

Industrial Property

Monthly Review of the
WORLD INTELLECTUAL PROPERTY
ORGANIZATION (WIPO)

and the United International Bureaux for the
Protection of Intellectual Property (BIRPI)

Published monthly
Annual subscription: Sw.fr. 50.—
Each monthly issue: Sw.fr. 6.—

11th year - No. 11
NOVEMBER 1972

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Articles. In the resolution, the Committee considers that such a relationship agreement appears desirable and requests the Director General, with a view to exploring the possibilities of entering into such an agreement, to bring the resolution to the attention of the United Nations. The resolution also makes provision for future action by the Coordination Committee and the General Assembly of WIPO.

Paris Union

Executive Committee

Eighth Ordinary Session

(Geneva, September 25 to 30, 1972)

Note*

The 16 States members of the Executive Committee were represented: *Ordinary members*: Argentina, Australia, Brazil, Cameroon, France, Germany (Federal Republic), Hungary, Japan, Kenya, Senegal, Soviet Union, Sweden, Switzerland, United Kingdom, United States of America (15); *Associate member*: Sri Lanka (Ceylon) (1).

The other States and the Organizations mentioned in the list of participants (see below) were represented in an observer capacity.

Patent Cooperation Treaty (PCT). The Executive Committee approved the PCT program and budget for the year 1973. The program includes surveys, studies and proposals by the International Bureau on matters concerning the PCT: minimum documentation (both patent literature and non-patent literature), abstracting, translating and documentation services (retrieval by subject matter, classification and "families") and searching techniques; adaptation of national laws to the PCT; administrative procedures under the PCT; advice on legislative and administrative measures for developing countries and assistance in establishing and developing patent documentation centers (national or regional). This work is to be carried out through the three PCT Interim Committees — for Technical Cooperation, for Administrative Questions and for Technical Assistance — and the Standing Subcommittee of the PCT Committee for Technical Cooperation. In this connection, the invitation of the Delegation of Japan that these four committees meet in Japan for a period of one week late in 1973 or early in 1974 was accepted.

The Executive Committee adopted a resolution concerning the amounts of special cash contributions for the year 1973 to cover the expenses of the International Bureau connected with its activities in the field of the PCT and noted the pledges or statements made by delegations.

ICIREPAT. With respect to the Paris Union Committee for International Cooperation in Information Retrieval among Patent Offices (ICIREPAT), the Executive Committee established the program for the year 1973.

* This Note has been prepared by the International Bureau on the basis of the documents of the session.

The Executive Committee adopted a system for the allocation of special contributions among the participating countries of ICIREPAT based on the number of applications for patents and inventors' certificates filed in a given year and the number of such applications granted in that year¹. The Executive Committee also adopted a resolution concerning the amounts of special cash contributions of participating countries of ICIREPAT for the year 1973 and noted the pledges or statements made by delegations.

International Patent Classification (IPC). The Executive Committee approved the IPC program and budget for the year 1973. This program concerns the continuation of the work on the improvement of the IPC, including the preparation and adoption of amendments to the IPC and ensuring the uniform application of the IPC. The work is to be carried out by an Interim Committee, a Bureau, and six working groups. The Executive Committee also approved a proposal that a special working group be convened by the Director General to advise the International Bureau on a study of the question of international cooperation in the field of reclassification of search files according to the IPC, with a view to proposing possible solutions.

The Executive Committee adopted a system for the allocation of special contributions among the countries participating in the work on the IPC similar to that adopted for ICIREPAT. The Executive Committee also adopted a resolution concerning the amounts of special cash contributions for the year 1973 to cover the International Bureau's expenses connected with the IPC.

New Treaty on the Protection of Appellations of Origin or Revision of the Lisbon Agreement. The Executive Committee took note of the results of a survey among countries of the Paris Union on the question of a possible revision of the Lisbon Agreement. The Executive Committee adopted a suggestion that the International Bureau study, with the aid of a working group, the question of revising existing agreements or of drafting a new treaty and that, if appropriate, proposals be then submitted to a committee of experts to which all member countries of the Paris Union would be invited.

Scientific Discoveries. The Executive Committee decided that the study of the possibilities of the international recognition or recording of the authorship of scientific discoveries should be continued and that a working group should be convened consisting of countries interested in the subject.

Question of the Deposit of Microorganisms. The Executive Committee considered the proposal of the United Kingdom concerning the requirements for deposit of microorganisms for the purpose of patent applications. The Executive Committee decided that the International Bureau should study the questions raised by this proposal and prepare a report on them. A survey of the systems existing on the national level would be a part of such a study, which would be submitted to a working group to be convened in 1974.

¹ *Industrial Property*, 1972, p. 223.

The International Patent Documentation Center (INPADOC). The Executive Committee noted the report by the Director General concerning the creation of INPADOC in Vienna by the Government of Austria under an agreement between that Government and WIPO.

The Patent System and the Environment. The Director General was authorized to cooperate with the United Nations Environment Secretariat in a study of the measures that could be envisaged in the patent system to enhance its usefulness in the protection of the environment.

1973 Vienna Diplomatic Conference. The Executive Committee decided that the Vienna Diplomatic Conference — which will be convened for the adoption of the proposed Trademark Registration Treaty (TRT), the proposed Agreement on the Protection of Type Faces, and the proposed Agreement or Protocol on the International Classification of the Figurative Elements of Marks — should take place from May 17 to June 12, 1973. The Diplomatic Conference will meet in the *Hofburg* in Vienna under the auspices of the Government of Austria.

Program and Budget for the Year 1973. In addition to the special program and budget activities relating to the PCT, ICIREPAT and IPC as well as the other projects previously described, the Committee approved the program and budget of the Paris Union for the year 1973.

Madrid Union

Assembly and Committee of Directors of the National Industrial Property Offices

Extraordinary Sessions

(Geneva, September 25 to 30, 1972)

Note *

The following 15 States members of the Assembly were represented: Algeria, Belgium, Czechoslovakia, France, Germany (Federal Republic), Hungary, Italy, Liechtenstein, Luxembourg, Netherlands, Portugal, Romania, Spain, Switzerland, Yugoslavia. Monaco and Morocco were not represented.

Three of the five members of the Committee of Directors were represented: Austria, Egypt, Tunisia. The Republic of Viet-Nam and San Marino were not represented.

The discussions of the Assembly and the Committee of Directors took place jointly.

Reserve Fund. The Assembly and the Committee of Directors decided that the ceiling of the reserve fund should be variable, equivalent to the total amount of expenditure provided for in the Madrid Union budget for the current year.

* This Note has been prepared by the International Bureau on the basis of the documents of the session.

Fees and Other Charges. The Assembly and the Committee of Directors adopted a new scale of fees (basic, complementary, and supplementary fees, other charges) effective January 1, 1973¹.

Program and Budget for the Year 1973. The Assembly approved the program and budget for 1973. This includes the continuation of the preparatory work on the conclusion of the proposed Trademark Registration Treaty, the continuation of studies on the mechanization of trademark searches, and the continuation of the work of the committee of experts related thereto.

¹ See page 303 below.

Locarno Union

Assembly

Extraordinary Session

(Geneva, September 25 to 30, 1972)

Note *

The following seven States members of the Assembly were represented: Czechoslovakia, Denmark, Finland, Norway, Sweden, Switzerland, United States of America. Ireland was not represented.

Official Texts. The Assembly designated German, Portuguese and Spanish as languages in which, pursuant to Article 1 (7) of the Locarno Agreement Establishing an International Classification for Industrial Designs, official texts of that Classification were to be established.

Program and Budget for the Year 1973. The Assembly approved the program and budget for 1973.

* This Note has been prepared by the International Bureau on the basis of the documents of the session.

List of Participants

in the Meetings of WIPO and of the Paris, Madrid and
Locarno Unions *

I. States Members of One or Several Bodies Convened

Algeria: S. Bonzidi; G. Sellali (Mrs.); A. Boussaid. Argentina: R. A. Ramayón; E. A. Pareja. Australia: K. B. Petersson. Austria: T. Lorenz. Belgium: A. Schurmans; R. Philippart de Foy. Brazil: T. Thedim Lobo; S. P. Rouanet; F. Miragaia Perri. Cameroon: J. Ekedji Samnik. Canada: F. W. Simons; J. Corheil. Czechoslovakia: V. Vaniš; J. Prošek; A. Ringl; J. Springer; J. Stahl. Denmark: E. Tuxen. Egypt: M. M. Saad; S. A. Ahou-Ali. Finland: E. Tuuli; R. Meinander. France: J. Fernand-Laurent; A. J. Kerever; F. Savignon; R. M. N. Labry; J. Buffin; E. de Dampierre (Mrs.); P. Guérin. Germany (Federal Republic): A. Krieger; O. von Stempel;

* A list containing the titles and functions of the participants may be obtained from the International Bureau upon request.

H. Mast; G. Rheker (Mrs.); R. Singer; W. Boecker. Hungary: E. Tasnádi; J. Bobrovsky. Italy: P. Archi; G. Ranzi; G. Trotta; V. Oliva; C. Ferroluzzi; V. De Sanctis; M. Vitali (Mrs.); G. Lajolo. Japan: K. Otani; T. Koyama. Kenya: D. J. Coward. Liechtenstein: A. de Gerliczy-Burian. Luxembourg: J.-P. Hoffmann. Mexico: G. E. Larrea Richerand; J. Sandoval Ulloa; V. C. Garcia Moreno; J. Fraymann Castro. Netherlands: W. M. J. C. Pbaif; E. van Weel. Norway: L. Nordstrand; R. W. Knudsen; S. H. Røer. Philippines: C. V. Espejo; D. Domingo (Miss). Poland: J. Szomański; B. Janicki; M. Paszkowski. Portugal: J. L. Esteves da Fonseca; J. Van-Zeller Garin; F. Lopes Vieira; M. T. Ascensão (Mrs.); J. Oliveira Ascensão; L. M. Cesar Nunes de Almeida. Romania: L. Marinete; M. Costin. Senegal: N. N'Diaye; J. P. Crespín. Soviet Union: E. Artemiev; V. Kalinin; V. N. Evgeniev. Spain: A. Fernandez-Mazambroz; I. Fonseca-Ruiz (Mrs.). Sri Lanka (Ceylon): A. Goonasekera. Sweden: G. Borggård; C. Uggla; I. Stjernberg; W. G. Skoldefors. Switzerland: W. Stamm; P. Braendli; P. Ruedin. Tunisia: A. Amri; H. Ben Achour. United Kingdom: E. Armitage; W. Wallace; D. Cadman; A. Evans. United States of America: B. C. Ladd; R. Gottschalk; R. D. Tegmeyer; H. J. Winter; M. K. Kirk; H. D. Hoinkes. Yugoslavia: D. Bošković; N. Janković.

