

Industrial Property

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ORGANIZATION (WIPO)

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WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO Convention

I. Ratifications

BELGIUM

The Government of Belgium deposited on October 31, 1974, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization (WIPO).

Belgium has fulfilled the conditions set forth in Article 14(2) of the WIPO Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety and the Stockholm Act of the Berne Convention with the declaration provided for in Article 28(1)(b)(i) of the said Act to the effect that the ratification shall not apply to Articles 1 to 21 and to the Protocol Regarding Developing Countries.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Belgium on January 31, 1975.

WIPO Notification No. 61, of November 12, 1974.

ZAIRE

The Government of Zaire deposited on October 28, 1974, its instrument of ratification of the WIPO Convention.

Zaire has fulfilled the conditions set forth in Article 14(2) of the WIPO Convention by concurrently acceding to the

Stockholm Act (1967) of the Paris Convention and to the Paris Act (1971) of the Berne Convention, as provided for in Article 29^{bis} of that Act.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Zaire on January 28, 1975.

WIPO Notification No. 59, of October 31, 1974.

II. Application of the Transitional Provisions (Five-Year Privilege)

REPUBLIC OF VIET-NAM

The Government of the Republic of Viet-Nam has notified its desire to avail itself of the provisions of Article 21(2) of the WIPO Convention.

This notification entered into force on the date of its receipt, that is, on October 30, 1974.

Pursuant to the said article, the Republic of Viet-Nam, which is a member of the Paris Union but has not yet become party to the WIPO Convention, may, until the expiration of five years from the date of entry into force of the WIPO Convention, that is to say until April 26, 1975, exercise the same rights as if it had become party.

WIPO Notification No. 60, of November 5, 1974.

INTERNATIONAL UNIONS

Paris Convention

I. Ratification of the Stockholm Act

BELGIUM

The Government of Belgium deposited on October 31, 1974, its instrument of ratification of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Stockholm on July 14, 1967.

Pursuant to the provisions of Article 20(2)(c) and (3), the Stockholm Act of the Paris Convention will enter into force with respect to Belgium on February 12, 1975.

Paris Notification No. 53, of November 12, 1974.

II. Accession to the Stockholm Act

ZAIRE

The Government of Zaire deposited on October 28, 1974, its instrument of accession to the Paris Convention, as revised at Stockholm on July 14, 1967.

Concurrently with depositing the instrument of accession, Zaire indicated, pursuant to Article 16(4)(b), that it wished to belong to Class VI.

Pursuant to the provisions of Article 21(3), the Stockholm Act of the Paris Convention will enter into force with respect to Zaire on January 31, 1975.

Paris Notification No. 52, of October 31, 1974.

Madrid Agreement (Marks)

Ratification of the Stockholm Act

BELGIUM

The Government of Belgium deposited on October 31, 1974, its instrument of ratification of the Madrid Agreement Concerning the International Registration of Marks of April 14, 1891, as revised at Stockholm on July 14, 1967.

Pursuant to the provisions of Article 14(4)(b), the Stockholm Act of the Madrid Agreement will enter into force with respect to Belgium on February 12, 1975.

Madrid (Marks) Notification No. 22, of November 12, 1974.

Nice Agreement

Ratification of the Stockholm Act

BELGIUM

The Government of Belgium deposited on October 31, 1974, its instrument of ratification of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967.

Pursuant to the provisions of Article 9(4)(b), the Stockholm Act of the Nice Agreement will enter into force with respect to Belgium on February 12, 1975.

Nice Notification No. 28, of November 12, 1974.

Strasbourg Agreement

Accession

AUSTRALIA

The Government of Australia deposited on November 7, 1974, its instrument of accession, for and on behalf of Australia, to the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971.

Pursuant to the provisions of Article 4(4)(i) of the Agreement, the said instrument of accession was accompanied by the following declaration:

"The Government of Australia furthermore declares for and on behalf of Australia that it does not undertake to include the symbols relating to groups or subgroups of the Classification in applications as referred to in Article 4(3) which are only laid open for public inspection and in notices relating thereto." (Original)

Pursuant to the provisions of Article 13(1)(b), the Strasbourg Agreement will enter into force with respect to Australia on November 12, 1975.

Strasbourg Notification No. 19, of November 12, 1974.

WIPO MEETINGS

Paris Union

Working Group on Scientific Discoveries

Second Session

(Geneva, October 2 to 4, 1974)

Note*

Pursuant to a decision of the Assembly of the Paris Union, the Working Group on Scientific Discoveries met in Geneva for the second time from October 2 to 4, 1974¹, under the chairmanship of Mr. J. F. da Costa (Brazil).

* This Note has been prepared by the International Bureau.

¹ For a Note on the first session of the Working Group, see *Industrial Property*, 1973, p. 373.

The Working Group had been convened to study questions relating to a system of international recordal of scientific discoveries. Twenty-six States, one intergovernmental organization and two non-governmental organizations were represented.

The list of participants appears at the end of this Note.

The Working Group's discussions were based on a questionnaire prepared by the International Bureau on the international recordal of scientific discoveries, and on replies to that questionnaire received from certain States. With regard to the usefulness of a system of international recordal of scientific discoveries, the opinions of the members of the Working Group were divided: some were in favor of such a system; others expressed doubts as to the usefulness of a system of

international recordal, considering that the current practice in that field, based on a system of publication in specialized journals, was satisfactory. It was in any event emphasized by certain experts that, for developing countries, the purpose of a system of international recordal of scientific discoveries should be to enable the divulgation of information on such discoveries.

The Working Group then examined the technical aspects of a possible system of international recordal of scientific discoveries. In particular it examined questions relating to the definition of a scientific discovery, the examination of scientific discoveries, the legal consequences of international recordal, administrative procedure and the legal framework for a system of international recordal. Unanimity or a large majority was reached on many of these questions, notably with respect to the usefulness of a definition for a scientific discovery and the absence of any obligation to recognize the legal effects deriving from an international recordal.

The Working Group decided that, at its next session, in 1975, the necessity and the usefulness of setting up a system of international recordal of scientific discoveries should be studied. As the basis for such a study, the International Bureau should prepare a report showing the ways in which the system of international recordal of scientific discoveries could be implemented, and containing detailed information on the financial implications of such a system, both for the International Bureau and for the users.

List of Participants*

I. Countries

Australia: K. B. Petersson. Austria: J. Fichte. Belgium: P. Peetermans; R. Philippart de Foy. Brazil: J. F. da Costa; A. Gurgel de Alencar. Byelorussian SSR: N. I. Androsovitich. Canada: J. H. A. Gariépy. Cuba: J. M. Rodríguez Padilla. Czechoslovakia: V. Vaniš; A. Ringl. Finland: B. Norring. France: S. G. Bindel. German Democratic Republic: D. Schack. Germany (Federal Republic of): R. von Schlensner (Mrs.). Hungary: E. Tasnádi; G. Pálos. Italy: N. Faiel Dattilo. Japan: K. Otani. Kenya: D. J. Coward. Mexico: G. E. Larrea Richerand; V. C. García Moreno. Nigeria: O. Johnson (Mrs.); I. A. Owoyele. Poland: H. Wasilewska (Mrs.). Portugal: J. Mota Maia. Soviet Union: E. Artemiev; V. F. Zubarev; V. N. Roslov; A. Zaitsev. Spain: J. Escudero Durán; S. Jessel (Mrs.). Switzerland: J. Mirimanoff-Chilikine; Ch. Peter. Uganda: J. H. Ntahgoha. United Kingdom: J. J. D. Ashdown. United States of America: H. Winter; H. D. Hoinkes.

