Minister of Agriculture concerning regulations necessary for the application of the Law mentioned above and may, in general, submit any suggestions to him relating to the implementation of plant variety protection.

¹ Law for the Protection of New Plant Varieties, No. 70-489 of June 11, 1970; see *Industrial Property*, 1971, p. 39.

Chapter II — Organization and Activity

3. — The headquarters of the Committee for the Protection of New Plant Varieties shall be in Paris. On the basis of the requirements of Section 4 of the Law mentioned above of June 11, 1970, the Committee shall have, in addition to the chairman, ten members appointed by order of the Minister of Agriculture. One such member shall first be proposed by the Minister responsible for the Overseas Departments and Territories.

4. — The member of the judiciary, appointed as chairman of the Committee, shall be chosen from the judges of the Paris Court of Appeal or the Paris *Tribunal de grande instance* belonging at least to the first grade of the judiciary.

He shall be appointed by joint order of the Minister of Justice and the Minister of Agriculture.

In addition to his duties as chairman of the Committee's meetings, the tasks of the chairman shall be to supervise the smooth working of the Secretariat General provided for in Section 10 of this Decree and, with the aid of the Secretariat, to undertake the preparation and execution of the Committee's decisions.

5. — The chairman and members of the Committee shall be appointed for four years. Their term of office may be renewed. Half the membership of the Committee shall be renewed every two years. Those members whose term is to expire at the time of the first renewal shall be chosen by lot two months after the Committee has begun to sit. Where, through death or other cause, a member has ceased to exercise his functions, he shall be replaced within a period of two months. The newly appointed member shall stay in office for the remainder of the term of the member he is replacing.

6. — Members of the Committee who are not civil servants shall be subject to the provisions of Decree No. 68-724 of August 7, 1964, governing the reimbursement of travel and living expenses of State agents and other persons who take part in councils, committees, commissions and other bodies assisting the State.

7. — The chairman and members of the Committee shall be under an obligation of secrecy in relation to anything coming to their knowledge in the exercise of their functions. Moreover, a member of the Committee may not take part in the deliberations relating to a plant variety where he is directly interested in the acceptance or refusal of an application for a certificate.

8. — The Committee shall be convened by the chairman whenever necessary. It may only sit if the number of members present is more than half the number of members in office. Where the votes are equal, the Chairman shall have a casting vote.

9. — To assist the preparation and examination of cases before it, the Committee may:

appoint a standing bureau from among its members;
set up specialized expert commissions;
call upon any expert or other person whose advice appears necessary.

10. — The Committee for the Protection of New Plant Varieties shall have a Secretariat General. The Secretary General shall be appointed by order of the Minister of Agriculture on the Committee's proposal and after consultation with the Director General of the National Agronomic Research Institute.

The Secretary General shall be assisted by agents under contract engaged by the Director General of the National Agronomic Research Institute under the same conditions as those governing its own agents. Their remuneration shall be drawn from the special section referred to in Section 11 of the Law mentioned above of June 11, 1970.

The direction of the staff shall be undertaken by the Secretary General, by delegation of power from the Director General of the National Agronomic Research Institute.

In accordance with the Committee's directions, under the authority of the chairman and within the terms of the Law mentioned above of June 11, 1970, and its implementing legislation, the principal tasks of the Secretary General shall be:

to receive, register and examine applications for new plant variety certificates and oppositions to the issue of certificates;

to maintain the various registers relating to the protection of new plant varieties, to record any transactions affecting the property in certificates and to publish the various notices provided for;

to keep in contact with all the competent bodies, in particular — for questions of denomination — with the National Institute for Industrial Property and the bureau of the International Union for the Protection of New Plant Varieties as well as with the experts undertaking the technical examination of plant varieties;

to provide the secretariat for the Committee's meetings;
to draw up new plant variety certificates and to issue all copies of official documents;

to inspect or to arrange for the inspection of the preservation of plant varieties for which certificates have been granted;

to prepare the budget relating to the special section of the budget of the National Agronomic Research Institute referred to in Section 11 of the Law mentioned above of June 11, 1970.

The Secretary General shall draw up the implementing legislation of the Law referred to, which shall be submitted by the Committee to the Minister of Agriculture. He shall prepare and take part in the negotiation of international agreements proposed by the Committee to the Minister of Agriculture and the Minister of Foreign Affairs with a view to facilitating or improving plant variety protection.

11. — The Committee for the Protection of New Plant Varieties and its Secretariat General shall be considered as the special authority in France for the protection of new

plant varieties for the purposes of Article 30(1)(b) of the Convention of Paris for the Protection of New Varieties of Plants of December 2, 1961. In this connection, the Secretariat General of the Committee shall keep in contact with the International Union for the Protection of New Plant Varieties and shall participate in its work.