II. Other States

Bulgaria: I. Ivanov; T. Sourgov; I. Daskalov. Chile: A. Alberti; E. Bucchi de Yépez (Mrs.). Cuba: J. M. Rodriguez Padilla; E. Pretel; F. Ortiz Rodriguez. Iran: M. Naraghi. Israel: M. Gabay. Jordan: A. Marzouq. Lebanon: C. Choueri. Syrian Arab Republic: M. Allaf. Turkey: S. Adil; Y. Vedat. Uruguay: R. Rodriguez-Larreta de Pesaresi (Mrs.).

III. Intergovernmental Organizations

United Nations: P. Casson; V. Fessenko. United Nations Conference on Trade and Development (UNCTAD): C. R. Greenbill; T. Ganiatsos. United Nations Educational, Scientific and Cultural Organization (Unesco): B. Ringer (Miss). United Nations Economic Commission for Europe (ECE): B. Beer (Mrs.). International Patent Institute (IPI): G. M. Finnis; L. Knight. African and Malagasy Industrial Property Office (OAMPI): D. Ekani. Benelux Trademark Office: L. van Bauwel. Council of Europe: H. Golsong. Industrial Development Centre for Arab States (IDCAS): A. Abdel Hak; A. Shalakany.

IV. International Bureau of WIPO

G. H. C. Bodenhausen (*Director General*); A. Bogsch (*First Deputy Director General*); J. Voyame (*Second Deputy Director General*); C. Masouyé (*Senior Counsellor, Head, External and Public Relations Division*); K. Pfanner (*Senior Counsellor, Head, Industrial Property Division*); B. A. Armstrong (*Senior Counsellor, Head, Administrative Division*); L. Egger (*Counsellor, Head, International Registrations Division*); T. S. Krishnamurti (*Counsellor, Head, Copyright Division*).

V. Officers and Secretariat

World Intellectual Property Organization (WIPO)

Coordination Committee: *Chairman*: B. C. Ladd (United States of America); *Vice-Chairmen*: L. Marinete (Romania); A. Goonasekera (Sri Lanka (Ceylon)); *Secretary*: C. Masouyé (WIPO).

Paris Union

Executive Committee: *Chairman*: T. Thedim Lobo (Brazil); *Vice-Chairmen*: N. N'Diaye (Senegal); E. Artemiev (Soviet Union); *Secretary*: K. Pfanner (WIPO).

Madrid Union

Assembly: *Chairman*: F. Savignon (France); *Vice-Chairmen*: A. Fernandez-Mazambroz (Spain); D. Bošković (Yugoslavia); *Secretary*: L. Egger (WIPO).

Committee of Directors: *Chairman*: A. Amri (Tunisia); *Vice-Chairmen*: T. Lorenz (Austria); M. M. Saad (Egypt); *Secretary*: L. Egger (WIPO).

Locarno Union

Assembly: *Chairman*: (Ireland: not represented); *Vice-Chairmen*: G. Borggård (Sweden); W. Stamm (Switzerland); *Secretary*: L. Egger (WIPO).

Lisbon Union

Council

Seventh Ordinary Session

(Geneva, September 28 and 29, 1972)

Note*

Nine of the ten States party to the Lisbon Agreement were represented: Algeria, Cuba, Czechoslovakia, France, Hungary, Israel, Italy, Mexico, Portugal (9). Haiti was not represented.

The following States party to the Paris Convention but not to the Lisbon Agreement were represented by observers: Austria, Canada, Finland, Germany (Federal Republic), Iran, Norway, Senegal, Spain, Sweden, Switzerland, Turkey.

Activities of the Union and Financial Questions. The Council noted with unanimous approval the report of the Director General on the activities of the Union and on financial questions. In particular, it expressed a favorable opinion on the 1971 accounts and the budget for 1973.

Revision of the Lisbon Agreement or Preparation of a New Treaty. After an exchange of views on this question, the Council came to the following conclusions: that a revision of the Lisbon Agreement was necessary both to facilitate further accessions and to improve the system of protection under the Agreement; that the study to be undertaken for this purpose should be as extensive as possible and should take into account not only the results of the survey carried out by the International Bureau among member countries of the Paris Union (see documents P/EC/VIII/6 and 7), but also all other sources of information; that the study should be aimed first and foremost at a revision of the Lisbon Agreement, but should not overlook any other solutions if these can be expected to yield better results, such as the merging of the Lisbon Agreement with the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, or the preparation of a new treaty. Accordingly, the Council requested the International Bureau to study, with the aid of a working group, the revision of existing agreements in the field or the preparation of a new treaty, and to submit any proposals to a committee of experts to which all member countries of the Paris Union would be invited. The Council invited the Director General, in the meantime, to make a report on the progress of the study, at the Council's next ordinary session; the Council would thus be in a complete position to decide upon the most suitable solution in the light of the objectives to be attained.

Other Developments. The Delegation of Iran declared that Iran planned to accede to the Lisbon Agreement. The Delegation of Senegal recalled that a Convention relating to the Protection of Appellations of Origin had been adopted under the auspices of the African and Malagasy Industrial Property Office (OAMPI), and stated that after the member countries

* This Note has been prepared by the International Bureau on the basis of the documents of the session.

of OAMPI had ratified this Convention, they might consider acceding to an agreement which would take account of the special situation in their countries.

List of Participants*

I. Member States

Algeria: S. Bouzidi; G. Sellali (Mrs.); A. Bonssaid. Cuba: J. M. Rodriguez Padilla; E. Pretel; F. Ortiz Rodriguez. Czechoslovakia: J. Prošek; J. Springer. France: R. M. N. Lahry; A. Devletian. Hungary: E. Tasnádi; J. Bobrovsky. Israel: M. Gabay. Italy: V. Oliva. Mexico: J. Sandoval Ulloa; J. Fraymann Castro. Portugal: J. L. Esteves da Fonseca; J. Van-Zeller Garin.

* A list containing the titles and functions of the participants may be obtained from the International Bureau upon request.

II. Observers

Austria: T. Lorenz. Canada: F. W. Simons; J. Corbeil. Finland: E. Tuuli. Germany (Federal Republic): H. Mast. Iran: M. Naraghi. Norway: L. Nordstrand. Senegal: B. Niang. Spain: A. Fernandez-Mazarambroz. Sweden: C. Ugglá. Switzerland: P. Braendli. Turkey: S. Adil; Y. Vedat.

III. WIPO

J. Voyame (*Second Deputy Director General*); B. A. Armstrong (*Senior Counsellor, Head, Administrative Division*); L. Egger (*Counsellor, Head, International Registrations Division*); A. Jaccard (*Head, Finance Section, Administrative Division*).

IV. Officers

Chairman: J. M. Rodriguez Padilla (Cuba); *Vice-Chairman*: J. L. Esteves da Fonseca (Portugal); *Secretary*: L. Egger (WIPO).

INTERNATIONAL UNIONS

Madrid Union

New Scale of Fees and Charges

effective January 1, 1973

The Assembly of the Madrid Union and the Committee of Directors of the National Industrial Property Offices have adopted the following scale, to take effect on January 1, 1973, of fees and charges provided for under Article 27 of the Regulations of the Madrid Agreement Concerning the International Registration of Marks:

	Swiss francs
1. Basic fee	
(a) for 20 years	400 or 390 *
(b) for 10 years	240 or 230 *
2. Balance of the fee	330 or 320 *
3. Supplementary fee	40
4. Complementary fee	40
5. Establishment of printing block	30
6. Classification and reclassification of goods and services; per word	1 †

* The first figure relates to a single mark, the second to each of the following marks belonging to the same proprietor and for which registration or renewal is requested at the same time.

† Minimum 20 francs.

7. Fee for recording territorial extension subsequent to registration	50
8. Period of grace	50 %
9. Transfers	50
10. Limitation of list of goods and services	50
11. Change of name and/or address of proprietor of mark	50 or 10 **
12. Entries relating to agent	20 or 5 **
13. Extract from Register	40
14. Facsimiles or photocopies	5
15. Information	
written	30 or 5 **
oral	10
16. Attestations	30 or 5 **
17. Searches for anticipation	
(a) identity (word mark)	15
(b) identity (figurative mark)	30
(c) similarity	60

The fees listed under 1, 3 and 4 above will apply to renewals of registrations expiring on or after January 1, 1973, irrespective of the date when the request for renewal was made to the International Bureau.

** The first figure relates to a single mark, the second to each of the following marks belonging to the same proprietor and for which the same change, information or attestation is requested at the same time.

- (vii) in relation to the Union territory of Chandigarh, the High Court of Punjab and Haryana; and
- (viii) in relation to any other State, the High Court for that State;
- (j) "invention" means any new and useful —
- (i) art, process, method or manner of manufacture;
 - (ii) machine, apparatus or other article;
 - (iii) substance produced by manufacture,
- and includes any new and useful improvement of any of them, and an alleged invention;
- (k) "legal representative" means a person who in law represents the estate of a deceased person;
- (l) "medicine or drug" includes —
- (i) all medicines for internal or external use of human beings or animals,
 - (ii) all substances intended to be used for or in the diagnosis, treatment, mitigation or prevention of diseases in human beings or animals,
 - (iii) all substances intended to be used for or in the maintenance of public health, or the prevention or control of any epidemic disease among human beings or animals,
 - (iv) insecticides, germicides, fungicides, weedicides and all other substances intended to be used for the protection or preservation of plants;
 - (v) all chemical substances which are ordinarily used as intermediates in the preparation or manufacture of any of the medicines or substances above referred to;
- (m) "patent" means a patent granted under this Act and includes for the purposes of sections 44, 49, 50, 51, 52, 54, 55, 56, 57, 58, 63, 65, 66, 68, 69, 70, 78, 134, 140, 153, 154 and 156 and Chapters XVI, XVII and XVIII, a patent granted under the Indian Patents and Designs Act, 1911;
- (n) "patent agent" means a person for the time being registered under this Act as a patent agent;
- (o) "patented article" and "patented process" mean respectively an article or process in respect of which a patent is in force;
- (p) "patentee" means the person for the time being entered on the register as the grantee or proprietor of the patent;
- (q) "patent of addition" means a patent granted in accordance with section 54;
- (r) "patent office" means the patent office referred to in section 74;
- (s) "person" includes the Government;
- (t) "person interested" includes a person engaged in, or in promoting, research in the same field as that to which the invention relates;
- (u) "prescribed" means, in relation to proceedings before a High Court, prescribed by rules made by the High Court, and in other cases, prescribed by rules made under this Act;
- (v) "prescribed manner" includes the payment of the prescribed fee;
- (w) "priority date" has the meaning assigned to it by section 11;
- (x) "register" means the register of patents referred to in section 67;
- (y) "true and first inventor" does not include either the first importer of an invention into India, or a person to whom an invention is first communicated from outside India.
- (2) In this Act, unless the context otherwise requires, any reference —
- (a) to the Controller shall be construed as including a reference to any officer discharging the functions of the Controller in pursuance of section 73;
 - (b) to the patent office shall be construed as including a reference to any branch office of the patent office.