II. Intergovernmental Organization

United Nations (UN): F. Brnsick.

III. Non-Governmental Organizations

International Association for the Protection of Industrial Property (AIPPI): E. Pitrovranov. International Confederation of Professional and Intellectual Workers (CITI): M. Guiton.

IV. Officers

Chairman: J. F. da Costa (Brazil); Vice-Chairmen: S. G. Bindel (France); E. Artemiev (Soviet Union); Secretary: L. Baeumer (WIPO).

V. WIPO

A. Bogsch (Director General); L. Baeumer (Counsellor, Head, Legislation and Regional Agreements Section, Industrial Property Division); A.-B. Kecherid (Legal Officer, Legislation and Regional Agreements Section).

Hague Union

Committee of Experts for the Revision of the Hague Agreement

First Session

(Geneva, September 30 and October 1, 1974)

Note*

Pursuant to a decision taken in June 1974 by the Coordination Committee of WIPO, the Director General of WIPO convened a Committee of Experts for the Revision of the Hague Agreement Concerning the International Deposit of Industrial Designs. The Committee met in Geneva on September 30 and October 1, 1974.

The following States, members of the Hague Union, were represented: Belgium, Egypt, France, Germany (Federal Republic of), Liechtenstein, Netherlands, Spain, Switzerland (8). Italy, which is not a member of the Hague Union, was represented in an observer capacity.

The list of participants follows this Note.

The Committee elected Mr. P. Braendli (Switzerland) Chairman and Mrs. E. Steup (Federal Republic of Germany) and Mr. J. Escudero Durán (Spain) Vice-Chairmen. Mr. L. Baeumer (WIPO) acted as Secretary of the Committee.

The task of the Committee was to study measures which could be taken in view of the denunciation of the Hague Agreement by Belgium and the Netherlands. The reason for the denunciation by these two States is the incompatibility of the new industrial designs law of the Benelux countries with the 1934 Act of the Hague Agreement. The new law is, however, compatible with the 1960 Act of the Hague Agreement.

After a thorough discussion, the Committee came to the conclusion that the International Bureau should prepare a draft protocol to the Hague Agreement whose purpose would be to enable States which are not bound by the 1934 Act, but which are able to accept the procedure provided for by the 1960 Act, to become members of the Hague Union without waiting for the entry into force of the 1960 Act and thus to participate in the system for the international deposit of industrial designs. The protocol should be open to any member State of the Paris Union for the Protection of Industrial Property; it should enter into force following ratification or accession by four States of which one is bound by the 1934 Act.

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

* This Note has been prepared by the International Bureau.

The draft protocol which will be prepared by the International Bureau as well as the questions relating to the procedure for signature and adoption will be examined at the Committee's second session, to take place in 1975.

List of Participants*

I. Member States

Belgium: P. Peetermans. Egypt: A. M. Khalil. France: M. Bierry. Germany (Federal Republic of): E. Steup (Mrs.); R. von Schleussner (Mrs.). Liechtenstein: F. de Gerliczy-Burian. Netherlands: W. M. J. C. Phaf; E. van Weel. Spain: J. Escudero Durán; S. Jessel Picoury (Mrs.). Switzerland: P. Braendli.

II. Observer State

Italy: N. Fael Dattilo; M. Vitali (Miss).

III. Officers

Chairman: P. Braendli (Switzerland); Vice-Chairmen: E. Steup (Mrs.) (Germany, Federal Republic of); J. Escudero Durán (Spain); Secretary: L. Baeumer (WIPO).

IV. WIPO

A. Bogsch (Director General); K. Pfanner (Deputy Director General); L. Egger (Counsellor, Head, International Registrations Division); L. Baeumer (Counsellor, Head, Legislation and Regional Agreements Section, Industrial Property Division); G. R. Wipf (Counsellor, Head, General and Periodicals Section, Industrial Property Division); F. Curchod (Legal Officer, General and Periodicals Section).

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

Patent Cooperation Treaty

Interim Advisory Committee for Administrative Questions

Working Group on Forms

First Session

(Geneva, September 9 to 13, 1974)

Note*

The Working Group on Forms, which was established following a decision taken by the PCT Interim Advisory Committee for Administrative Questions at its fourth session, in October 1973¹, held its first session at the headquarters of WIPO, under the chairmanship of Mr. W. A. Smith III, of the United States Patent Office.

Thirteen countries were represented at the session. In addition, two intergovernmental organizations — IIB and UNCTAD — and two non-governmental organizations were represented.

The list of participants appears at the end of this Note.

* This Note has been prepared by the International Bureau.

¹ See *Industrial Property*, 1973, p. 325.

The Working Group examined the content and layout of the draft forms intended for the use of the PCT International Authorities in dealing with communications which may arise under the PCT procedure. On the basis of the proposals made by the Working Group, the International Bureau of WIPO will prepare a revised version of the draft forms.

With respect to explanatory notes, such as those contained in the draft forms discussed, a substantial majority of the participants expressed the view that they were useful in connection with all forms to be used for communications to the applicant.

With regard to the forms for communications between the International Authorities, the majority of the participants expressed the view that no notes were needed in these cases, since the staff of the International Authorities could be expected to be familiar with the relevant provisions of the PCT. One representative pointed out, however, that even in these cases a reference to the relevant provision would be useful.

As to the mandatory or optional use of the forms, it was agreed that no discussion was called for in respect of the Request form, the International Search Report form, the Demand form or the International Preliminary Examination Report form, and it was understood that the four forms mentioned, as eventually adopted, would be mandatory both as to contents and as to layout.

With respect to all the other forms, no agreement could be reached at this time as to their mandatory or optional character. In order to prepare in due course a more detailed review of the question, the Working Group proposed that the Interim Committee should consider the possibility of requesting the International Bureau to conduct a survey among member States of the Interim Committee, and the IIB, on the question of mandatory or optional use of the forms.

As far as applicants' reply letters were concerned, it was generally agreed by the Working Group that such correspondence could easily be carried out according to existing practice and that no forms were needed.

List of Participants*

I. States

Cameroon: J. M. Happy-Tchankou. Canada: D. V. Cummings. France: G. M. Guilhemotonia (Mrs.). Germany (Federal Republic of): K.-H. Hofmann; U. C. Hallmann. Iran: B. Esfandiary. Japan: Y. Hashimoto. Norway: O. Os. Philippines: C. V. Espejo. Soviet Union: Y. Buryak; M. Plakhoutine. Sweden: B. Sandberg (Mrs.). Switzerland: M. Leuthold. United Kingdom: A. F. C. Miller; A. R. Summers. United States of America: W. A. Smith III; L. O. Maassel; M. E. Turowski (Mrs.).