Chapter III — Financial Provisions

12. — The special section of the budget of the National Agronomic Research Institute, created by Section 11 of the Law mentioned above of June 11, 1970, shall be set up by order of the Governing Body of the Institute after consultation with the Committee for the Protection of New Plant Varieties. The income and expenses of the special section shall be administered by the Secretary General of the Committee for the Protection of New Plant Varieties, through delegation of power from the Director General of the National Agronomic Research Institute, under the same conditions as those applying to the income and expenses of the Institute.

13. — The assets of the special section shall consist principally in all fees relating to plant variety protection that are chargeable under Section 11 of the Law mentioned above of June 11, 1970.

14. — The liabilities of the special section shall consist in:

running and equipment expenses of the Committee and its Secretariat General, including staff salaries and moving expenses;

the costs of the technical examination and of making reference collections where required;

the financial contribution of France to international organizations concerned with plant variety protection;

any other expense resulting from the application of the Law mentioned above of June 11, 1970.

15. — The Minister of State responsible for National Defense, the Minister of State responsible for the Overseas Departments and Territories, the Minister of Justice, the Minister of Foreign Affairs, the Minister of Economy and Finance, the Minister of Industrial and Scientific Development, the Minister of Agriculture, the Minister for Public Health and Social Security, the Secretary of State attached to the Minister of Economy and Finance responsible for the budget and the Secretary of State for Light and Medium Industry and Handicraft shall each be responsible, within his sphere of interest, for the application of this Decree. This Decree shall be published in the *Journal officiel* of the French Republic.

TURKEY

Trademarks Law

(No. 551 of March 3, 1965) *

PART ONE — GENERAL PROVISIONS

I. Trademarks

1. — Any signs placed on goods — or on their packaging when they cannot be placed on the goods themselves — for the purpose of distinguishing goods of any kind manufactured, prepared or produced in industry, handicraft or agriculture, or offered for sale in the course of trade, from other goods and signs, as well as signs suitable for the above purpose, shall be considered as trademarks.

II. Kinds of Trademarks

2. — The following kinds of trademarks may be registered under this Law:

- (a) trademarks used individually and independently by persons or legal entities, as "individual marks";
- (b) the same kind of trademarks used separately by persons or legal entities, not forming a single legal entity, for the same or similar goods under an agreement concluded between them, as "collective marks";
- (c) trademarks used by an organization, with or without a separate enterprise, which has been formed into a legal entity in order to protect the interests of those engaged in the activities set out in Section 1, and to encourage and supervise such activities, as "certification marks."

III. Registration

A. General

3. — In order to enjoy the rights contained in this Law, a trademark must be registered with the Ministry of Industry.

Unregistered trademarks shall, however, be protected in accordance with the general provisions.

The Council of Ministers may make it compulsory for certain goods to be marked with a trademark registered in accordance with this Law.

B. Signs Not Registrable as Trademarks

1. In Respect of Form

4. — The following signs may not be registered as trademarks:

- (a) signs which cannot be placed on labels, lids, containers, covers, cases and packaging generally or directly on goods, by printing or by any form of adhesion or by way of casting, engraving, weaving, painting or otherwise;
- (b) signs containing more than five words, other than trade names;
- (c) signs consisting merely of a particular color, a single letter or a numeral or numerals.

* We are indebted to S. Bolton & Sons, Istanbul, who sent us a translation on which this text is based.

However single letters and numerals and colors may be registered as a trademark if they are given a special shape, or are combined in a shape with any symbol, decoration, lines, pictures, or colors.

2. In Respect of Content

(a) Absolute Prohibition

5. — Signs containing the following features may not be registered as trademarks:

- (a) signs which, by reason of their purpose or manner of utilization, are contrary to the laws and regulations, morals, propriety or public order or which injure national feelings or diminish the value and reputation of works of art or historic monuments owned by the public;
- (b) signs likely to mislead the public, including signs and names incorporating certificates, diplomas, rewards or medals which do not belong to the applicant for registration or which are arranged in such a way as to create the impression that foreign goods were produced or manufactured in Turkey or that Turkish goods were produced or manufactured abroad or signs containing indications of source unrelated to the place of residence, production, manufacture or business of the applicant for registration;
- (c) signs identical to trademarks which have already been registered or are the subject of a pending application in Turkey and which relate to the same goods, and signs similar to such trademarks which are *prima facie* indistinguishable therefrom in shape, pronunciation or meaning.

(b) Prohibition as to Principal Feature

6. — Signs containing the following as their principal features may not be registered as trademarks:

- (a) trademarks consisting exclusively of signs and indications as to the type, species, quality, amount, value and origin of the article on which the trademark is to be placed or the place or time of dispatch and destination;
- (b) signs and names in general trade use or those serving to distinguish persons belonging to a particular profession, art or trade group;
- (c) signs and names which indicate a specific type of product or which have become the generic name of an article.