Chapter II — Inventions not patentable

3. — The following are not inventions within the meaning of this Act, —

- (a) an invention which is frivolous or which claims anything obviously contrary to well established natural laws;
- (b) an invention the primary or intended use of which would be contrary to law or morality or injurious to public health;
- (c) the mere discovery of a scientific principle or the formulation of an abstract theory;
- (d) the mere discovery of any new property or new use for a known substance or of the mere use of a known process, machine or apparatus unless such known process results in a new product or employs at least one new reactant;
- (e) a substance obtained by a mere admixture resulting only in the aggregation of the properties of the components thereof or a process for producing such substance;
- (f) the mere arrangement or re-arrangement or duplication of known devices each functioning independently of one another in a known way;
- (g) a method or process of testing applicable during the process of manufacture for rendering the machine, apparatus or other equipment more efficient or for the improvement or restoration of the existing machine, apparatus or other equipment or for the improvement or control of manufacture;
- (h) a method of agriculture or horticulture;
- (i) any process for the medicinal, surgical, curative, prophylactic or other treatment of human beings or any process for a similar treatment of animals or plants to render them free of disease or to increase their economic value or that of their products.

4. — No patent shall be granted in respect of an invention relating to atomic energy falling within sub-section (1) of section 20 of the Atomic Energy Act, 1962.

5. — In the case of inventions —

- (a) claiming substances intended for use, or capable of being used, as food or as medicine or drug, or
- (b) relating to substances prepared or produced by chemical processes (including alloys, optical glass, semi-conductors and inter-metallic compounds),

no patent shall be granted in respect of claims for the substances themselves, but claims for the methods or processes of manufacture shall be patentable.

Chapter III — Applications for patents

6. — (1) Subject to the provisions contained in section 134, an application for a patent for an invention may be made by any of the following persons, that is to say, —

- (a) by any person claiming to be the true and first inventor of the invention;
- (b) by any person being the assignee of the person claiming to be the true and first inventor in respect of the right to make such an application;
- (c) by the legal representative of any deceased person who immediately before his death was entitled to make such an application.

(2) An application under sub-section (1) may be made by any of the persons referred to therein either alone or jointly with any other person.

7. — (1) Every application for a patent shall be for one invention only and shall be made in the prescribed form and filed in the patent office.

(2) Where the application is made by virtue of an assignment of the right to apply for a patent for the invention, there shall be furnished with the application, or within such period as may be prescribed after the filing of the application, proof of the right to make the application.

(3) Every application under this section shall state that the applicant is in possession of the invention and shall name the owner claiming to be the true and first inventor; and where the person so claiming is not the applicant or one of the applicants, the application shall contain a declaration that the applicant believes the person so named to be the true and first inventor.

(4) Every such application (not being a convention application) shall be accompanied by a provisional or a complete specification.

8. — (1) Where an applicant for a patent under this Act is prosecuting either alone or jointly with any other person an application for a patent in any country outside India in respect of the same or substantially the same invention, or where to his knowledge such an application is being prosecuted by some person through whom he claims or by some person deriving title from him, he shall file along with his application —

- (a) a statement setting out the name of the country where the application is being prosecuted, the serial number and date of filing of the application and such other particulars as may be prescribed; and

(b) an undertaking that, up to the date of the acceptance of his complete specification filed in India, he would keep the Controller informed in writing, from time to time, of details of the nature referred to in clause (a) in respect of every other application relating to the same or substantially the same invention, if any, filed in any country outside India subsequently to the filing of the statement referred to in the aforesaid clause, within the prescribed time.

(2) The Controller may also require the applicant to furnish, as far as may be available to the applicant, details relating to the objections, if any, taken to any such application as is referred to in sub-section (1) on the ground that the invention is lacking in novelty or patentability, the amendments effected in the specifications, the claims allowed in respect thereof and such other particulars as he may require.

9. — (1) Where an application for a patent (not being a convention application) is accompanied by a provisional specification, a complete specification shall be filed within twelve months from the date of filing of the application, and if the complete specification is not so filed the application shall be deemed to be abandoned:

Provided that the complete specification may be filed at any time after twelve months but within fifteen months from the date aforesaid, if a request to that effect is made to the Controller and the prescribed fee is paid on or before the date on which the complete specification is filed.

(2) Where two or more applications in the name of the same applicant are accompanied by provisional specifications in respect of inventions which are cognate or of which one is a modification of another and the Controller is of opinion that the whole of such inventions are such as to constitute a single invention and may properly be included in one patent, he may allow one complete specification to be filed in respect of all such provisional specifications.

(3) Where an application for a patent (not being a convention application) is accompanied by a specification purporting to be a complete specification, the Controller may, if the applicant so requests at any time before the acceptance of the specification, direct that such specification shall be treated for the purposes of this Act as a provisional specification and proceed with the application accordingly.

(4) Where a complete specification has been filed in pursuance of an application for a patent accompanied by a provisional specification or by a specification treated by virtue of a direction under sub-section (3) as a provisional specification, the Controller may, if the applicant so requests at any time before the acceptance of the complete specification, cancel the provisional specification and post-date the application to the date of filing of the complete specification.

10. — (1) Every specification, whether provisional or complete, shall describe the invention and shall begin with a title sufficiently indicating the subject-matter to which the invention relates.

(2) Subject to any rules that may be made in this behalf under this Act, drawings may, and shall, if the Controller so

requires, be supplied for the purposes of any specification, whether complete or provisional; and any drawings so supplied shall, unless the Controller otherwise directs, be deemed to form part of the specification, and references in this Act to a specification shall be construed accordingly.

(3) If, in any particular case, the Controller considers that an application should be further supplemented by a model or sample of anything illustrating the invention or alleged to constitute an invention, such model or sample as he may require shall be furnished before the acceptance of the application, but such model or sample shall not be deemed to form part of the specification.

(4) Every complete specification shall —

- (a) fully and particularly describe the invention and its operation or use and the method by which it is to be performed;
- (b) disclose the best method of performing the invention which is known to the applicant and for which he is entitled to claim protection; and
- (c) end with a claim or claims defining the scope of the invention for which protection is claimed.

(5) The claim or claims of a complete specification shall relate to a single invention, shall be clear and succinct and shall be fairly based on the matter disclosed in the specification and shall, in the case of an invention such as is referred to in section 5, relate to a single method or process of manufacture.

(6) A declaration as to the inventorship of the invention shall, in such cases as may be prescribed, be furnished in the prescribed form with the complete specification or within such period as may be prescribed after the filing of that specification.

(7) Subject to the foregoing provisions of this section, a complete specification filed after a provisional specification may include claims in respect of developments of, or additions to, the invention which was described in the provisional specification, being developments or additions in respect of which the applicant would be entitled under the provisions of section 6 to make a separate application for a patent.

11. — (1) There shall be a priority date for each claim of a complete specification.

(2) Where a complete specification is filed in pursuance of a single application accompanied by —

- (a) a provisional specification; or
- (b) a specification which is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification,

and the claim is fairly based on the matter disclosed in the specification referred to in clause (a) or clause (b), the priority date of that claim shall be the date of the filing of the relevant specification.

(3) Where the complete specification is filed or proceeded with in pursuance of two or more applications accompanied by such specifications as are mentioned in sub-section (2) and the claim is fairly based on the matter disclosed —

- (a) in one of those specifications, the priority date of that claim shall be the date of the filing of the application accompanied by that specification;
- (b) partly in one and partly in another, the priority date of that claim shall be the date of the filing of the application accompanied by the specification of the later date.

(4) Where the complete specification has been filed in pursuance of a further application made by virtue of sub-section (1) of section 16 and the claim is fairly based on the matter disclosed in any of the earlier specifications, provisional or complete, as the case may be, the priority date of that claim shall be the date of the filing of that specification in which the matter was first disclosed.

(5) Where, under the foregoing provisions of this section, any claim of a complete specification would, but for the provisions of this sub-section, have two or more priority dates, the priority date of that claim shall be the earlier or earliest of those dates.

(6) In any case to which sub-sections (2), (3), (4) and (5) do not apply, the priority date of a claim shall, subject to the provisions of section 137, be the date of filing of the complete specification.

(7) The reference to the date of the filing of the application or of the complete specification in this section shall, in cases where there has been a post-dating under section 9 or section 17 or, as the case may be, an ante-dating under section 16, be a reference to the date as so post-dated or ante-dated.

(8) A claim in a complete specification of a patent shall not be invalid by reason only of —

- (a) the publication or use of the invention so far as claimed in that claim on or after the priority date of such claim; or
- (b) the grant of another patent which claims the invention, so far as claimed in the first mentioned claim, in a claim of the same or a later priority date.

Chapter IV — Examination of applications

12. — (1) When the complete specification has been filed in respect of an application for a patent, the application and the specification relating thereto shall be referred by the Controller to an examiner for making a report to him in respect of the following matters, namely: —

- (a) whether the application and the specification relating thereto are in accordance with the requirements of this Act and of any rules made thereunder;
- (b) whether there is any lawful ground of objection to the grant of the patent under this Act in pursuance of the application;
- (c) the result of investigations made under section 13; and
- (d) any other matter which may be prescribed.

(2) The examiner to whom the application and the specification relating thereto are referred under sub-section (1) shall ordinarily make the report to the Controller within a period of eighteen months from the date of such reference.

13. — (1) The examiner to whom an application for a patent is referred under section 12 shall make investigation for the purpose of ascertaining whether the invention so far as claimed in any claim of the complete specification —

- (a) has been anticipated by publication before the date of filing of the applicant's complete specification in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
- (b) is claimed in any claim of any other complete specification published on or after the date of filing of the applicant's complete specification, being a specification filed in pursuance of an application for a patent made in India and dated before or claiming the priority date earlier than that date.

(2) The examiner shall, in addition, make such investigation as the Controller may direct for the purpose of ascertaining whether the invention, so far as claimed in any claim of the complete specification, has been anticipated by publication in India or elsewhere in any document other than those mentioned in sub-section (1) before the date of filing of the applicant's complete specification.

(3) Where a complete specification is amended under the provisions of this Act before it has been accepted, the amended specification shall be examined and investigated in like manner as the original specification.

(4) The examination and investigations required under section 12 and this section shall not be deemed in any way to warrant the validity of any patent, and no liability shall be incurred by the Central Government or any officer thereof by reason of, or in connection with, any such examination or investigation or any report or other proceedings consequent thereon.

14. — Where, in respect of an application for a patent, the report of the examiner received by the Controller is adverse to the applicant or requires any amendment of the application or of the specification to ensure compliance with the provisions of this Act or of the rules made thereunder, the Controller, before proceeding to dispose of the application in accordance with the provisions hereinafter appearing, shall communicate the gist of the objections to the applicant and shall, if so required by the applicant within the prescribed time, give him an opportunity of being heard.

15. — (1) Where the Controller is satisfied that the application or any specification filed in pursuance thereof does not comply with the requirements of this Act or of any rules made thereunder, the Controller may either —

- (a) refuse to proceed with the application; or
- (b) require the application, specification or drawings to be amended to his satisfaction before he proceeds with the application.