II. Intergovernmental Organizations

United Nations Conference on Trade and Development (UNCTAD): F. P. Fiallo. International Patent Institute (IIB): R. Weber; A. J. Kirscht.

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

III. Non-Governmental Organizations

International Federation of Inventors Associations (IFIA): K. Lerstrup; K. E. Sundström. Union of Industries of the European Community (UNICE): M. Meunier.

IV. Officers

Chairman: W. A. Smith III (United States of America); *Vice-Chairmen:* Y. Buryak (Soviet Union); Y. Hashimoto (Japan); *Secretary:* P. Claus (WIPO).

V. WIPO

K. Pfanner (*Director, Industrial Property Division*); P. Claus (*Technical Counsellor, Acting Head, PCT Section, Industrial Property Division*); N. Scherrer (*Counsellor, PCT Section*); Y. Gyrdaymov (*Technical Officer, PCT Section*); J. Kohnen (*Legal Officer, PCT Section*); F. Iizuka (*Consultant*).

ICIREPAT

Plenary Committee

Sixth Session

(Geneva, September 18 to 20, 1974)

Note *

The Plenary Committee of the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) held its sixth ordinary session in Geneva from September 18 to 20, 1974¹. The session was chaired by Mr. E. Armitage, C. B., Comptroller-General of the United Kingdom Patent Office.

The list of participants appears at the end of this Note.

Election of a Chairman and a Vice-Chairman. The Plenary Committee unanimously elected Mr. C. Marshall Dann, Commissioner of Patents, United States Patent Office, as Chairman, and re-elected Mr. E. Armitage, C. B., Comptroller-General of the United Kingdom Patent Office, as Vice-Chairman of the Plenary Committee for three-year terms beginning on January 1, 1975.

Past and Current ICIREPAT Activities. The Plenary Committee noted the general report of the International Bureau on the activities of ICIREPAT during the preceding year as well as reports on the activities of the Technical Committees and on the status of ICIREPAT search systems.

The Plenary Committee adopted several recommendations approved by the Technical Coordination Committee, including a revised version of the Standard Procedure for Correcting Packs of 80-column Cards (SI. 5), an amendment to Standard ST. 7/A "8-up Aperture Card Microform," a Recommendation for a Standard Method of Identifying Roll Microfilm Files of Patent and Patent-related Documents and, provisionally,

an amended version of the Standard Recording of Int. Cl. Symbols on Machine-Readable Records (ST. 8).

The Role of ICIREPAT in Relation to INPADOC. The Plenary Committee considered the question of ICIREPAT in relation to INPADOC and agreed that any technical problems of general interest connected with INPADOC activities and proper to ICIREPAT's task, broadly construed, should be submitted for possible action to the appropriate bodies of ICIREPAT. Matters concerning contractual obligations between INPADOC and the country concerned would, however, continue to be handled on a bilateral basis.

Program for 1975. The Plenary Committee finalized a draft program for 1975 for submission to the Executive Committee of the Paris Union, which the latter established without change as the ICIREPAT Program for 1975.

Admission of Observers to Meetings of ICIREPAT Bodies. The Plenary Committee decided to admit the Commission of the European Communities as an observer to meetings of all ICIREPAT bodies. It was furthermore decided to grant the International Federation for Documentation (The Hague) and the Patent Documentation Group (Basle) a limited observer status in ICIREPAT bodies.

List of Participants *

I. States

Austria: K. Springer. Canada: F. Simons. Cuba: J. M. Rodríguez Padilla; H. Rivero. Czechoslovakia: M. Fortová. Denmark: A. Morsing. Finland: P. Salmi. France: D. Cuvelot; M. Verderosa. German Democratic Republic: H. Konrad. Germany (Federal Republic of): A. Wittmann. Ireland: P. Slavin. Japan: Y. Hashimoto. Norway: E. O. Kjeldsen; K. A. Hansen. Romania: S. Florica. Soviet Union: E. I. Artemiev; V. F. Zubarev; V. N. Roslov; A. S. Zaitsev. Sweden: G. Borggård; L. J. Björklund. Switzerland: J.-L. Comte. United Kingdom: E. Armitage; D. G. Gay. United States of America: R. Tegtmeyer; M. Kirk; R. A. Spencer.

II. Organization

International Patent Institute (IIB): J. A. H. van Voorthuizen; A. Vandecasteele.

III. Chairmen of Technical Committees

Chairman of the Technical Coordination Committee: G. Borggård; *Chairman of the Technical Committee for Search Systems:* D. G. Gay; *Chairman of the Technical Committee for Standardization:* A. Wittmann.

IV. Officers

Vice-Chairman (and Acting Chairman): E. Armitage (United Kingdom); *Secretary:* P. Claus (WIPO).

V. WIPO

A. Bogsch (*Director General*); K. Pfanner (*Director, Industrial Property Division*); P. H. Claus (*Technical Counsellor, Head, ICIREPAT Section, Industrial Property Division*); K. J. Dood (*Technical Counsellor, ICIREPAT Section*); D. Bouchez (*Technical Officer, ICIREPAT Section*).

* This Note has been prepared by the International Bureau.

¹ For a Note on the fifth ordinary session of the Plenary Committee, see *Industrial Property*, 1973, p. 374.

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

Group of Governmental Consultants on Industrial Property Statistics

(Geneva, July 8 to 10, 1974)

Note *

Pursuant to a decision taken in 1972 by the competent organs of WIPO, concerning the improvement of the industrial property statistics published annually by the International Bureau, a meeting of a Group of Governmental Consultants (hereinafter referred to as "the Group") took place in Geneva from July 8 to 10, 1974. Invitations to the meeting had been sent to all Industrial Property Offices which had received in 1972 more than 10,000 applications for patents, inventors' certificates and trademark registrations.

Five Industrial Property Offices were represented by consultants and four intergovernmental organizations and the International Patent Documentation Center (INPADOC) were represented by observers at the meeting.

The list of participants follows this Note.

The Group elected Mr. M. Leuthold (Switzerland) Chairman and Mr. G. Vial (France) and Mrs. I. Vedernicova (Soviet Union) Vice-Chairmen. Mr. L. Baeumer (WIPO) acted as Secretary of the Group.

The Group's discussions were essentially based on a document prepared by the International Bureau containing an outline of possibilities of improving the questionnaires relating to the statistics which are sent to Industrial Property Offices; on first drafts of new questionnaires; and on written observations concerning the document mentioned above, made by the Industrial Property and Copyright Department of the United Kingdom, by the Government of the United States of America and by the Patent Office of the Netherlands.