The principal features of a trademark shall mean those features which serve to distinguish the marks from similar trademarks.

Signs and names specified in paragraphs (a), (b) and (c) above which are combined with the principal features of trademarks and are jointly registered with them shall be regarded as the complementary features of the said marks. After registration, such features may be altered and severed from each other by means of a second registration procedure.

C. Trademark to be Seen as a Whole

7. — In the determination of whether or not any sign is to be registered as a trademark, regard shall be had to the

overall impression of the mark rather than to its individual features.

D. Signs Registrable Subject to Permission

1. Foreign Official Insignia

8. — Armorial bearings, flags and other signs and State emblems belonging to:

- (a) countries which are parties to international conventions, in the field of industrial property, to which Turkey has adhered;
- (b) countries with which Turkey has concluded separate agreements, in the field of industrial property;
- (c) countries which have recognized the principle of reciprocity, in the field of industrial property, in relation to Turkey;
- (d) international and intergovernmental organizations of which countries mentioned in paragraph (a) are members;

as well as related symbols and designations, stamps, seals and official signs and hallmarks indicating control and warranty and imitations of armorial bearings may not be registered as trademarks without the written authorization of the country or organization concerned.

2. National Insignia

9. — Stamps, seals, symbols and signs belonging to the State, local administrative services and other public legal entities, to public economic enterprises, to professional associations of a public nature, to charitable associations, and to political parties and sports clubs, and stamps, seals, symbols and signs which are so similar to the foregoing as to be *prima facie* indistinguishable therefrom, may not be registered without the written authorization of the bodies concerned.

3. Signs Taken from Intellectual or Artistic Works

10. — Signs copied or adapted from intellectual or artistic works may not be registered as trademarks without the written authorization of the persons concerned.

4. Well-Known Trademarks

11. — Foreign or domestic trademarks which are registered in this country and are known throughout the world or throughout the country, or trademarks similar to the foregoing, may be registered for different goods only with the authorization of the owner of the well-known trademark.

Where a trademark is registered, contrary to the first subsection, the owner of the trademark and any person concerned who has sustained loss by reason of such registration may, within five years of the date of registration, institute proceedings for the cancellation of the registration.

There shall be no limitation period for the institution of proceedings where registration was obtained in bad faith.

IV. Persons Entitled to Apply for Registration

A. Individual Marks

12. — The following persons may apply for the registration of individual marks:

- (a) Turkish citizens engaged in industry, handicraft, agriculture or trade in Turkey, and legal entities established under Turkish law or the law of a foreign country and having a branch in Turkey;
- (b) citizens of the countries referred to in Section 8(a), (b) and (c) and legal entities established under the law of the said countries;
- (c) citizens of countries which have not adhered to the conventions referred to in Section 8(a), who are engaged in industry, handicraft, agriculture or commerce in the territory of countries which have adhered to the conventions referred to or legal entities established under the law of such countries.

B. Certification Marks

13. — The registration of certification marks may be applied for by the organizations referred to in Section 2(c).

The registration of certification marks belonging to organizations formed under the law of the countries party to the conventions referred to in Section 8(a) shall be applied for by the said organizations.

Applications for the registration of certification marks belonging to organizations formed under the law of the countries referred to in Section 8(b) and (c) shall be treated in accordance with the relevant agreement or on the basis of reciprocity.

C. Collective Marks

14. — Collective marks shall be registered upon an application filed by one or all of the enterprises and persons party to the relevant agreement and in the joint name of all concerned.

Section 13 shall apply *mutatis mutandis* to applications for the registration of collective marks filed in foreign countries.

V. Effects of Registration

A. Presumption

15. — The person first applying for registration of a trademark shall be presumed the true owner of the trademark.

However, any person may claim, as against the registered owner, to have previously devised and used the same trademark for the same goods and to have made it known on the market and to prove his claim in an action or counterclaim. Such right shall lapse after six months following the date when such person learned of the registration or use of the trademark and, in any event, after three years following the publication of the registration.

B. Period of Protection

16. — The rights in a trademark shall be valid for a period of ten years following the date of registration.

C. Scope of Rights

17. — Registration of a trademark shall entitle the owner to the enjoyment of his trademark, within the period of protection referred to in Section 16, provided that the mark is used for the purpose and in the manner prescribed in Sec-

tion 1 and for the goods listed in the Register. The registered owner shall have the right, *inter alia*, to place the trademark on goods coming within the scope of the registration and on their packaging, to sell or distribute the goods or market them in any other manner, to use the trademark on commercial stationery, in newspapers and in other announcements and advertisements, to assign the mark or to grant licenses.

D. Identical and Uninterrupted Use and Alterations

18. — Trademarks shall be used as registered. However, where no color has been specified in the registration, the mark may be used in any color.

Where a registered owner wishes to alter the mark, he must have the sign re-registered in its altered form.