(2) If it appears to the Controller that the invention claimed in the specification is not an invention within the meaning of, or is not patentable under, this Act, he shall refuse the application.

(3) If it appears to the Controller that any invention, in respect of which an application for a patent is made, might be used in any manner contrary to law, he may refuse the application, unless the specification is amended by the insertion of such disclaimer in respect of that use of the invention, or such other reference to the illegality thereof, as the Controller thinks fit.

16. — (1) A person who has made an application for a patent under this Act may, at any time before the acceptance of the complete specification, if he so desires, or with a view to remedy the objection raised by the Controller on the ground that the claims of the complete specification relate to more than one invention, file a further application in respect of an invention disclosed in the provisional or complete specification already filed in respect of the first mentioned application.

(2) The further application under sub-section (1) shall be accompanied by a complete specification, but such complete specification shall not include any matter not in substance disclosed in the complete specification filed in pursuance of the first mentioned application.

(3) The Controller may require such amendment of the complete specification filed in pursuance of either the original or the further application as may be necessary to ensure that neither of the said complete specifications includes a claim for any matter claimed in the other.

Explanation. — For the purposes of this Act, the further application and the complete specification accompanying it shall be deemed to have been filed on the date on which the complete specification in pursuance of the first mentioned application had been filed, and the further application shall, subject to the determination of the priority date under sub-section (4) of section 11, be proceeded with as a substantive application.

17. — (1) Subject to the provisions of section 9, at any time after the filing of an application and before acceptance of the complete specification under this Act, the Controller may, at the request of the applicant made in the prescribed manner, direct that the application shall be post-dated to such date as may be specified in the request, and proceed with the application accordingly:

Provided that no application shall be post-dated under this sub-section to a date later than six months from the date on which it was actually made or would, but for the provisions of this sub-section, be deemed to have been made.

(2) Where an application or specification (including drawings) is required to be amended under clause (b) of sub-section (1) of section 15, the application or specification shall, if the Controller so directs, be deemed to have been made on the date on which the requirement is complied with or where the application or specification is returned to the applicant, on the date on which it is re-filed after complying with the requirement.

18. — (1) Where it appears to the Controller that the invention so far as claimed in any claim of the complete speci-

fication has been anticipated in the manner referred to in clause (a) of sub-section (1) or sub-section (2) of section 13, he may refuse to accept the complete specification unless the applicant —

- (a) shows to the satisfaction of the Controller that the priority date of the claim of his complete specification is not later than the date on which the relevant document was published; or
- (b) amends his complete specification to the satisfaction of the Controller.

(2) If it appears to the Controller that the invention is claimed in a claim of any other complete specification referred to in clause (b) of sub-section (1) of section 13, he may, subject to the provisions hereinafter contained, direct that a reference to that other specification shall be inserted by way of notice to the public in the applicant's complete specification unless within such time as may be prescribed, —

- (a) the applicant shows to the satisfaction of the Controller that the priority date of his claim is not later than the priority date of the claim of the said other specification; or
- (b) the complete specification is amended to the satisfaction of the Controller.

(3) If it appears to the Controller, as a result of an investigation under section 13 or otherwise, —

- (a) that the invention so far as claimed in any claim of the applicant's complete specification has been claimed in any other complete specification referred to in clause (a) of sub-section (1) of section 13; and
- (b) that such other complete specification was published on or after the priority date of the applicant's claim,

then, unless it is shown to the satisfaction of the Controller that the priority date of the applicant's claim is not later than the priority date of the claim of that specification, the provisions of sub-section (2) shall apply thereto in the same manner as they apply to a specification published on or after the date of filing of the applicant's complete specification.

(4) Any order of the Controller under sub-section (2) or sub-section (3) directing the insertion of a reference to another complete specification shall be of no effect unless and until the other patent is granted.

19. — (1) If, in consequence of the investigations required by the foregoing provisions of this Act or of proceedings under section 25, it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent shall be inserted in the applicant's complete specification by way of notice to the public, unless within such time as may be prescribed —

- (a) the applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
- (b) the complete specification is amended to the satisfaction of the Controller.

(2) Where, after a reference to another patent has been inserted in a complete specification in pursuance of a direction under sub-section (1) —

- (a) that other patent is revoked or otherwise ceases to be in force; or
- (b) the specification of that other patent is amended by the deletion of the relevant claim; or
- (c) it is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention,

the Controller may, on the application of the applicant, delete the reference to that other patent.

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

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

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

- (a) the invention is identified therein by reference to the number of the application for the patent; or
- (b) there is produced to the Controller an acknowledgment by the person by whom the assignment or agreement was made that the assignment or agreement relates to the invention in respect of which that application is made; or
- (c) the rights of the claimant in respect of the invention have been finally established by the decision of a court; or
- (d) the Controller gives directions for enabling the application to proceed or for regulating the manner in which it should be proceeded with under sub-section (5).

(4) Where one of two or more joint applicants for a patent dies at any time before the patent has been granted, the Controller may, upon a request in that behalf made by the survivor or survivors, and with the consent of the legal representative of the deceased, direct that the application shall proceed in the name of the survivor or survivors alone.

(5) If any dispute arises between joint applicants for a patent whether or in what manner the application should be proceeded with, the Controller may, upon application made to him in the prescribed manner by any of the parties, and after

giving to all parties concerned an opportunity to be heard, give such directions as he thinks fit for enabling the application to proceed in the name of one or more of the parties alone or for regulating the manner in which it should be proceeded with, or for both those purposes, as the case may require.

21. — (1) An application for a patent shall be deemed to have been abandoned unless within fifteen months from the date on which the first statement of objections to the application or complete specification is forwarded by the Controller to the applicant or within such longer period as may be allowed under the following provisions of this section the applicant has complied with all the requirements imposed on him by or under this Act, whether in connection with the complete specification or otherwise in relation to the application.

Explanation. — Where the application or any specification or, in the case of a convention application, any document filed as part of the application has been returned to the applicant by the Controller in the course of the proceedings, the applicant shall not be deemed to have complied with such requirements unless and until he has re-filed it.

(2) The period of fifteen months specified in sub-section (1) shall, on request made by the applicant in the prescribed manner and before the expiration of the period so specified, be extended for a further period so requested (hereafter in this section referred to as the extended period), so, however, that the total period for complying with the requirements of the Controller does not exceed eighteen months from the date on which the objections referred to in sub-section (1) are forwarded to the applicant.

(3) If at the expiration of the period of fifteen months specified in sub-section (1) or the extended period —

- (a) an appeal to the High Court is pending in respect of the application for the patent for the main invention, or
- (b) in the case of an application for a patent of addition, an appeal to the High Court is pending in respect of either that application or the application for the main invention,

the time within which the requirements of the Controller shall be complied with shall, on an application made by the applicant before the expiration of the said period of fifteen months or the extended period, as the case may be, be extended until such date as the High Court may determine.

(4) If the time within which the appeal mentioned in sub-section (3) may be instituted has not expired, the Controller may extend the period of fifteen months, or as the case may be, the extended period, until the expiration of such further period as he may determine:

Provided that if an appeal has been filed during the said further period, and the High Court has granted any extension of time for complying with the requirements of the Controller, then, the requirements may be complied with within the time granted by the Court.

22. — Subject to the provisions of section 21, the complete specification filed in pursuance of an application for a patent may be accepted by the Controller at any time after the applicant has complied with the requirements mentioned in sub-section (1) of that section, and, if not so accepted within the period allowed under that section for compliance with those requirements, shall be accepted as soon as may be thereafter:

Provided that the applicant may make an application to the Controller in the prescribed manner requesting him to postpone acceptance until such date [not being later than eighteen months from the date on which the objections referred to in sub-section (1) of section 21 are forwarded to the applicant] as may be specified in the application, and, if such application is made, the Controller may postpone acceptance accordingly.

23. — On the acceptance of a complete specification, the Controller shall give notice thereof to the applicant and shall advertise in the Official Gazette the fact that the specification has been accepted, and thereupon the application and the specification with the drawings (if any) filed in pursuance thereof shall be open to public inspection.

24. — On and from the date of advertisement of the acceptance of a complete specification and until the date of sealing of a patent in respect thereof, the applicant shall have the like privileges and rights as if a patent for the invention had been sealed on the date of advertisement of acceptance of the complete specification:

Provided that the applicant shall not be entitled to institute any proceedings for infringement until the patent has been sealed.

Chapter V — Opposition to grant of patent

25. — (1) At any time within four months from the date of advertisement of the acceptance of a complete specification under this Act (or within such further period not exceeding one month in the aggregate as the Controller may allow on application made to him in the prescribed manner before the expiry of the four months aforesaid) any person interested may give notice to the Controller of opposition to the grant of the patent on any of the following grounds, namely: —

- (a) that the applicant for the patent or the person under or through whom he claims, wrongfully obtained the invention or any part thereof from him or from a person under or through whom he claims;
- (b) that the invention so far as claimed in any claim of the complete specification has been published before the priority date of the claim —

- (i) in any specification filed in pursuance of an application for a patent made in India on or after the 1st day of January, 1912; or
- (ii) in India or elsewhere, in any other document:

Provided that the ground specified in sub-clause (ii) shall not be available where such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29;

- (c) that the invention so far as claimed in any claim of the complete specification is claimed in a claim of a complete specification published on or after the priority date of the applicant's claim and filed in pursuance of an application for a patent in India, being a claim of which the priority date is earlier than that of the applicant's claim;
- (d) that the invention so far as claimed in any claim of the complete specification was publicly known or publicly used in India before the priority date of that claim.

Explanation. — For the purposes of this clause, an invention relating to a process for which a patent is claimed shall be deemed to have been publicly known or publicly used in India before the priority date of the claim if a product made by that process had already been imported into India before that date except where such importation has been for the purpose of reasonable trial or experiment only;

- (e) that the invention so far as claimed in any claim of the complete specification is obvious and clearly does not involve any inventive step, having regard to the matter published as mentioned in clause (b) or having regard to what was used in India before the priority date of the applicant's claim;
- (f) that the subject of any claim of the complete specification is not an invention within the meaning of this Act, or is not patentable under this Act;
- (g) that the complete specification does not sufficiently and clearly describe the invention or the method by which it is to be performed;
- (h) that the applicant has failed to disclose to the Controller the information required by section 8 or has furnished the information which in any material particular was false to his knowledge;
- (i) that in the case of a convention application, the application was not made within twelve months from the date of the first application for protection for the invention made in a convention country by the applicant or a person from whom he derives title,

but on no other ground.

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

(3) The grant of a patent shall not be refused on the ground stated in clause (c) of sub-section (1) if no patent has been granted in pursuance of the application mentioned in that clause; and for the purpose of any inquiry under clause (d) or clause (e) of that sub-section, no account shall be taken of any secret use.