Patent Applications Filed. The Group studied the possibilities of improving the questionnaires, concentrating on the problems found in the questionnaires relating to patents, its conclusions in this respect being applicable *mutatis mutandis* to the other forms of industrial property. On the actual contents of the questionnaires, the Group considered that it would be useful if the various stages of the procedure could be treated separately: filing of applications, grant of patents, publication of patent applications before examination, etc. Moreover, with such a system it would be possible to avoid sending to Industrial Property Offices questionnaires con-

cerning aspects of the procedure which were not applicable in those Offices.

The conclusions of the Group covered a large number of special aspects of the questionnaires, particularly the replacement of the criterion of the applicant's nationality by that of his residence, the inclusion of a subdivision relating to technical fields in the data concerning patent applications filed as well as patents granted and the possibility of collecting data relating to published patent applications.

The Group's conclusions will be taken into account when the International Bureau prepares the new questionnaires, which will be used for the first time in 1976 for the statistics relating to the year 1975. The new questionnaires will be distributed, for the purposes of information, before the beginning of 1975 to all Industrial Property Offices so as to enable them to take the questionnaires into account when they prepare their statistical data.

List of Participants *

I. Member States

France: G. Vial. Germany (Federal Republic of): R. von Schleussner (Mrs.). Soviet Union: I. Vedernicova (Mrs.); A. S. Zailsev. Sweden: I. Söderlund (Mrs.). Switzerland: M. Leuthold.

II. Intergovernmental Organizations

United Nations (UN): F. Brusick. United Nations Conference on Trade and Development (UNCTAD): P. O'Brien. International Patent Institute (IPI): R. Weber. Secretariat of the Interim Committee of the European Patent Organisation: G. Aschenbrenner.

III. International Patent Documentation Center (INPADOC)

W. Pilch.

IV. Officers

Chairman: M. Leuthold (Switzerland); Vice-Chairmen: G. Vial (France); I. Vedernicova (Mrs.) (Soviet Union); Secretary: L. Baeumer (WIPO).

V. WIPO

K. Pfanner (Director, Industrial Property Division); L. Baeumer (Counsellor, Head, Legislation and Regional Agreements Section, Industrial Property Division); A.-B. Kecherid (Legal Officer, Legislation and Regional Agreements Section); E. Geiger (Miss) (Documentalist, Legislation and Regional Agreements Section).

Consultant, International Bureau of WIPO: D. A. Was.

* This Note has been prepared by the International Bureau.

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

LEGISLATION

ANDEAN GROUP

I

Common Rules for the Treatment of Foreign Capital and on Trademarks, Patents, Licenses and Royalties

(Decision No. 24 of December 1970 of the Commission of the Cartagena Agreement) *

(Extracts)

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18. — Every contract relating to the importation of technology or to patents or trademarks shall be examined and submitted for approval to the competent authority of the Member Country concerned, which shall evaluate the real contribution of the imported technology by reference to an estimate of the probable profit from it, to the price of the goods incorporating technology or to other specific ways of quantifying the effects of the imported technology.

19. — Contracts relating to the importation of technology shall, as a minimum, contain clauses relating to the following matters:

(a) identification of the way in which the technology is to be transferred;

(b) contractual value of each of the elements involved in the transfer of technology, expressed in a form similar to that used in the registration of foreign direct investments, and

(c) duration of the contract.

20. — The Member Countries shall not authorize the conclusion of contracts relating to the transfer of foreign technology or to patents which contain:

(a) clauses whereby the supply of technology entails an obligation on the country or the importing enterprise to acquire from a specific source capital goods, intermediate products, raw materials or other technology or to use, on a permanent basis, staff specified by the enterprise supplying technology. In exceptional cases the importing country may accept clauses of this nature for the acquisition of capital goods, intermediate products or raw materials, provided that their price corresponds to the price levels current on the international market;

(b) clauses whereby the enterprise selling technology reserves the right to fix the sale or resale price of products manufactured on the basis of the technology concerned;

(c) clauses containing restrictions on the volume and structure of production;

(d) clauses prohibiting the use of competing technology;

(e) clauses giving the supplier of technology a total or partial option to purchase;

(f) clauses obliging the purchaser of technology to transfer to the supplier inventions or improvements obtained through the use of the technology concerned;

(g) clauses requiring the payment of royalties to the patentee for unused patents, and

(h) clauses with equivalent effects.

Save in exceptional cases, duly recognized by the competent authority of the importing country, clauses shall not be admissible where they prohibit or in any way restrict the exportation of products manufactured on the basis of the technology concerned.

In no case shall such clauses be admissible in relation to trade in the subregion or for the exportation of similar products to third countries.

21. — The transfer of technology in intangible form shall give a right to the payment of royalties, subject to the authorization of the competent national authority, but it shall not be considered as a contribution of capital.

When such technology is supplied to a foreign enterprise by its parent company or by another subsidiary of the same parent company, the payment of royalties shall not be authorized and no deduction for the purpose of tax shall be admissible under this heading.

22. — The national authorities shall carry out, on a continuous and systematic basis, the task of identifying technology available on the world market for the different branches of industry, with a view to having the most favorable alternative solutions at their disposal, and the most suited to the economic conditions of the subregion, and shall transmit the results of their work to the Council (*Junta*) [of the Cartagena Agreement]. These activities shall be carried on in coordination with those to be adopted under Chapter V of these Rules in relation to the production of national or subregional technology.

23. — On the proposal of the Council, the Commission shall, before November 30, 1972, approve a program designed to promote and protect the production of subregional technology, as well as the adaptation and assimilation of existing technology.

Such program shall inter alia provide for:

(a) special tax or other benefits to stimulate the production of technology, especially technology involving the intensive use of subregional inputs or designed to make effective use of production factors in the subregion;

(b) promotion of the exportation to third countries of products prepared on the basis of subregional technology, and

(c) channeling of national savings towards the establishment of subregional or national centers for research and development.

* The parties to the Cartagena Agreement (also called the "Andean Pact") are Bolivia, Chile, Colombia, Ecuador, Peru and Venezuela.

24. — The Governments of the Member Countries shall, when purchasing products, give preference to those incorporating subregional technology, in the manner considered suitable by the Commission. The Commission, on the proposal of the Council, may make proposals to the Member States for the imposition of a tax on products using foreign trademarks which are subject to the payment of royalties, when technology of public knowledge or readily available is used in the manufacture of the products.

25. — License contracts for the use of foreign trademarks on the territories of the Member Countries may not contain restrictive clauses of the following kinds:

(a) clauses prohibiting or restricting the exportation or sale in specific countries of products prepared under the trademark concerned, or similar products;

(b) clauses requiring the use of raw materials, intermediate goods or equipment supplied by the trademark owner or subsidiaries thereof. In exceptional cases the importing country may accept clauses of this nature provided that the price corresponds to the price levels current on the international market;

(c) clauses fixing the sale or resale price of the products manufactured under the trademark;

(d) clauses requiring the payment of royalties to the trademark owner for unused marks;

(e) clauses requiring the permanent use of staff supplied by the trademark owner, and

(f) clauses with equivalent effects.