In the absence of just cause, the use of a trademark may not be interrupted for a continuous period exceeding three years. This provision shall not apply to citizens of the countries party to the conventions referred to in Section 8(a) or to legal entities established under the law of such countries. The Council of Ministers may by decree, on the basis of agreements or reciprocity, exempt citizens of certain countries from the obligation to use the trademark in Turkey.

E. Exception

19. — Registration in Turkey shall not affect goods used or sold, displayed, ordered or advertised on means of transport by land, sea and air temporarily entering Turkish territory.

VI. Priority Rights

A. Registrations under International Conventions

20. — During the six months following the filing of a regular application for registration of a trademark with the competent authorities of any of the countries party to the conventions referred to in Section 8(a), individuals and legal entities that are nationals of one of the said countries, or that are domiciled or have a real and effective commercial establishment therein, shall have a right of priority in which to apply for registration of the trademark concerned.

A right of priority which is not exercised within the six-month period prescribed in the first subsection shall lapse.

Where an application for registration claiming a right of priority has been filed within the period prescribed in the first subsection, all applications filed or registrations effected in respect of the same or a similar trademark on or after the date on which the right of priority arose shall be null and void.

B. Display in Exhibitions

21. — Individuals and legal entities referred to in Section 20, first subsection, which display their goods bearing their trademarks in national and international exhibitions held in Turkey by the Government or with government authorization, or in official or officially recognized exhibitions held in the territories of countries party to the conventions referred to in Section 8(a), shall have a right of priority, during the six months following the date of display at the exhibition, in which to apply for registration of the same trademarks in Turkey.

Where, however, goods bearing the trademarks have been conspicuously placed on the exhibition premises prior to the official opening date, the period shall run from the date on which the goods were so placed.

The provisions of Section 20, second and third subsections, shall apply *mutatis mutandis*.

The management of the exhibitions referred to in the first subsection which are to be held in Turkey shall give a certificate to the persons exhibiting their products indicating the kind of goods on which the trademark displayed has been placed, the date on which the goods were conspicuously put on exhibition and the date of the official opening. A certified copy of the trademark shall be attached to the certificate.

If a right of priority is desired in respect of trademarks relating to goods displayed in foreign countries, a certificate obtained from the competent authority of the country in which the exhibition was held and containing the particulars specified in the preceding subsection must be produced.

It shall be permissible to exhibit under a registered trademark goods which have been displayed at exhibitions held in Turkey and to return such goods to the country of origin after the exhibition.

Where two or more applications for registration are made in relation to the same or similar trademark which has been placed on the same goods displayed at an exhibition, the person who first put such goods on exhibition shall have priority. Where two or more persons have put the goods on exhibition and displayed them at the same time, the person who first applies for registration shall have priority.

C. Manner of Application

22. — Applications for registration claiming a right of priority under Sections 20 and 21 shall be made in the manner prescribed in the Rules.

D. Priority Rights Based on Special Agreements or Reciprocity

23. — Applications for registration based on the rights of priority belonging to individuals and legal entities that are nationals of the countries referred to in Section 8(b) and (c) shall be dealt with in accordance with the provisions of the relevant agreement or the rules of reciprocity.

PART TWO — REGISTRATION

I. Applications

A. Place and Date of Application

24. — Any person wishing to have a trademark registered shall apply to the Ministry of Industry.

The date of application shall be the day, hour and minute indicated on the certificate to be issued to the applicant by the Ministry of Industry.

Where the person concerned applies by post or through the senior civil officer in the locality, the application shall be valid as from the date on which it reaches the Ministry,

in accordance with the rules prescribed in the preceding subsection.

In such cases the certificate indicating the day, hour and minute of arrival shall be sent by post to the applicant.

B. Form of Application

25. — Every application for registration of a trademark shall contain the name and surname of the owner and his agent (if any), the owner's nationality, residence, present business and business address, and the goods for which the trademark is to be used, and shall be accompanied by a certificate indicating the business carried on by the owner of the trademark, a copy of the trademark, and a receipt for the fee payable in respect of the trademark.

In the case of applications based on a trademark registered or displayed in a foreign country, the documents relating to registration or display in a foreign country and the documents obtained from foreign countries in connection with the application together with translations thereof shall be attached to each application.

A separate application must be submitted for the registration of each trademark.

C. The Rules

26. — The pattern and number of copies of the application and the attachments thereto, and such other particulars and documents as are necessary for the application of this Law, shall be prescribed in the Rules.

D. Requirements for the Examination of Applications

27. — An application which is not set out in accordance with the pattern annexed to the Rules, or is not accompanied by the receipt of payment for the trademark fee and a copy of the trademark, shall not be processed.