26. — (1) Where in any opposition proceeding under this Act —

- (a) the Controller finds that the invention, so far as claimed in any claim of the complete specification, was obtained from the opponent in the manner set out in clause (a) of sub-section (1) of section 25 and refuses the applica-

tion on that ground, he may, on request by such opponent made in the prescribed manner, direct that the application shall proceed in the name of the opponent as if the application and the specification had been filed by the opponent on the date on which they were actually filed;

- (b) the Controller finds that a part of an invention described in the complete specification was so obtained from the opponent and passes an order requiring that the specification be amended by the exclusion of that part of the invention, the opponent may, subject to the provisions of sub-section (2), file an application in accordance with the provisions of this Act accompanied by a complete specification for the grant of a patent for the invention so excluded from the applicant's specification, and the Controller may treat such application and specification as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

(2) Where an opponent has, before the date of the order of the Controller requiring the amendment of a complete specification referred to in clause (b) of sub-section (1), filed an application for a patent for an invention which includes the whole or a part of the invention held to have been obtained from him and such application is pending, the Controller may treat such application and specification in so far as they relate to the invention held to have been obtained from him, as having been filed, for the purposes of this Act relating to the priority dates of claims of the complete specification, on the date on which the corresponding document was or was deemed to have been filed by the earlier applicant, but for all other purposes the application of the opponent shall be proceeded with as an application for a patent under this Act.

27. — If at any time after the acceptance of the complete specification filed in pursuance of an application for a patent and before the grant of a patent thereon it comes to the notice of the Controller otherwise than in consequence of proceedings in opposition to the grant under section 25, that the invention, so far as claimed in any claim of the complete specification, has been published before the priority date of the claim —

- (a) in any specification filed in pursuance of an application for a patent made in India and dated on or after the 1st day of January, 1912;
- (b) in any other document in India or elsewhere,

the Controller may refuse to grant the patent unless, within such time as may be prescribed, the complete specification is amended to his satisfaction:

Provided that the Controller shall not refuse to grant the patent on the ground specified in clause (b) if such publication does not constitute an anticipation of the invention by virtue of sub-section (2) or sub-section (3) of section 29.

28. — (1) If the Controller is satisfied, upon a request or claim made in accordance with the provisions of this section,

(a) that the person in respect of or by whom the request or claim is made is the inventor of an invention in respect of which application for a patent has been made, or of a substantial part of that invention; and

(b) that the application for the patent is a direct consequence of his being the inventor,

the Controller shall, subject to the provisions of this section, cause him to be mentioned as inventor in any patent granted in pursuance of the application in the complete specification and in the register of patents:

Provided that the mention of any person as inventor under this section shall not confer or derogate from any rights under the patent.

(2) A request that any person shall be mentioned as aforesaid may be made in the prescribed manner by the applicant for the patent or (where the person alleged to be the inventor is not the applicant or one of the applicants) by the applicant and that person.

(3) If any person [other than a person in respect of whom a request in relation to the application in question has been made under sub-section (2)] desires to be mentioned as aforesaid, he may make a claim in the prescribed manner in that behalf.

(4) A request or claim under the foregoing provisions of this section shall be made not later than two months after the date of advertisement of acceptance of the complete specification or within such further period (not exceeding one month) as the Controller may, on an application made to him in that behalf before the expiration of the said period of two months and subject to the payment of the prescribed fee, allow.

(5) No request or claim under the foregoing provisions of this section shall be entertained if it appears to the Controller that the request or claim is based upon facts which, if proved in the case of an opposition under the provisions of clause (a) of sub-section (1) of section 25 by the person in respect of or by whom the request or claim is made, would have entitled him to relief under that section.

(6) Subject to the provisions of sub-section (5), where a claim is made under sub-section (3), the Controller shall give notice of the claim to every applicant for the patent (not being the claimant) and to any other person whom the Controller may consider to be interested; and before deciding upon any request or claim made under sub-section (2) or sub-section (3), the Controller shall, if required, hear the person in respect of or by whom the request or claim is made, and, in the case of a claim under sub-section (3), any person to whom notice of the claim has been given as aforesaid.

(7) Where any person has been mentioned as inventor in pursuance of this section, any other person who alleges that he ought not to have been so mentioned may at any time apply to the Controller for a certificate to that effect, and the Controller may, after hearing, if required, any person whom he may consider to be interested, issue such a certificate, and if he does so, he shall rectify the specification and the register accordingly.

Chapter VI — Anticipation

29. — (1) An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published in a specification filed in pursuance of an application for a patent made in India and dated before the 1st day of January, 1912.

(2) Subject as hereinafter provided, an invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that the invention was published before the priority date of the relevant claim of the specification, if the patentee or the applicant for the patent proves —

(a) that the matter published was obtained from him, or (where he is not himself the true and first inventor) from any person from whom he derives title, and was published without his consent or the consent of any such person; and

(b) where the patentee or the applicant for the patent or any person from whom he derives title learned of the publication before the date of the application for the patent, or, in the case of a convention application, before the date of the application for protection in a convention country, that the application or the application in the convention country, as the case may be, was made as soon as reasonably practicable thereafter:

Provided that this sub-section shall not apply if the invention was before the priority date of the claim commercially worked in India, otherwise than for the purpose of reasonable trial, either by the patentee or the applicant for the patent or any person from whom he derives title or by any other person with the consent of the patentee or the applicant for the patent or any person from whom he derives title.

(3) Where a complete specification is filed in pursuance of an application for a patent made by a person being the true and first inventor or deriving title from him, an invention claimed in that specification shall not be deemed to have been anticipated by reason only of any other application for a patent in respect of the same invention made in contravention of the rights of that person, or by reason only that after the date of filing of that other application the invention was used or published, without the consent of that person, by the applicant in respect of that other application, or by any other person in consequence of any disclosure of any invention by that applicant.

30. — An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of the communication of the invention to the Government or to any person authorised by the Government to investigate the invention or its merits, or of anything done, in consequence of such a communication, for the purpose of the investigation.

31. — An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only of —

(a) the display of the invention with the consent of the true and first inventor or a person deriving title from him at an industrial or other exhibition to which the provisions

of this section have been extended by the Central Government by notification in the Official Gazette, or the use thereof with his consent for the purpose of such an exhibition in the place where it is held; or

- (b) the publication of any description of the invention in consequence of the display or use of the invention at any such exhibition as aforesaid; or
- (c) the use of the invention, after it has been displayed or used at any such exhibition as aforesaid and during the period of the exhibition, by any person without the consent of the true and first inventor or a person deriving title from him; or
- (d) the description of the invention in a paper read by the true and first inventor before a learned society or published with his consent in the transactions of such a society,

if the application for the patent is made by the true and first inventor or a person deriving title from him not later than six months after the opening of the exhibition or the reading or publication of the paper, as the case may be.

32. — An invention claimed in a complete specification shall not be deemed to have been anticipated by reason only that at any time within one year before the priority date of the relevant claim of the specification, the invention was publicly worked in India —

- (a) by the patentee or applicant for the patent or any person from whom he derives title; or
- (b) by any other person with the consent of the patentee or applicant for the patent or any person from whom he derives title,

if the working was effected for the purpose of reasonable trial only and if it was reasonably necessary, having regard to the nature of the invention, that the working for that purpose should be effected in public.

33. — (1) Where a complete specification is filed or proceeded with in pursuance of an application which was accompanied by a provisional specification or where a complete specification filed along with an application is treated by virtue of a direction under sub-section (3) of section 9 as a provisional specification, then, notwithstanding anything contained in this Act the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated by reason only that any matter described in the provisional specification or in the specification treated as aforesaid as a provisional specification was used in India or published in India or elsewhere at any time after the date of the filing of that specification.

(2) Where a complete specification is filed in pursuance of a convention application, then, notwithstanding anything contained in this Act, the Controller shall not refuse to grant the patent, and the patent shall not be revoked or invalidated, by reason only that any matter disclosed in any application for protection in a convention country upon which the convention application is founded was used in India or published in India or elsewhere at any time after the date of that application for protection.

34. — Notwithstanding anything contained in this Act, the Controller shall not refuse to accept a complete specification for a patent or to grant a patent, and a patent shall not be revoked or invalidated by reason only of any circumstances which, by virtue of section 29 or section 30 or section 31 or section 32, do not constitute an anticipation of the invention claimed in the specification.

Chapter VII — Provisions for secrecy of certain inventions

35. — (1) Where, in respect of an application made before or after the commencement of this Act for a patent, it appears to the Controller that the invention is one of a class notified to him by the Central Government as relevant for defence purposes, or, where otherwise the invention appears to him to be so relevant, he may give directions for prohibiting or restricting the publication of information with respect to the invention or the communication of such information to any person or class of persons specified in the directions.

(2) Where the Controller gives any such directions as are referred to in sub-section (1), he shall give notice of the application and of the directions to the Central Government, and the Central Government shall, upon receipt of such notice, consider whether the publication of the invention would be prejudicial to the defence of India, and if upon such consideration, it appears to it that the publication of the invention would not so prejudice, give notice to the Controller to that effect, who shall thereupon revoke the directions and notify the applicant accordingly.

(3) Without prejudice to the provisions contained in sub-section (1), where the Central Government is of opinion that an invention in respect of which the Controller has not given any directions under sub-section (1), is relevant for defence purposes, it may at any time before acceptance of the complete specification notify the Controller to that effect, and thereupon the provisions of that sub-section shall apply as if the invention were one of the class notified by the Central Government, and accordingly the Controller shall give notice to the Central Government of the directions issued by him.

36. — (1) The question whether an invention in respect of which directions have been given under section 35 continues to be relevant for defence purposes shall be re-considered by the Central Government within nine months from the date of issue of such directions and thereafter at intervals not exceeding twelve months, and if, on such re-consideration it appears to the Central Government that the publication of the invention would no longer be prejudicial to the defence of India it shall forthwith give notice to the Controller accordingly and the Controller shall thereupon revoke the directions previously given by him.

(2) The result of every re-consideration under sub-section (1), shall be communicated to the applicant within such time and in such manner as may be prescribed.

37. — (1) So long as any directions under section 35 are in force in respect of an application —

- (a) the Controller shall not pass an order refusing to accept the same; and
- (b) notwithstanding anything contained in this Act, no appeal shall lie from any order of the Controller passed in respect thereof:

Provided that the application may, subject to the directions, proceed up to the stage of the acceptance of the complete specification, but the acceptance shall not be advertised nor the specification published, and no patent shall be granted in pursuance of the application.

(2) Where a complete specification filed in pursuance of an application for a patent for an invention in respect of which directions have been given under section 35 is accepted during the continuance in force of the directions, then —

- (a) if, during the continuance in force of the directions, any use of the invention is made by or on behalf of, or to the order of the Government, the provisions of sections 100, 101 and 103 shall apply in relation to that use as if the patent had been granted for the invention; and
- (b) if it appears to the Central Government that the applicant for the patent has suffered hardship by reason of the continuance in force of the directions, the Central Government may make to him such payment (if any) by way of solatium as appears to the Central Government to be reasonable having regard to the novelty and utility of the invention and the purpose for which it is designed, and to any other relevant circumstances.