26. — The Commission, on the proposal of the Council, may specify manufacturing processes, products or groups of products for which patents may not be granted in any of the Member Countries. It may similarly decide upon the treatment of patents already granted.

.....

54. — The Member Countries shall establish a Subregional Industrial Property Office, which shall have the following functions:

(a) to serve as an organ of liaison between the national Industrial Property Offices;

(b) to collect and disseminate information on industrial property to the national Offices;

(c) to prepare model license contracts relating to the use of marks or working of patents in the subregion;

(d) to advise national Offices on all questions relating to the application of the common rules on industrial property to be adopted in the regulations referred to in Article G) of the transitional provisions;

(e) to carry out studies and submit recommendations on patents of invention to the Member Countries.

55. — The Commission, on the proposal of the Council, shall establish a subregional system for the promotion, development, production and adaptation of technology, which shall also have the function of centralizing the information referred to in Article 22 of these Rules and of disseminating it to the Member Countries, together with the information that

it obtains directly on the same subject and on the conditions for the marketing of technology.

Transitional Provisions

.....

G) Within six months after the entry into force of these Rules, the Commission, on the proposal of the Council, shall adopt regulations for the application of rules concerning industrial property, which shall include, inter alia, the subjects set out in Annex 2 ¹.

II

Regulations for the Application of Rules concerning Industrial Property

(Decision No. 85 (Industrial Property) of May/June 1974
of the Commission of the Cartagena Agreement)

Chapter I — Patents

I. Requirements for Patentability

1. — A patent shall be granted for new creations capable of industrial application and for improvements of such creations.

2. — An invention shall not be considered as new if it forms part of the prior art, that is to say, if it has been made available to the public anywhere by means of an oral or written description, or by use or exploitation, or in any other way that would enable it to be implemented, before the date of filing of the patent application. Notwithstanding the provisions of this Article, disclosure of the invention during the year preceding the filing of the application shall not entail loss of novelty, where such disclosure resulted from:

(a) an evident abuse to the detriment of the applicant or his successor in title, such as illicit obtaining of plans or documents, misconduct or disloyalty on the part of the inventor's agent, colleagues or employees, industrial espionage or the like;

(b) the fact that the applicant or his successor in title has displayed the invention at an exhibition officially organized and recognized in one of the Member Countries or has carried out experiments to establish its industrial application.

3. — An invention shall be capable of industrial application if its subject can be manufactured or used in any kind of industry.

4. — The following shall not be considered inventions:

(a) principles and discoveries of a scientific character;

(b) the mere discovery of matter existing in nature;

(c) commercial, financial, accounting or similar plans; the rules of games or other systems to the extent that they are of a purely abstract nature;

(d) therapeutic or surgical methods for human or animal treatment and methods of diagnosis;

(e) purely aesthetic creations.

¹ This Annex is not published here.

5. — Patents shall not be granted for:

- (a) inventions contrary to public order or morality;
- (b) plant varieties or animal breeds or essentially biological processes for the production of plants or animals;
- (c) pharmaceutical products, medicaments, therapeutically active substances, beverages and foodstuffs for human, animal or vegetable use;

(d) foreign inventions where the patent is applied for one year after the filing date of the patent application in the first country in which it was applied for. Once this period has expired, no rights derived from such an application shall be enforceable;

(e) inventions affecting the development of the Member Country concerned or processes, products or groups of products excluded from patentability by the Governments.

II. Patentees

6. — Patentees may be natural persons or legal entities.

The right to a patent shall be presumed to belong to the first person to file the application.

If several persons have jointly made an invention, the right shall be held by them in common.

7. — Where a patent application includes an invention illicitly obtained from the inventor or his successors in title or where it is the result of the non-performance of a contractual or statutory obligation, the injured person may, within 90 working days after the date of publication of the patent application, claim to be recognized as the true owner, or he may take legal proceedings if the patent has already been granted and he has not claimed his right through the administrative channel.

In the case of the opposition provided for in this Article, the competent national Office shall, as soon as it has received the notice of opposition, refer the matter to the competent judicial body. In such event, the applicant for the patent shall, having served a writ of summons, contest the opposition in accordance with the procedure laid down in the Member Country concerned.

The proceedings provided for may only be brought within two years after the grant of the patent.

8. — An invention made by an employee or an agent engaged for the purposes of research shall belong to the employer or the person having commissioned the work, unless provided otherwise. In all other cases, the invention shall belong, without any possibility of waiver, to the employee or agent, except where by reason of his duties he has had access to secrets or confidential research work.

9. — The inventor shall be entitled to be named as such in the patent and he may similarly oppose such mention. These rights cannot be waived.

10. — The first application for a patent filed for the first time in any Member Country shall confer upon its owner a right of priority for a period of one year following the date of the said application, during which time he may apply for a patent for the same invention in the other Member Countries.

III. Patent Applications

11. — Applications for patents shall be filed with the competent national Office and shall contain:

- (a) the complete name — or trade name — and the address of the applicant or, where applicable, of the inventor;
- (b) the title or name of the invention; and
- (c) the object or purpose of the invention.

12. — The application shall be accompanied by:

- (a) the power of attorney, where necessary;
- (b) proof of payment of the relevant fees, where applicable;
- (c) the documents proving the existence of the legal entity making the application and stating the persons empowered to represent it;
- (d) relevant plans and drawings;
- (e) a clear and complete description of the invention enabling a person skilled in the art to carry it out;
- (f) one or more claims specifying the extent of novelty and industrial application of the invention; and
- (g) an authenticated copy of the first patent application filed in respect of the same invention.

13. — A patent may cover only a single creation or invention or only a group of directly related inventions which form a unity.

IV. Processing of the Application

14. — When an application is filed, the competent national Office shall examine whether it is in conformity with Articles 5(a) and (d) and 11 and 13 and whether it is accompanied by the documents referred to in Article 12.

15. — If the examination shows that the application does not fulfill the requirements in the preceding Article, the Office shall state its objections, so that the applicant may present his comments or supplement his application within 60 working days — which may be extended by an equal period, where justified by the circumstances — without losing his priority.

If, at the end of the period referred to, the applicant has not fulfilled the requirements specified, the application shall be considered abandoned and no declaration to that effect shall be necessary.

The description, claims and plans or drawings may be amended only for the purpose of remedying a defect pointed out by the Office.

16. — If the application does not call for observations or has been duly completed, an order shall be made for its publication in one issue of a suitable organ of publicity together with an abstract of the description of the invention and the claims.

17. — Within 90 working days after the date of publication, any person may file observations, together with his reasons, which may adversely affect the patentability of the invention.

18. — If observations have been filed within the time limit prescribed in the preceding Article, the competent

national Office shall notify the applicant so that he may, within 60 working days, submit his arguments and documents or redraft the claims or the description of the invention.

19. — Once the time limits provided for in Articles 17 and 18, as the case may be, have expired, the competent national Office shall examine whether the application is patentable in accordance with Articles 2, 3, 4 and 5(b), (c) and (e) and in the case of a patent for an improvement, whether the subject of the patent constitutes the improvement claimed.