In the case of applications relating to certification marks and collective marks, the relevant documents shall be returned unexamined, even though the fee has been paid, if — in the case of certification marks — the technical regulations prepared by the organization or — in the case of collective marks — the agreement, are not submitted together with the application for registration.

E. Examination of Applications

28. — The Ministry of Industry shall ascertain, within one month at the latest, whether the application and attachments thereto comply with the provisions of this Law and the Rules.

Where, upon examination, an application is found not to comply with the provisions of Section 4, 5, 6, 8, 9, 10, 11 or 40 of this Law, the application shall be rejected with a statement of the reasons therefor.

Where an application is found not to contain all the necessary documents, the applicant shall be allowed a period of not less than three months in which to produce the outstanding documents. Where the applicant fails without just cause to produce the documents during this period, he shall be allowed a final extension of one month. If he does not do so within that final period, the application shall be rejected.

Any person concerned may appeal to the courts against decisions rejecting an application. A decision in such a case shall be reached within a period of three months.

II. Registration of the Trademark

29. — Where an application is found to comply with this Law and the Rules, or where the outstanding documents are produced, it shall be entered in the Register and a trademark registration certificate shall be issued to the applicant.

A copy of the trademark, its number, the goods on which it is to be applied, the name, surname, nationality and residence of the registered owner and his agent (if any), the owner's business and business address, and the date of application, all amendments relating to the trademark and to the trademark rights, and all other particulars prescribed in the Rules shall be entered in the Register.

III. Trademark Registration Certificates

30. — The trademark registration certificate shall be an official certificate bearing, at its head, the words "Republic of Turkey" and the Crescent and Star, and authenticated by the seal of the Ministry of Industry. The name, surname, nationality and residence of the registered owner, the goods for which the trademark is to be used, and the date of registration of the trademark shall be entered on the certificate and a copy of the trademark shall be affixed thereto.

A copy of the trademark registration certificate shall be issued to the registered owner on his request.

IV. Publication

31. — After registration of the trademark, the particulars entered in the Register and all subsequent amendments shall be published in the Official Industrial Property Gazette issued every two months.

V. Inspection of the Register

32. — The Trademark Register shall be available for inspection by the public. Copies of entries in the Register shall be issued on request.

VI. Renewals

33. — On the expiry of the ten-year period of protection, a trademark may be renewed for successive periods of ten years. The Rules shall specify the nature, number and pattern of the documents and their attachments. Where the application does not contain all the necessary documents, Section 28, third subsection, shall apply.

The owner of the rights in a trademark may apply for renewal within the three years following the expiry of the trademark protection period.

The renewal shall be effective as from the date of expiry of the previous protection period.

When a trademark registered by virtue of a right of priority is renewed, it shall be irrelevant whether the trademark is or is not protected in the country of origin.

VII. Transfer, Licensing and Attachment of Trademarks

A. Individual Trademarks

1. Transfer and Licenses

34. — Individual trademarks may be transferred by succession.

An individual trademark may be transferred or assigned, independently of the enterprise in which it is used, for all or part of the goods for which it has been registered. A licence may be granted for the exercise of the trademark rights.

Transfer and license contracts must be executed before a notary public.

Every license contract shall specify the period for which the trademark is to be used, the manner and terms of use, the royalties payable and the goods for which the mark will be used.

Transfers and licenses shall be binding on third parties as from their entry in the Trademark Register.

2. Attachment

35. — An individual trademark may be the subject of attachment for debt, independently of the enterprise in which it is used, unless the registered owner proves that he has other property to meet the debt.

Prior rights of third parties shall not be prejudiced thereby.

B. Collective Marks and Certification Marks

36. — Collective marks and certification marks may not be transferred, assigned, licensed or attached.

In the absence of a stipulation to the contrary, the right of the contracting parties to use a collective trademark shall pass on succession.

VIII. Protection of Trademarks from becoming Generic Names

37. — The rights conferred on the owners of trademarks registered under this Law shall not lapse in the event of their trademarks' subsequently becoming generic names used by the public. The registered owners of such trademarks may oppose the use of their trademarks by others, in legal proceedings. It shall be no defense in such cases that the trademark has become a generic name.

IX. Cancellation of Registration

A. Grounds for Cancellation

1. Renunciation

38. — Where the registered owner makes a written notification that he has renounced the use of his trademark, it shall be expunged from the Trademark Register and a corresponding announcement shall be made in the Official Industrial Property Gazette.

Where a trademark has been registered for more than one kind of goods, its use may also be renounced for part only of the said goods, in accordance with the foregoing rule.

Where license rights have been recorded in connection with a trademark registration which the owner wishes to

cancel in accordance with the preceding subsections, cancellation shall be effected upon the joint application of the registered owner and the licensee.

2. Cancellation under a Court Order

39. — On communication to the Ministry of Industry of judgments respecting the cancellation of a trademark registration under Section 50, the registration shall be cancelled and a corresponding announcement shall be made in the Official Industrial Property Gazette.