(3) Where a patent is granted in pursuance of an application in respect of which directions have been given under section 35, no renewal fee shall be payable in respect of any period during which those directions were in force.

38. — When any direction given under section 35 is revoked by the Controller, then, notwithstanding any provision of this Act specifying the time within which any step should be taken or any act done in connection with an application for the patent, the Controller may, subject to such conditions, if any, as he thinks fit to impose, extend the time for doing anything required or authorised to be done by or under this Act in connection with the application, whether or not that time has previously expired.

39. — (1) No person resident in India shall, except under the authority of a written permit granted by or on behalf of the Controller, make or cause to be made any application outside India for the grant of a patent for an invention unless —

- (a) an application for a patent for the same invention has been made in India, not less than six weeks before the application outside India; and
- (b) either no directions have been given under sub-section (1) of section 35 in relation to the application in India, or all such directions have been revoked.

(2) The Controller shall not grant written permission to any person to make any application outside India without the prior consent of the Central Government.

(3) This section shall not apply in relation to an invention for which an application for protection has first been filed in a country outside India by a person resident outside India.

40. — Without prejudice to the provisions contained in Chapter XX, if in respect of an application for a patent any person contravenes any direction as to secrecy given by the Controller under section 35 or makes or causes to be made an application for the grant of a patent outside India in contravention of section 39, the application for patent under this Act shall be deemed to have been abandoned and the patent granted, if any, shall be liable to be revoked under section 64.

41. — All orders of the Controller giving directions as to secrecy as well as all orders of the Central Government under this Chapter shall be final and shall not be called in question in any court on any ground whatsoever.

42. — Nothing in this Act shall be held to prevent the disclosure by the Controller of information concerning an application for a patent or a specification filed in pursuance thereof to the Central Government for the purpose of the application or specification being examined for considering whether an order under this Chapter should be made or whether an order so made should be revoked.

Chapter VIII — Grant and sealing of patents and rights conferred thereby

43. — (1) Where a complete specification in pursuance of an application for a patent has been accepted and either —

- (a) the application has not been opposed under section 25 and the time for the filing of the opposition has expired; or
- (b) the application has been opposed and the opposition has been finally decided in favour of the applicant; or
- (c) the application has not been refused by the Controller by virtue of any power vested in him by this Act,

the patent shall, on request made by the applicant in the prescribed form, be granted to the applicant or, in the case of a joint application, to the applicants jointly, and the Controller shall cause the patent to be sealed with the seal of the patent office and the date on which the patent is sealed shall be entered in the register.

(2) Subject to the provisions of sub-section (1) and of the provisions of this Act with respect to patents of addition, a request under this section for the sealing of a patent shall be made not later than the expiration of a period of six months from the date of advertisement of the acceptance of the complete specification:

Provided that —

- (a) where at the expiration of the said six months any proceeding in relation to the application for the patent is pending before the Controller or the High Court, the request may be made within the prescribed period after the final determination of that proceeding;
- (b) where the applicant or one of the applicants has died before the expiration of the time within which under the provisions of this sub-section the request could

otherwise be made, the said request may be made at any time within twelve months after the date of the death or at such later time as the Controller may allow.

(3) The period within which under sub-section (2) a request for the sealing of a patent may be made, may, from time to time, be extended by the Controller to such longer period as may be specified in an application made to him in that behalf, if the application is made and the prescribed fee paid within that longer period:

Provided that the first mentioned period shall not be extended under this sub-section by more than three months in the aggregate.

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

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

45. — (1) Subject to the other provisions contained in this Act, every patent shall be dated as of the date on which the complete specification was filed:

Provided that a patent which is granted in pursuance of an application to which any directions issued under section 78C of the Indian Patents and Designs Act, 1911 applied immediately before the commencement of this Act, shall be dated as of the date of the filing of the complete specification or the date of such commencement whichever is later.

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

(3) Notwithstanding anything contained in this section, no suit or other proceeding shall be commenced or prosecuted in respect of an infringement committed before the date of advertisement of the acceptance of the complete specification.

46. — (1) Every patent shall be in the prescribed form and shall have effect throughout India.

(2) A patent shall be granted for one invention only:

Provided that it shall not be competent for any person in a suit or other proceeding to take any objection to a patent on the ground that it has been granted for more than one invention.

47. — The grant of a patent under this Act shall be subject to the condition that —

- (1) any machine, apparatus or other article in respect of which the patent is granted or any article made by using a process in respect of which the patent is granted, may be imported or made by or on behalf of the Government for the purpose merely of its own use;
- (2) any process in respect of which the patent is granted may be used by or on behalf of the Government for the purpose merely of its own use;
- (3) any machine, apparatus or other article in respect of which the patent is granted or any article made by the use of the process in respect of which the patent is granted, may be made or used, and any process in respect of which the patent is granted may be used, by any person, for the purpose merely of experiment or research including the imparting of instructions to pupils; and
- (4) in the case of a patent in respect of any medicine or drug, the medicine or drug may be imported by the Government for the purpose merely of its own use or for distribution in any dispensary, hospital or other medical institution maintained by or on behalf of the Government or any other dispensary, hospital or other medical institution which the Central Government may, having regard to the public service that such dispensary, hospital or medical institution renders, specify in this behalf by notification in the Official Gazette.

48. — (1) Subject to the other provisions contained in this Act, a patent granted before the commencement of this Act, shall confer on the patentee the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute the invention in India.

(2) Subject to the other provisions contained in this Act and the conditions specified in section 47, a patent granted after the commencement of this Act shall confer upon the patentee —

- (a) where the patent is for an article or substance, the exclusive right by himself, his agents or licensees to make, use, exercise, sell or distribute such article or substance in India;
- (b) where a patent is for a method or process of manufacturing an article or substance, the exclusive right by himself, his agents or licensees to use or exercise the method or process in India.

49. — (1) Where a vessel or aircraft registered in a foreign country or a land vehicle owned by a person ordinarily resident in such country comes into India (including the territorial waters thereof) temporarily or accidentally only, the rights conferred by a patent for an invention shall not be deemed to be infringed by the use of the invention —

- (a) in the body of the vessel or in the machinery, tackle, apparatus or other accessories thereof, so far as the invention is used on board the vessel and for its actual needs only; or
- (b) in the construction or working of the aircraft or land vehicle or of the accessories thereof,

as the case may be.

(2) This section shall not extend to vessels, aircraft or land vehicles owned by persons ordinarily resident in a foreign country the laws of which do not confer corresponding rights with respect to the use of inventions in vessels, aircraft or land vehicles owned by persons ordinarily resident in India while in the ports or within the territorial waters of that foreign country or otherwise within the jurisdiction of its courts.

50. — (1) Where a patent is granted to two or more persons, each of those persons shall, unless an agreement to the contrary is in force, be entitled to an equal undivided share in the patent.

(2) Subject to the provisions contained in this section and in section 51, where two or more persons are registered as grantee or proprietor of a patent, then, unless an agreement to the contrary is in force, each of those persons shall be entitled, by himself or his agents, to make, use, exercise and sell the patented invention for his own benefit without accounting to the other person or persons.

(3) Subject to the provisions contained in this section and in section 51 and to any agreement for the time being in force, where two or more persons are registered as grantee or proprietor of a patent, then, a licence under the patent shall not be granted and a share in the patent shall not be assigned by one of such persons except with the consent of the other person or persons.

(4) Where a patented article is sold by one of two or more persons registered as grantee or proprietor of a patent, the purchaser and any person claiming through him shall be entitled to deal with the article in the same manner as if the article had been sold by a sole patentee.

(5) Subject to the provisions contained in this section, the rules of law applicable to the ownership and devolution of movable property generally shall apply in relation to patents; and nothing contained in sub-section (1) or sub-section (2) shall affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or their rights or obligations as such.

(6) Nothing in this section shall affect the rights of the assignees of a partial interest in a patent created before the commencement of this Act.

51. — (1) Where two or more persons are registered as grantee or proprietor of a patent, the Controller may, upon application made to him in the prescribed manner by any of those persons, give such directions in accordance with the application as to the sale or lease of the patent or any interest therein, the grant of licences under the patent, or the exercise of any right under section 50 in relation thereto, as he thinks fit.

(2) If any person registered as grantee or proprietor of a patent fails to execute any instrument or to do any other thing required for the carrying out of any direction given under this section within fourteen days after being requested in writing so to do by any of the other persons so registered, the Controller may, upon application made to him in the prescribed manner by any such other person, give directions

empowering any person to execute that instrument or to do that thing in the name and on behalf of the person in default.

(3) Before giving any directions in pursuance of an application under this section, the Controller shall give an opportunity to be heard —

(a) in the case of an application under sub-section (1), to the other person or persons registered as grantee or proprietor of the patent;

(b) in the case of an application under sub-section (2), to the person in default.

(4) No direction shall be given under this section so as to affect the mutual rights or obligations of trustees or of the legal representatives of a deceased person or of their rights or obligations as such, or which is inconsistent with the terms of any agreement between persons registered as grantee or proprietor of the patent.

52. — (1) Where a patent has been revoked on the ground that the patent was obtained wrongfully and in contravention of the rights of the petitioner or any person under or through whom he claims, or, where in a petition for revocation, the court, instead of revoking the patent, directs the complete specification to be amended by the exclusion of a claim or claims in consequence of a finding that the invention covered by such claim or claims had been obtained from the petitioner, the court may, by order passed in the same proceeding, permit the grant to the petitioner of the whole or such part of the invention which the court finds has been wrongfully obtained by the patentee, in lieu of the patent so revoked or is excluded by amendment.

(2) Where any such order is passed, the Controller shall, on request by the petitioner made in the prescribed manner grant to him —

(i) in cases where the court permits the whole of the patent to be granted, a new patent bearing the same date and number as the patent revoked;

(ii) in cases where the court permits a part only of the patent to be granted, a new patent for such part bearing the same date as the patent revoked and numbered in such manner as may be prescribed:

Provided that the Controller may, as a condition of such grant, require the petitioner to file a new and complete specification to the satisfaction of the Controller describing and claiming that part of the invention for which the patent is to be granted.

(3) No suit shall be brought for any infringement of a patent granted under this section committed before the actual date on which such patent was granted.

53. — (1) Subject to the provisions of this Act, the term of every patent granted under this Act shall —

(a) in respect of an invention claiming the method or process of manufacture of a substance, where the substance is intended for use, or is capable of being used, as food or as a medicine or drug, be five years from the date of sealing of the patent, or seven years from the date of the patent whichever period is shorter; and

(b) in respect of any other invention, be fourteen years from the date of the patent.

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

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

Chapter IX — Patents of addition

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

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

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

(4) A patent of addition shall not be sealed before the sealing of the patent for the main invention; and if the period within which, but for the provisions of this sub-section, a request for the sealing of a patent of addition could be made under section 43 expires before the period within which a request for the sealing of the patent for the main invention may be so made, the request for the sealing of the patent of addition may be made at any time within the last mentioned period.