20. — If the final examination is favorable, the patent shall be granted.

If the examination is favorable in part, a patent may be granted by a decision containing the reasons and including only the claims accepted.

If the examination is unfavorable, the patent shall be refused by a decision containing the reasons for the refusal.

21. — Member Countries may decide to carry out a complete examination into the prior art which may affect the patentability of inventions in specified sectors of industry.

22. — The competent national Offices may request reports from experts or scientific and technological institutes that they regard as qualified to express an opinion on the novelty and industrial application of the invention.

23. — The competent national Office shall number the patent and order the publication of the claim or claims of the invention.

Any person may obtain at his expense a copy of patents granted.

24. — Where an invention relates to national security or to processes, products or groups of products reserved to the Government or where specified by law, the grant of a patent may be made subject to conditions governing its working. In such a case, the administrative act granting the patent shall state the reasons.

25. — For the arrangement and classification of patents, the Member Countries undertake to adopt, within one year from the date of entry into force of this Decision, the International Patent Classification of December 19, 1954.

26. — The Member Countries undertake to keep each other informed and to inform the Council (*Junta*) [of the Cartagena Agreement] of patents granted or refused by their competent national Offices. For this purpose, the Council shall send to Member Countries the necessary forms for the exchange of the said information.

V. Rights Conferred by the Patent

27. — The extent of the protection conferred by a patent shall be determined by the terms of the claims. The description and the drawings or plans shall be used to interpret the claims.

28. — Within the limits laid down in these Regulations, the patent shall confer on its owner the exclusive right to

work the invention for his own account, to grant one or more licenses for its working and to receive royalties or compensation for its working by third parties.

The patent shall not confer the exclusive right to import the patented product or a product manufactured by the patented process.

29. — The patent shall be granted for a maximum term of ten years from the date of the administrative act by which it was granted. It shall be granted initially for five years and, to obtain an extension, the patentee must prove to the competent national Office that the patent is being adequately worked.

A patent of improvement shall expire at the same time as the original patent.

VI. Obligations of the Patentee

30. — The patentee shall:

(a) within three years from the date of the grant of the patent, notify the competent national authorities of the commencement of working. Where no such notification is made, the working shall be presumed not to have begun, for the purposes of the grant of compulsory licenses under Article 34;

(b) register with the competent national Office any contract entailing the assignment, licensing or other form of utilization of the patent by third parties in any capacity.

The obligations provided for in subparagraphs (a) and (b) shall be discharged by the patentee or by the successors in title, assignees, licensees or any other person having a right derived from the patent.

31. — Working shall mean the permanent and regular use of the patented processes or the manufacture of the product covered by the patent in order to put the end result on the market under reasonable marketing conditions, provided that such acts have occurred on the territory of the Member Country which granted the patent, without prejudice to the provisions of the sectorial industrial development programs referred to in Articles 33 and 34 of the Cartagena Agreement.

VII. Licensing

32. — A patentee may grant a license to work the patent only by means of a written contract.

License contracts must be approved and registered by the competent national Office.

33. — The competent national Office shall not authorize the conclusion of license contracts for the working of patents where such contracts are not compatible with Article 20 of Decision No. 24 of the Commission of the Cartagena Agreement¹.

34. — After three years from the grant of a patent, any person may apply to the competent national Office for a compulsory license to work the patent if, at the time of the application and in the absence of a legitimate reason recognized as such by the Office, any of the following has occurred:

¹ For the text of that Article, see p. 436 above.

(a) the patented invention has not been worked in the country;

(b) the working of the said invention has been suspended for more than one year;

(c) the working of the invention does not meet the demand of the national market on reasonable terms as to quantity, quality or price;

(d) the patentee has not granted contractual licenses on reasonable terms enabling a licensee to meet the demand of the national market on reasonable terms as to quantity, quality or price.

After five years from the grant of the patent, a compulsory license may be granted by the competent national Office without there being any need to prove the facts referred to in subparagraphs (b), (c) and (d) of this Article.

The holder of a compulsory license shall pay suitable compensation to the patentee.

35. — The competent national Office may at any time grant a license to a patentee who requests such a license and duly proves to the said Office that the working of his own patent necessarily requires the use of another patent.

36. — The amount of compensation shall be fixed by the competent national Office after hearing the parties. Within 30 working days from the notification of the decision, either of the parties may, once the administrative remedies have been exhausted, appeal to the competent judicial body.

The appeal shall not preclude the working of the patent and shall have no effect on any time limits that have not expired. It shall not prevent the patentee from collecting, in the meantime, such part of the royalties determined by the Office which is not contested.

37. — At the request of the patentee or of any licensee, the license terms may be modified by the authority that approved them, after the parties have been heard, where new factors so justify and, in particular, where the patentee has granted a license under more favorable terms than those laid down.

38. — The licensee may not assign the license or grant sub-licenses without the authorization of the patentee and of the competent national Office and, in any event, the patent concerned must continue to be adequately worked.

The obligation on the patentee to prove the commencement of working shall apply to the licensee.

39. — In the case of patents affecting public health or where the national development so requires, the Government of a Member Country may make a patent subject to compulsory licensing at any time; in such a case, the competent national Office may grant licenses whenever requested.

40. — Licenses which do not comply with the provisions of these Regulations shall have no effect.

VIII. Legal Protection

41. — At the request of any person or ex officio, the competent national Office, after hearing the parties, may revoke a

compulsory license where the licensee is making inadequate use of the invention.

42. — Anyone who works a patent without having concluded a license contract with the patentee or without the authorization of the competent national Office shall, ex officio or at the request of a party and after the alleged infringer has been heard, be liable to a fine imposed by the Office in favor of the national treasury; this provision shall be without prejudice to the remedies and actions provided in the laws of the Member Countries.

43. — Where a patent is worked pursuant to a contract which has not been authorized by the competent national Office, the contracting parties shall be liable to a fine.

IX. Nullity of Patents

44. — A patent may, ex officio or at the request of any person and after the patentee and the licensees have been heard, be declared null and void by the national Office which granted it where the invention was not patentable under Articles 1, 2, 3, 4 and 5 of these Regulations or did not fulfill the requirement in Article 12(e).

If the provisions referred to in the preceding paragraph are only partially applicable to a patent, the declaration of nullity shall be limited to the objectionable claim or claims.

Chapter II — Industrial Designs

45. — New industrial designs² may be registered.

Any composition of lines or combination of colors which is embodied in a product of industry or handicraft in order to give it a special appearance, without changing its purpose, shall be considered a design; any three-dimensional form which serves as a pattern for products of industry or handicraft which give it a special appearance and do not imply any technical results shall be considered a model.

Industrial designs relating to clothing shall not be registrable.

Industrial designs that are contrary to public order or morality shall not be protected.

46. — An industrial design shall not be new if, before the date of application or before the priority date validly claimed in respect thereof, it has been made available to the public, anywhere and at any time whatever, through description or use, or in any other way.