3. Cancellation Ex Officio

40. — A trademark registration which is not the subject of an application for renewal within the three years following expiry of the protection period shall be cancelled and a corresponding announcement shall be made in the Official Industrial Property Gazette.

B. Restriction of Registration and Use of Trademarks

41. — A trademark whose registration has been cancelled shall not be used for the same goods and shall not be registered in another person's name, until the expiry of three years following cancellation.

The preceding subsection shall not apply to trademarks whose registration has lapsed for failure, without just cause, to make proper use thereof during three consecutive years.

X. Miscellaneous Provisions

A. Attorneys

42. — Persons not resident in Turkey shall appoint an attorney resident in Turkey for the purposes of having their trademarks registered and exercising their rights arising from registration.

Subject to the provisions of the Law on Lawyers, every attorney shall be authorized to represent his principal in administrative formalities carried out under the present Law.

Notices served on an attorney by the Administration shall be deemed to be served on the principal.

B. Sundry Expenses

43. — The Rules shall prescribe the price of the Official Industrial Property Gazette, the fee payable for an extract from the Trademark Register, and for a copy of the trademark registration certificate. The provisions of Law No. 2490 concerning the Acceptance of Tenders which relate to bargaining shall apply to acceptance of tenders for the printing of the Official Industrial Property Gazette. In determining the fee payable for an extract from the Trademark Register the scale of charges to be prepared by the Ministry of Industry shall indicate the expenses incurred — transcription, drawing, photocopies, etc.

These expenses and the expenses of publication and other expenses shall be deposited in advance with the Treasury and the receipt obtained shall be submitted to the Ministry of Industry.

Publication fees shall be collected in advance from:

- (a) the applicant, in the case of registration or renewal of registration;
- (b) the assignee or licensee, in the case of assignment or licensing;
- (c) the person renouncing registration, in the case of cancellation on the ground of renunciation;
- (d) the plaintiff, in the case of cancellation under a court order;
- (e) the purchaser, in the case of transfer on attachment proceedings.

C. Provisions on Certification Marks

1. Technical Regulations and Affixing of Certification Marks

44. — The technical regulations relating to certification marks shall prescribe such particulars as the nature and kind of goods guaranteed to the public by the registered owner of the trademark, their quality, the measures for the control of their quality by the organization and the penalties to be imposed on the manufacturers or producers in the event of non-compliance with these provisions.

Any amendments whatsoever to the technical regulations shall be communicated to the registration authority.

The affixing of the mark on the goods shall be carried out by the organization owning the mark after inspection under the technical regulations.

2. Joinder in Actions

45. — Members of the organization concerned may be joined to the organization owning the mark in actions brought by it.

D. Service Marks

46. — The provisions of this Law shall not apply to service marks.

PART THREE — CIVIL AND CRIMINAL PROCEEDINGS

I. Infringements

47. — The following acts shall constitute infringement of the rights in a trademark registered under this Law:

- (a) Use of the same or a similar trademark by persons other than the persons entitled.

Any person using a trademark which is identical in shape or meaning or both, to a trademark registered in the name of another person, or which differs slightly in dimensions or color, or which is prima facie indistinguishable therefrom, shall be deemed to have used the same trademark.

Any person using a trademark which resembles another person's registered trademark to such an extent that it is not prima facie distinguishable therefrom having regard to the overall impression and is thereby likely to give rise to confusion shall be deemed to have used a similar trademark.

- (b) The offering for sale, sale, distribution, importing or exporting of goods bearing trademarks unlawfully used by persons other than the persons entitled.
- (c) Aiding and abetting the acts specified in the preceding subsections.

II. Civil Actions

A. Compensation

48. — Any person who causes loss to the owner of a trademark, intentionally or through negligence, by committing any of the acts specified in Section 47, shall be liable to pay compensation for such loss.

B. Injunctions

49. — Any person whose rights have been infringed in the manner specified in Section 47 may bring an action against the offender for an injunction to restrain the infringement. Any person whose rights are threatened may bring an action to restrain an imminent infringement.

Where an infringement is committed by the manager, representative or employee of an enterprise, in the performance of his duties, an action may be brought against the owner of the enterprise. In actions brought under this Section, it shall not be necessary to prove fault on the part of the persons with respect to whom an injunction is sought, or on the part of the owner of the enterprise.

C. Cancellation of Registration under a Court Order

50. — The Ministry of Industry or any interested person may apply to the courts for cancellation of a trademark registration in the following cases:

- (a) where the registered owner has failed, without just cause, to make proper use of his trademark during three consecutive years, or where the trademark has not been used as registered, or where the owner of a certification mark has not complied with the technical regulations submitted as an annex to the application;
- (b) where a trademark is transferred in a misleading manner.