55. — (1) A patent of addition shall be granted for a term equal to that of the patent for the main invention, or so much thereof as has not expired, and shall remain in force during that term or until the previous cesser of the patent for the main invention and no longer:

Provided that if the patent for the main invention is revoked under this Act, the court, or, as the case may be, the Controller, on request made to him by the patentee in the prescribed manner, may order that the patent of addition shall become an independent patent for the remainder of the term

for the patent for the main invention and thereupon the patent shall continue in force as an independent patent accordingly.

(2) No renewal fees shall be payable in respect of a patent of addition, but, if any such patent becomes an independent patent under sub-section (1), the same fees shall thereafter be payable, upon the same dates, as if the patent had been originally granted as an independent patent.

56. — (1) The grant of a patent of addition shall not be refused, and a patent granted as a patent of addition shall not be revoked or invalidated, on the ground only that the invention claimed in the complete specification does not involve any inventive step having regard to any publication or use of —

- (a) the main invention described in the complete specification relating thereto; or
- (b) any improvement in or modification of the main invention described in the complete specification of a patent of addition to the patent for the main invention or of an application for such a patent of addition,

and the validity of a patent of addition shall not be questioned on the ground that the invention ought to have been the subject of an independent patent.

(2) For the removal of doubts it is hereby declared that in determining the novelty of the invention claimed in the complete specification filed in pursuance of an application for a patent of addition regard shall be had also to the complete specification in which the main invention is described.

Chapter X — Amendment of applications and specifications

57. — (1) Subject to the provisions of section 59, the Controller may, upon application made under this section in the prescribed manner by an applicant for a patent or by a patentee, allow the application for the patent or the complete specification to be amended subject to such conditions, if any, as the Controller thinks fit:

Provided that the Controller shall not pass any order allowing or refusing an application to amend an application for a patent or a specification under this section while any suit before a court for the infringement of the patent or any proceeding before the High Court for the revocation of the patent is pending, whether the suit or proceeding commenced before or after the filing of the application to amend.

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

(3) Every application for leave to amend an application for a patent or a specification under this section made after the acceptance of the complete specification and the nature of the proposed amendment shall be advertised in the prescribed manner.

(4) Where an application is advertised under sub-section (3), any person interested may, within the prescribed period after the advertisement thereof, give notice to the Con-

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

(5) An amendment under this section of a complete specification may be, or include, an amendment of the priority date of a claim.

(6) The provisions of this section shall be without prejudice to the right of an applicant for a patent to amend his specification to comply with the directions of the Controller issued before the acceptance of the complete specification or in the course of proceedings in opposition to the grant of a patent.

58. — (1) In any proceeding before the High Court for the revocation of a patent, the High Court may, subject to the provisions contained in section 59, allow the patentee to amend his complete specification in such manner and subject to such terms as to costs, advertisement or otherwise, as the High Court may think fit, and if in any proceedings for revocation the High Court decides that the patent is invalid, it may allow the specification to be amended under this section instead of revoking the patent.

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

(3) Copies of all orders of the High Court allowing the patentee to amend the specification shall be transmitted by the High Court to the Controller, who shall on receipt thereof cause an entry thereof and reference thereto to be made in the register.

59. — (1) No amendment of an application for a patent or a complete specification shall be made except by way of disclaimer, correction or explanation, and no amendment thereof shall be allowed, except for the purpose of correcting an obvious mistake, and no amendment of a complete specification shall be allowed the effect of which would be that the specification as amended would claim or describe matter not in substance disclosed in the specification before the amendment, or that any claim of the specification as amended would not fall wholly within the scope of a claim of the specification before the amendment.

(2) Where after the date of advertisement of acceptance of a complete specification, any amendment of the specification is allowed by the Controller or by the High Court, —

- (a) the amendment shall for all purposes be deemed to form part of the specification;
- (b) the fact that the specification has been amended shall be advertised in the Official Gazette; and
- (c) the right of the applicant or patentee to make amendment shall not be called in question except on the ground of fraud.

(3) In construing the specification as amended, reference may be made to the specification as originally accepted.

Chapter XI — Restoration of lapsed patents

60. — (1) Where a patent has ceased to have effect by reason of failure to pay any renewal fee within the prescribed period or within that period as extended under sub-section (3) of section 53, the patentee or his legal representative, and where the patent was held by two or more persons jointly, then, with the leave of the Controller, one or more of them without joining the others, may, within one year from the date on which the patent ceased to have effect, make an application for the restoration of the patent.

(2) The provisions of sub-section (1) shall also apply to patents granted before the commencement of this Act, subject to the modification that for the reference to the prescribed period or to sub-section (3) of section 53, there shall be substituted a reference to the period prescribed therefor under the Indian Patents and Designs Act, 1911 or to sub-section (2) of section 14 of that Act.

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

61. — (1) If, after hearing the applicant in cases where the applicant so desires or the Controller thinks fit, the Controller is *prima facie* satisfied that the failure to pay the renewal fee was unintentional and that there has been no undue delay in the making of the application, he shall advertise the application in the prescribed manner; and within the prescribed period any person interested may give notice to the Controller of opposition thereto on either or both of the following grounds, that is to say, —

- (a) that the failure to pay the renewal fee was not unintentional; or
- (b) that there has been undue delay in the making of the application.

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

(3) If no notice of opposition is given within the period aforesaid or if in the case of opposition, the decision of the Controller is in favour of the applicant, the Controller shall, upon payment of any unpaid renewal fee and such additional fee as may be prescribed, restore the patent and any patent of addition specified in the application which has ceased to have effect on the cesser of that patent.

(4) The Controller may, if he thinks fit as a condition of restoring the patent, require that an entry shall be made in the register of any document or matter which, under the provisions of this Act, has to be entered in the register but which has not been so entered.

62. — (1) Where a patent is restored, the rights of the patentee shall be subject to such provisions as may be prescribed and to such other provisions as the Controller thinks fit to impose for the protection or compensation of persons who may have begun to avail themselves of, or have taken

definite steps by contract or otherwise to avail themselves of, the patented invention between the date when the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent under this Chapter.

(2) No suit or other proceeding shall be commenced or prosecuted in respect of an infringement of a patent committed between the date on which the patent ceased to have effect and the date of the advertisement of the application for restoration of the patent.

Chapter XII — Surrender and revocation of patents

63. — (1) A patentee may, at any time by giving notice in the prescribed manner to the Controller, offer to surrender his patent.

(2) Where such an offer is made, the Controller shall advertise the offer in the prescribed manner, and also notify every person other than the patentee whose name appears in the register as having an interest in the patent.

(3) Any person interested may, within the prescribed period after such advertisement, give notice to the Controller of opposition to the surrender, and where any such notice is given the Controller shall notify the patentee.

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

64. — (1) Subject to the provisions contained in this Act, a patent, whether granted before or after the commencement of this Act, may, on the petition of any person interested or of the Central Government or on a counter-claim in a suit for infringement of the patent, be revoked by the High Court on any of the following grounds, that is to say —

(a) that the invention, so far as claimed in any claim of the complete specification, was claimed in a valid claim of earlier priority date contained in the complete specification of another patent granted in India;

(b) that the patent was granted on the application of a person not entitled under the provisions of this Act to apply therefor:

Provided that a patent granted under the Indian Patents and Designs Act, 1911 shall not be revoked on the ground that the applicant was the communicatee or the importer of the invention in India and therefore not entitled to make an application for the grant of a patent under this Act;

(c) that the patent was obtained wrongfully in contravention of the rights of the petitioner or any person under or through whom he claims;

(d) that the subject of any claim of the complete specification is not an invention within the meaning of this Act;

(e) that the invention so far as claimed in any claim of the complete specification is not new, having regard to what was publicly known or publicly used in India before the priority date of the claim or to what was published in India or elsewhere in any of the documents referred to in section 13:

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911, this clause shall have effect as if the words "or elsewhere" had been omitted;

(f) that the invention so far as claimed in any claim of the complete specification is obvious or does not involve any inventive step, having regard to what was publicly known or publicly used in India or what was published in India or elsewhere before the priority date of the claim:

Provided that in relation to patents granted under the Indian Patents and Designs Act, 1911, this clause shall have effect as if the words "or elsewhere" had been omitted;

(g) that the invention, so far as claimed in any claim of the complete specification, is not useful;

(h) that the complete specification does not sufficiently and fairly describe the invention and the method by which it is to be performed, that is to say, that the description of the method or the instructions for the working of the invention as contained in the complete specification are not by themselves sufficient to enable a person in India possessing average skill in, and average knowledge of, the art to which the invention relates, to work the invention, or that it does not disclose the best method of performing it which was known to the applicant for the patent and for which he was entitled to claim protection;

(i) that the scope of any claim of the complete specification is not sufficiently and clearly defined or that any claim of the complete specification is not fairly based on the matter disclosed in the specification;

(j) that the patent was obtained on a false suggestion or representation;

(k) that the subject of any claim of the complete specification is not patentable under this Act;

(l) that the invention so far as claimed in any claim of the complete specification was secretly used in India, otherwise than as mentioned in sub-section (3), before the priority date of the claim;

(m) that the applicant for the patent has failed to disclose to the Controller the information required by section 8 or has furnished information which in any material particular was false to his knowledge;

(n) that the applicant contravened any direction for secrecy passed under section 35 or made or caused to be made an application for the grant of a patent outside India in contravention of section 39;

(o) that leave to amend the complete specification under section 57 or section 58 was obtained by fraud.

(2) For the purposes of clauses (e) and (f) of sub-section (1), —

(a) no account shall be taken of secret use; and

(b) where the patent is for a process or for a product as made by a process described or claimed, the importation into India of the product made abroad by that process shall constitute knowledge or use in India of the inven-

tion on the date of the importation, except where such importation has been for the purpose of reasonable trial or experiment only.

(3) For the purpose of clause (1) of sub-section (1), no account shall be taken of any use of the invention —

- (a) for the purpose of reasonable trial or experiment only; or
- (b) by the Government or by any person authorised by the Government or by a Government undertaking, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention directly or indirectly to the Government or person authorised as aforesaid or to the Government undertaking; or
- (c) by any other person, in consequence of the applicant for the patent or any person from whom he derives title having communicated or disclosed the invention, and without the consent or acquiescence of the applicant or of any person from whom he derives title.

(4) Without prejudice to the provisions contained in sub-section (1), a patent may be revoked by the High Court on the petition of the Central Government, if the High Court is satisfied that the patentee has without reasonable cause failed to comply with the request of the Central Government to make, use or exercise the patented invention for the purposes of Government within the meaning of section 99 upon reasonable terms.

(5) A notice of any petition for revocation of a patent under this section shall be served on all persons appearing from the register to be proprietors of that patent or to have shares or interests therein and it shall not be necessary to serve a notice on any other person.