An industrial design shall not be new solely by reason of the fact that it differs from earlier embodiments in minor respects or that it concerns a type of product different from the said embodiments.

47. — Applications for registration shall contain: (a) the complete name — or trade name — and the address of the applicant; (b) a statement of the kind of products for which the industrial design is to be used and the class to which those products belong.

² The comprehensive term "industrial designs" has been used in this translation although the original Spanish refers to "industrial designs and models" (*Editor's Note*).

The application shall be accompanied by: (a) the power of attorney, where necessary; (b) the documents proving the applicant's existence, in the case of a corporation or association having legal personality; (c) a specimen of the article bearing the industrial design or a graphic or photographic representation of the design.

48. — When an application is filed, the competent national Office shall examine whether it is in conformity with Articles 45 and 47.

49. — If the examination shows that the application does not fulfill the requirements in Article 45, it shall be refused; in other cases, objections shall be stated so that the applicant may supplement his application, make corrections or add the documents specified in Article 47 within 60 working days, without priority being lost thereby.

If, at the end of the period referred to, the applicant has not fulfilled the requirements specified, the application shall be considered abandoned and no declaration to that effect shall be necessary.

50. — If the application does not call for observations or has been duly completed, an order shall be made for its publication in one issue of a suitable organ of publicity.

51. — Within 30 working days after the publication, any person having an interest may oppose registration.

52. — If no opposition is entered, or if opposition is rejected, the competent national Office shall carry out an examination as to the novelty of the industrial design.

If the examination is favorable, registration shall be effected.

53. — An application validly filed in one Member Country shall confer a right of priority for a period of six months, during which registration in the other Member Countries may be applied for.

54. — The registration of an industrial design shall confer on its owner the exclusive right to use the design during a period of five years from the date of the administrative act by which registration was effected.

The owner of an industrial design may without restriction grant licenses or transfer it.

Any license or change of owner must be registered with the competent national Office.

55. — The Member Countries undertake to adopt, within one year from the date of entry into force of these Regulations, the International Classification established by the Locarno Agreement of October 8, 1968.

Chapter III — Marks

I. Requirements for Registration of Marks

56. — Signs which are new, visible and sufficiently distinctive may be registered as trademarks or service marks.

57. — Cooperatives, associations of public or private enterprises, communal or collective bodies or any other

groups of legal entities may have collective marks registered to distinguish their goods or services.

58. — The following may not be registered as marks:

(a) marks which are contrary to morality or public order, or those which are liable to deceive trade circles or the public as to the nature, the source, the manufacturing process, the characteristics, or the suitability for their purpose, of the goods or services concerned;

(b) shapes that are usual or essential in relation to the goods, and their dimensions and colors;

(c) descriptive or generic terms in any language and signs which may serve to designate the kind, quality, quantity, intended purpose, value, or time of production or supply, of the goods or services concerned;

(d) words which, in the current language or trade practices of the Member Countries, have become a usual designation of the goods or services concerned, or their equivalents in other languages;

(e) marks which reproduce or imitate without authorization the armorial bearings, flags and other emblems or names of any State or any intergovernmental international organization or any organization created by an international convention;

(f) marks which are liable to be confused with others already registered or applied for by a third party, or subsequently applied for with a valid claim to priority, for goods or services in the same class;

(g) marks which are liable to be confused with others which are well known and registered in the country or abroad for the same or similar goods or services;

(h) names, pseudonyms, signatures or portraits of living persons, except with their written consent; names of deceased persons except with the consent of their heirs; and historical names;

Nevertheless, such consent is not required in the case of a natural person applying for the registration of his own name, provided that it is presented in a form sufficiently peculiar and distinct to distinguish it from the same name when used by other persons;

(i) names, signs or denominations which might suggest a connection with persons living or dead, or national institutions, creeds, places or symbols, or which might expose them to discredit or ridicule;

(j) translations of marks registered in another language or well-known foreign marks, except when application is made by the owner of the mark; and

(k) translations in other languages of words not eligible for registration.

59. — When a mark consists of a foreign word or a geographical name, the place of manufacture of the product shall be indicated beneath it in a visible and clearly legible form.

II. Registration Procedure

60. — Applications for registration of a mark shall be filed with the competent national Office and shall contain:

(a) the complete name — or trade name — and the address of the applicant;

(b) a clear and complete description of the mark submitted for registration, and

(c) a statement of the class or classes of goods or services in respect of which registration of the mark is sought.

61. — The application shall be accompanied by:

(a) proof of payment of the relevant fees;

(b) the power of attorney, where necessary;

(c) the documents proving the existence of the legal entity making the application and stating the persons empowered to represent it;

(d) reproductions of the mark, where applicable.

62. — When an application is filed, the competent national Office shall examine whether it fulfills the requirements laid down by law or regulation and, in particular, whether it is in conformity with Articles 56, 58, 59, 60 and 61 of this Chapter.

63. — If the examination shows that the application does not fulfill the requirements in Article 60 or that it was not accompanied by the documents provided for in Article 61, the competent national Office shall inform the applicant so that he may make the necessary corrections or supply the missing documents within 60 working days, without any adverse effect on the priority provided for in this Chapter.

64. — If the requirements specified in Articles 56, 58 and 59 are not fulfilled, the competent national Office, after hearing the applicant, may decide to reject the application.

65. — If the application does not call for observations or has been duly completed, an order shall be made for the publication of an abstract in one issue of the organ of publicity determined by the domestic law of the Member Country concerned.

Within 30 working days after the publication, any person may oppose registration of the mark.

66. — If opposition is entered within 30 working days, the competent national Office shall deal with it in accordance with the domestic law of the Member Country concerned.

67. — If no opposition is entered, or if opposition is rejected, the competent national Office shall issue a certificate of registration.

68. — The registration of a mark and its protection shall cover only one class. For registration in several classes, separate applications must be filed for each of the classes, the corresponding fees must be paid and each application shall be processed separately.

The Member Countries undertake to adopt the International Classification approved at Nice on June 15, 1957.

Member Countries which have not yet adopted that Classification, shall do so within one year from the entry into force of these Regulations.

69. — Registration of a mark shall be for a period of five years from the date of grant and may be renewed indefinitely for periods of five years.

70. — To have the right to renew, the applicant must prove to the competent national Office that he is using the mark in question in one of the Member Countries.

71. — The competent national Office shall order the publication of registered marks in a suitable organ of publicity.

III. Rights Conferred by Registration

72. — The exclusive right to a mark shall be acquired by the registration of the mark with the competent national Office.

73. — The acceptance of an application for registration of a mark in one Member Country shall give the applicant a right of priority during a period of six months so that, during that period, he may apply for registration in the other Member Countries.

74. — The owner or licensee of a mark shall have the right to its exclusive use and may request the application of such protective measures for the defense of his rights as are provided for in the national laws of the countries concerned.

75. — The owner of a mark may not oppose the importation or introduction of goods originating in other Member Countries and bearing the same mark. The competent authorities shall require the imported products to clearly and adequately identify the Member Country in which they were produced.