III. Criminal Actions

A. Penalties Applicable

51. — (a) Any person infringing Section 3, last subsection, and any person maliciously using a trademark in the form other than that in which it has been registered, shall be liable to imprisonment for not less than three months and not more than one year and to a fine of not less than 1,000 and not more than 10,000 Turkish pounds.

(b) Any person who uses a trademark identical or similar to a trademark registered in the name of another person, or who knowingly offers for sale, sells, distributes, imports or exports goods bearing trademarks used unlawfully by a person other than the person entitled, and any person aiding and abetting such acts shall be liable to imprisonment for not less than eight months and not more than two years and to a fine of not less than 5,000 and not more than 50,000 Turkish pounds.

Persons sentenced to the penalties prescribed in (b) shall be ordered by the courts to close their place of business, if any, for a period of one year and shall be prohibited from engaging in their trade or handicraft for the same period.

Where the acts specified in this Section are found to have been committed through negligence, the offender shall be liable only to a fine.

In the event of a subsequent offense the penalties referred to shall be doubled.

B. Aiding and Abetting

52. — Where the offenses listed in Section 51 are committed by employees of an enterprise in the performance of their duties, the owner of the enterprise or the persons actually managing the enterprise, under any name and in any capacity whatsoever, who were aware of the commission of the offense shall be deemed to be abettors.

C. Confiscation

53. — The confiscation shall be ordered of goods, labels, wrappers, covers, commercial stationery and the like bearing a trademark in unlawful use within the meaning of Section 51(b), and of tools and instruments such as seals, stamps and printing blocks, used in making or affixing the said trademarks.

This provision shall also apply in the event of acquittal.

PART FOUR — FINAL PROVISIONS

I. Provisions Repealed

54. — The Trademarks Regulations of May 11, 1888, and its annexes and amendments, are hereby repealed.

II. Transitional Provisions

Transitional Section. — Applications which have already been processed on the date of entry into force of this Law shall be governed by the statutory provisions in force on the date of application.

III. Entry into Force

55. — This Law shall enter into force three months after the date of its publication¹.

IV. Application of this Law

56. — The Council of Ministers shall be responsible for the application of this Law.

¹ The Law came into force on June 12, 1965.



GENERAL STUDIES



The European Patent in 1971

**The First Convention — European System for the Grant
of Patents**

By J. B. van BENTHEM

President of the Octrooiraad (Netherlands Patent Office) *

**Comments on the Uniform Benelux
Trademark Law**

By L. J. M. van BAUWEL

CORRIGENDUM

LETTERS FROM CORRESPONDENTS

Letter from France

By Paul MATHÉLY, Attorney-at-Law, Paris Court of Appeal

III. It is recommended that the Executive Committee of ASIPI, in the light of the report of the Organization of American States, should express the desire to collaborate with that Organization in the revision of the international agreements relating to industrial property.

IV. Considering that patents are an important factor in ensuring access to technology and furthering the industrial development of a country or area, as has been recognized by the countries, areas, and regional or subregional organizations of the hemisphere, it is recommended that a sound and efficient patent system should be brought into existence and put into practice. Furthermore, noting that the controversies regarding the eventual value of a patent system are due to the fact that in many areas the patent systems have not kept in touch with the needs which have arisen from the economic and industrial development of countries or regions, it is recommended that emphasis be placed on prompt publication and accessibility for interested circles, and the adoption of a good classification system allowing efficient searches for desired subject matters, as well as means to permit the working of a patented invention in a country or region either by the patentees or through licensees.

V. On the subject of royalties, the following recommendations were made:

1. Royalties should be regarded as legitimate payment to purveyors of technology in consideration of their rights and in compensation for their work and investment in the creation of the technology and for their assistance to users and to society in general.
2. Royalties must be adequate to compensate the purveyor of the technology and at the same time equitable enough to avoid undue hardship for the user or the owner.

3. The principle of free negotiation between the parties to agreements relating to the transfer of technology should be retained.

4. The recognition of the right of the suppliers of technology to receive compensation and the declaration in favor of the principle of free negotiation do not imply ignoring the right — which is also an obligation — of the State to take the necessary measures to prevent any abuse by one party against the other or by any of the parties to the detriment of the public.

VI. On the subject of trademarks, the following recommendations were made:

1. All American countries whose legislations on trademarks do not make special provision therefor should adopt or amend their legislations to include the registration of trademarks, comprising product marks, service marks and collective marks.
2. The concepts and requisites for the registration of product marks and service marks should be the same, whereas collective marks require different and additional concepts.
3. The American countries which have not yet done so should adopt the International Classification of Goods and Services for the Purposes of the Registration of Marks, established by the Nice Agreement of June 15, 1957.