65. — (1) Where at any time after acceptance of a complete specification, the Central Government is satisfied that an application for a patent or a patent is for an invention relating to atomic energy for which no patent can be granted under sub-section (1) of section 20 of the Atomic Energy Act, 1962, it may direct the Controller to refuse to proceed further with the application or to revoke the patent, as the case may be, and thereupon the Controller, after giving notice to the applicant or, as the case may be, to the patentee and every other person whose name has been entered in the register as having an interest in the patent, and after giving them an opportunity of being heard, may refuse to proceed further with the application or may revoke the patent.

(2) In any proceedings under sub-section (1), the Controller may allow the applicant for the patent or the patentee to amend the complete specification in such manner as he considers necessary instead of refusing to proceed with the application or revoking the patent.

66. — Where the Central Government is of opinion that a patent or the mode in which it is exercised is mischievous to the State or generally prejudicial to the public, it may, after giving the patentee an opportunity to be heard, make a declaration to that effect in the Official Gazette and thereupon the patent shall be deemed to be revoked.

Chapter XIII — Register of patents

67. — (1) There shall be kept at the patent office a register of patents, wherein shall be entered —

- (a) the names and addresses of grantees of patents;
- (b) notifications of assignments and of transmissions of patents, of licences under patents, and of amendments, extensions, and revocations of patents; and
- (c) particulars of such other matters affecting the validity or proprietorship of patents as may be prescribed.

(2) No notice of any trust, whether express, implied or constructive, shall be entered in the register, and the Controller shall not be affected by any such notice.

(3) Subject to the superintendence and direction of the Central Government, the register shall be kept under the control and management of the Controller.

(4) For the removal of doubts, it is hereby declared that the register of patents existing at the commencement of this Act shall be incorporated in, and form part of, the register under this Act.

68. — An assignment of a patent or of a share in a patent, a mortgage, licence or the creation of any other interest in a patent shall not be valid unless the same were in writing and the agreement between the parties concerned is reduced to the form of a document embodying all the terms and conditions governing their rights and obligations and the application for registration of such document is filed in the prescribed manner with the Controller within six months from the commencement of this Act or the execution of the document, whichever is later or within such further period not exceeding six months in the aggregate as the Controller on application made in the prescribed manner allows:

Provided that the document shall, when registered, have effect from the date of its execution.

69. — (1) Where any person becomes entitled by assignment, transmission or operation of law to a patent or to a share in a patent or becomes entitled as a mortgagee, licensee or otherwise to any other interest in a patent, he shall apply in writing in the prescribed manner to the Controller for the registration of his title or, as the case may be, of notice of his interest in the register.

(2) Without prejudice to the provisions of sub-section (1), an application for the registration of the title of any person becoming entitled by assignment to a patent or a share in a patent or becoming entitled by virtue of a mortgage, licence or other instrument to any other interest in a patent may be made in the prescribed manner by the assignor, mortgagor, licensor or other party to that instrument, as the case may be.

(3) Where an application is made under this section for the registration of the title of any person the Controller shall, upon proof of title to his satisfaction, —

- (a) where that person is entitled to a patent or a share in a patent, register him in the register as proprietor or co-proprietor of the patent, and enter in the register particulars of the instrument or event by which he derives title; or

(b) where that person is entitled to any other interest in the patent, enter in the register notice of his interest, with particulars of the instrument, if any, creating it:

Provided that if there is any dispute between the parties whether the assignment, mortgage, licence, transmission, operation of law or any other such transaction has validly vested in such person a title to the patent or any share or interest therein, the Controller may refuse to take any action under clause (a) or, as the case may be, under clause (b), until the rights of the parties have been determined by a competent court.

(4) There shall be supplied to the Controller in the prescribed manner for being filed in the patent office copies of all agreements, licences and other documents affecting the title to any patent or any licence thereunder authenticated in the prescribed manner and also such other documents as may be prescribed relevant to the subject-matter:

Provided that in the case of a licence granted under a patent, the Controller shall, if so requested by the patentee or licensee, take steps for securing that the terms of the licence are not disclosed to any person except under the order of a court.

(5) Except for the purposes of an application under sub-section (1) or of an application to rectify the register, a document in respect of which no entry has been made in the register under sub-section (3) shall not be admitted by the Controller or by any court as evidence of the title of any person to a patent or to a share or interest therein unless the Controller or the court, for reasons to be recorded in writing, otherwise directs.

70. — Subject to the provisions contained in this Act relating to co-ownership of patents and subject also to any rights vested in any other person of which notice is entered in the register, the person or persons registered as grantee or proprietor of a patent shall have power to assign, grant licences under, or otherwise deal with, the patent and to give effectual receipts for any consideration for any such assignment, licence or dealing:

Provided that any equities in respect of the patent may be enforced in like manner as in respect of any other movable property.

71. — (1) The High Court may, on the application of any person aggrieved —

(a) by the absence or omission from the register of any entry; or
 (b) by any entry made in the register without sufficient cause; or
 (c) by any entry wrongly remaining on the register; or
 (d) by any error or defect in any entry in the register,
 make such order for the making, variation or deletion, of any entry therein as it may think fit.

(2) In any proceeding under this section the High Court may decide any question that may be necessary or expedient to decide in connection with the rectification of the register.

(3) Notice of any application to the High Court under this section shall be given in the prescribed manner to the Control-

ler who shall be entitled to appear and be heard on the application, and shall appear if so directed by the court.

(4) Any order of the High Court under this section rectifying the register shall direct that notice of the rectification shall be served upon the Controller in the prescribed manner who shall upon receipt of such notice rectify the register accordingly.

72. — (1) Subject to the provisions contained in this Act and any rules made thereunder, the register shall at all convenient times be open to inspection by the public; and certified copies, sealed with the seal of the patent office, of any entry in the register shall be given to any person requiring them on payment of the prescribed fee.

(2) The register shall be *prima facie* evidence of any matters required or authorised by or under this Act to be entered therein.

(To be continued)

ITALY

Decrees concerning the Temporary Protection of Industrial Property Rights at Exhibitions

(of July, August and September 1972) *

Sole Section

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

XXXVI° *Salone internazionale delle calzature, del cuoio, delle macchine e degli affini* — IV° MICAM (Milan, September 8 to 11, 1972);

XXV° *Fiera di Bolzano* — *Campionaria internazionale* (Bolzano, September 16 to 25, 1972);

IV° *Salone internazionale delle attività zootecniche* — EUROCARNE (Verona, October 4 to 8, 1972);

II° *Fiera Agricola dell'Arco Alpino* (Bolzano, October 20 to 23, 1972);

XVI° SINCAS — *Salone internazionale campeggio sport* and XII° *Salone internazionale rimorchio campeggio* (Busto Arsizio (Varese), October 28 to 30, 1972);

XXXII° *Mercato internazionale del tessile per l'abbigliamento* — MITAM (Milan, November 1 to 3, 1972);

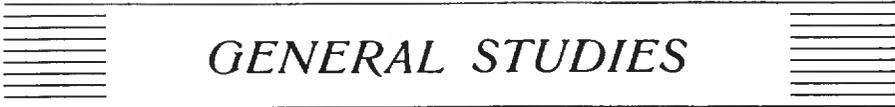
III° *Mostra nazionale dei vini e liquori BIBE* and IX° *Mostra internazionale delle attrezzature alberghiere e turistiche* — TECHHOTEL (Genoa, October 28 to November 5, 1972);

XII° *Salone nautico internazionale* (Genoa, December 1 to 10, 1972)

shall enjoy the temporary protection established by the decrees mentioned in the preamble¹.

* Official communications from the Italian Administration.

¹ Royal Decrees No. 1127 of June 29, 1939, No. 1411 of August 25, 1940, No. 929 of June 21, 1942 and Law No. 514 of July 1, 1959. (See *La Propriété industrielle* 1939, p. 124; 1940, pp. 84 and 196; 1942, p. 168; 1960, p. 23.)



GENERAL STUDIES

The European Patent in 1972

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

By J. B. van BENTHEM *

**Exhaustion of Exclusive Patent Rights and Free
Movement of Goods within the Common Market**

By Ulrich SCHATZ *



NEWS ITEMS

COLOMBIA

Head of the Industrial Property Division

We have been informed that Mrs. María Eugenia Orozco de Correa has been appointed Head of the Industrial Property Division in the Ministry of Economic Development.

We take this opportunity of congratulating Dr. Orozco de Correa on her appointment.

Meetings of Other International Organizations concerned with Intellectual Property

December 11 to 15, 1972 (The Hague) — International Patent Institute — Administrative Council

February 13 to 23, 1973 (Brussels) — European Economic Community — “Community Patent” Working Party

May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress

September 10 to October 6, 1973 (Munich) — Diplomatic Conference on a European Patent Convention

September 24 to 28, 1973 (Budapest) — International Association for the Protection of Industrial Property — Symposium

October 28 to November 3, 1973 (Jerusalem) — International Writers Guild — Congress

VACANCY IN WIPO

Competition No. 198

Counsellor

(or “Legal Assistant” *)

Legislation and Regional Agreements Section (Industrial Property Division)

Category and grade: P.4/P.3, according to qualifications and experience of the selected candidate.

Principal duties:

The incumbent will assist the Head of the Legislation and Regional Agreements Section in carrying out the duties which fall under the competence of the above-mentioned Section. In particular, he will have the following duties:

- (a) preparing drafts of industrial property model laws and regulations for developing countries and commentaries thereon (including all preparatory documents for meetings of expert committees); acting as assistant secretary in WIPO meetings dealing with these matters;
- (b) undertaking studies on questions relating to regional industrial property agreements;
- (c) undertaking studies on particular aspects of industrial property protection, such as license agreements, know-how and trade secrets, as well as studies concerning the role of industrial property in developing countries;
- (d) representing WIPO in meetings of other international organizations dealing with the questions referred to under (a) through (c).

Qualifications required **:

- (a) University degree in law or qualifications equivalent to such a degree;

* Title applicable if appointment at P.3 level.

** The full range of these qualifications corresponds to an appointment at the P. 4 level.

- (b) wide experience in industrial property law (including its international aspects); thorough knowledge of at least one national law in this field;
- (c) ability to undertake legal studies involving critical analysis and to draft legislative texts (i. e. model laws);
- (d) ability to act as a representative of WIPO in specialized meetings related to the above-mentioned duties;
- (e) excellent knowledge of English; at least a good knowledge of French; knowledge of other major languages would be an advantage.

Nationality:

Candidates must be nationals of one of the Member States of WIPO or of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no national is on the staff of WIPO.

Type of appointment:

Probationary period of two years, after satisfactory completion of which a permanent appointment will be offered.

Age limit:

Candidates must be under fifty at date of appointment.

Date of entry on duty:

To be agreed.

Applications:

Application forms and full information regarding the conditions of employment may be obtained from the Head of the Administrative Division, WIPO, 32, chemin des Colomnettes, 1211 Geneva, Switzerland. Please refer to the number of the competition.

Closing date: January 31, 1973.