The Congress was honored by the presence, at its opening and closing sessions, of the Minister of Development of Venezuela, Dra. Haydée Castillo de López, and the Director of the Venezuelan Industrial Property Office, Dra. Zenda Torrealba. Notwithstanding its full program of work it also found time for the participants to relax at several delightful receptions and other social events, including a display of Venezuelan dances and a banquet offered by the Minister of Development of Venezuela.

CALENDAR

WIPO Meetings

November 1 and 2, 1971 (Geneva) — Intergovernmental Committee Established by the Rome Convention (Neighboring Rights) (3rd Session)

Object: Consideration of various questions concerning neighboring rights — *Invitations:* Brazil, Denmark, Germany (Fed. Rep.), Mexico, Niger, United Kingdom — *Observers:* Costa Rica, Czechoslovakia, Ecuador, Paraguay, People's Republic of the Congo, Sweden; intergovernmental and international non-governmental organizations concerned — *Note:* Meeting convened jointly with the International Labour Office and Unesco

November 3 to 6, 1971 (Geneva) — Executive Committee of the Berne Union — Extraordinary Session

Object: Consideration of various questions concerning copyright — *Invitations:* Canada, Congo, France, Germany (Fed. Rep.), India, Italy, Mexico, Pakistan, Philippines, Poland, Romania, Spain, Switzerland, Tunisia, United Kingdom — *Observers:* All other member countries of the Berne Union; intergovernmental and international non-governmental organizations concerned

November 9 to 12, 1971 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

November 15 to 18, 1971 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

November 22 to 26, 1971 (Geneva) — Committee of Experts for the International Classification of the Figurative Elements of Marks

Invitations: Member countries of the Nice Union — *Observers:* Member countries of the Paris Union and international organizations concerned

November 24 to 27, 1971 (Bogotá) — Bogotá Symposium on Patents, Trademarks and Copyright

Object: Discussion of questions of special interest to the countries invited — *Invitations:* Argentina, Bolivia, Brazil, Chile, Colombia, Ecuador, Mexico, Paraguay, Peru, Uruguay, Venezuela — *Observers:* Intergovernmental and international non-governmental organizations concerned

- December 6 to 8, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Advisory Committee for Administrative Questions
Members: Signatory States of the PCT — *Observers:* Intergovernmental and international non-governmental organizations concerned
- December 8 to 11, 1971 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation
Members: Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil
- January 11 to 13, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee
- January 17 to 28, 1972 (Munich) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee
- January 31 to February 4, 1972 (Munich) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- February 5 to 10, 1972 (Cairo) — Arab Seminar on Treaties Concerning Industrial Property
Object: Discussion on the principal multilateral treaties on industrial property and the WIPO Convention — *Invitations:* States members of the Arab League — *Observers:* Intergovernmental and international non-governmental organizations concerned
- February 21 to 25, 1972 (The Hague) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- March 6 to 10, 1972 (Washington) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- March 13 to 17, 1972 (Geneva) — Committee of Experts on the Protection of Type Faces
Object: Discussion of a draft Agreement and draft Regulations — *Invitations:* Member countries of the Paris Union — *Observers:* Intergovernmental and international non governmental organizations concerned
- March 20 to 24, 1972 (The Hague) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- April 10 to 14, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization
- April 17 to 21, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- May 2 to 8, 1972 (Geneva) — Committee of Experts on the International Registration of Marks
Object: Preparation of draft texts for the Vienna Diplomatic Conference in 1973 (see below) — *Invitations:* Member countries of the Paris Union; organizations concerned
- May 29 to June 2, 1972 (*) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee
- June 5 to 9, 1972 (*) — International Patent Classification (IPC) — Joint ad hoc Committee
- June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee
- July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee
- July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- September 4 to 8, 1972 (*) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee
- September 25 to 29, 1972 (The Hague) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- September 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid and Locarno Unions
- October 2 to 6, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation
Members of the Interim Committees: Signatory States of the PCT — *Observers:* Intergovernmental organizations and international non-governmental organizations concerned; *Members of the Standing Subcommittee:* Austria, Germany (Fed. Rep.), Japan, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil
- May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces

Meetings of Other International Organizations concerned with Intellectual Property

- November 3 to 6, 1971 (Geneva) — Unesco — Intergovernmental Copyright Committee
- December 13 to 16, 1971 (Brussels) — International Association for the Protection of Industrial Property — Council of Presidents
- April 24 to 28, 1972 (Dubrovnik) — International Association for the Protection of Industrial Property — Council of Presidents
- May 21 to 25, 1972 (Geneva) — International League Against Unfair Competition — Congress
- November 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress

Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):

- November 22 to 26, 1971 — Working Party I
- November 29 to December 3, 1971 — Working Party II
- January 24 to February 4, 1972 — Intergovernmental Conference
- February 22 to 25, 1972 — Working Party IV
- June 19 to 30, 1972 — Intergovernmental Conference

* Place to be notified later.