76. — The registration of a mark shall be cancelled by the competent national Office, ex officio or at the request of a party, if it finds that the registration has been granted contrary to Articles 56 and 58 of these Regulations.

77. — If the competent national authority is satisfied that the owner or licensee has speculated in the mark or has made an improper use of it with respect to the price or quality of a product covered by it, to the detriment of the public or of the economy of the Member Country, a penalty shall be inflicted which may extend to the definitive cancellation of the mark or license concerned.

78. — Member Countries may prescribe that not more than one mark be used for goods or services which have the same characteristics, are prepared or supplied by the same owner and are intended for the same purposes.

IV. Assignment and Transfer of Registrations

79. — The owner of a trademark or service mark may assign or transfer it by written contract.

80. — Assignments and transfers of marks carried out in accordance with the law of each Member Country must be recorded at the competent national Office.

81. — All license contracts must be submitted for the approval of the competent authority of the Member Country concerned and may not contain the restrictive clauses referred to in Article 25 of Decision No. 24 of the Commission of the Cartagena Agreement³.

³ For the text of that Article, see p. 437 above.

Chapter IV — Miscellaneous Provisions

82. — All license contracts shall contain terms guaranteeing the quality of the goods or services supplied by the licensee.

83. — The Member Countries shall refrain from unilaterally concluding agreements on industrial property with third countries or with international organizations which are contrary to the provisions of these Regulations.

84. — Matters relating to industrial property which are not covered by these Regulations shall be governed by the domestic laws of the Member Countries.

85. — Any industrial property right validly granted in accordance with the law of a Member Country before these Regulations come into force shall continue for the period for which it was granted. With regard to its exercise and enjoyment, obligations and licenses, renewals and extensions, the rules contained in these Regulations shall apply.

In the case of patents granted before these Regulations come into force, the time limits provided for in Articles 30 and 34 shall be counted from the date of such grant. If such a time limit has already expired, an additional period of one year from the entry into force of these Regulations shall be allowed.

Pending applications shall be subject to these Regulations.

86. — The Governments of the Member Countries undertake to adopt all the measures necessary to incorporate these Regulations in their respective legal systems within six months after the adoption of this Decision.

JAPAN

I

Design Law

(Law No. 125 of April 13, 1959, as amended) *

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* By Law No. 140 of 1962, Law No. 161 of 1962, Law No. 148 of 1964, Law No. 81 of 1965, Law No. 91 of 1970 and Law No. 96 of 1971.

Note: This text is the translation of the Patent Office of Japan, published by the Japanese Group of AIPPI. The new provisions of the amended Design Law were translated by Mr. Takashi Ishihara and the full text of the amended Design Law was revised by Mr. Haruo Goto.

Chapter I — General Provisions

(Purpose)

1. — The purpose of this Law shall be to encourage the creation of designs by promoting their protection and utilization so as to contribute to the development of industry.

(Definitions)

2. — (1) "Design" in this Law means the shape, pattern or color or a combination of these in an article which produce an aesthetic impression on the sense of sight.

(2) "Registered design" in this Law means a design for which a design registration has been effected.

(3) "Exploiting" of a design in this Law means any act of manufacturing, using, assigning, leasing, displaying for the purpose of assignment or lease, or importing, of the articles to which the design has been applied.

Chapter II — Design Registration and Applications Therefor

(Registrability of designs)

3. — (1) Any person who has created a design capable of being used in industrial manufacture may obtain a design registration therefor, except in the case of the following designs:

(i) designs which were publicly known in Japan or elsewhere prior to the filing of the design application;

(ii) designs which were described in a publication distributed in Japan or elsewhere prior to the filing of the design application;

(iii) designs which are similar to those referred to in the two preceding paragraphs.

(2) Where a design could easily have been created, prior to the filing of the design application, by a person with ordinary skill in the art to which the design pertains, on the basis of a shape, pattern or color or a combination thereof widely known in Japan (other than a design referred to in any of the paragraphs of the preceding subsection), a design registration shall not be effected for such a design notwithstanding the preceding subsection.

(Exceptions to lack of novelty of design)

4. — (1) In the case of a design which has fallen under paragraph (i) or (ii) of Section 3(1) against the will of the person having the right to obtain a design registration, such a design shall be deemed not to have fallen under the said paragraph (i) or (ii), provided that such person has filed a design application for the design within six months from the date on which the design first fell under those paragraphs.

(2) In the case of a design which has fallen under paragraph (i) or (ii) of Section 3(1) due to an act on the part of the person having the right to obtain a design registration, the preceding subsection shall also apply, provided that such person has filed a design application for the design within six months from the date on which the design first fell under those paragraphs.

(3) Any person who desires the application of the preceding subsection with respect to a design in a design application

shall submit a written statement to that effect to the President of the Patent Office simultaneously with the design application. Within 14 days of the filing of the design application, he shall also submit to the President of the Patent Office a document proving that the design in the design application is a design falling under the said subsection.

(Unregistrable designs)

5. — A design registration shall not be effected for the following designs, notwithstanding Section 3:

- (i) designs liable to contravene public order or morality;
- (ii) designs liable to give rise to confusion with respect to articles connected with any other person's business.

(Applications for design registration)

6. — (1) Any person desiring a design registration shall submit a request to the President of the Patent Office, together with a drawing of the design for which registration is sought, stating the following:

- (i) the name and the domicile or residence of the applicant for a design registration and, in the case of a legal entity, the name of an officer entitled to represent it;
- (ii) the date of submission;
- (iii) the name and the domicile or residence of the creator of the design;
- (iv) the article or articles to which the design is applied.

(2) Whenever an ordinance of the Ministry of International Trade and Industry so prescribes, a photograph, model or sample of the design for which registration is sought may be submitted instead of the drawing referred to in the preceding subsection. In such a case, the fact that a photograph, model or sample has been submitted shall be noted in the request.

(3) Where a person desires a design registration for a design that is similar to one which has been registered in his name or for which he has applied for registration, the number of the relevant design registration or application shall be stated in the request.

(4) Where the statement referred to in subsection 1(iv) concerning the article or articles to which the design is applied, or the drawing, photograph or model attached to the request, is not such as to enable a person with ordinary skill in the art to which the design pertains to visualize the material or dimensions of the article or articles to which the design is applied, so that such a person is unable to recognize the design, the material or dimensions referred to shall be stated in the request.

(5) Where the shape, pattern or color of an article to which the design is applied varies according to the function that the article possesses and where registration is sought for the shape, pattern or color or a combination thereof as it appears before, during and after the variation referred to, the request shall contain a statement to that effect as well as an explanation concerning the said function of the article.

(6) When the colors of the design are applied on the drawing, photograph or model submitted under subsection (1) or (2), any parts that are white or black need not be colored.

(7) Where parts are not colored, in accordance with the preceding subsection, the request shall contain a statement to that effect.

(8) In the case of the drawing of a design submitted under subsection (1) or the photograph or model submitted under subsection (2), where the whole or part of the article to which the design has been applied is transparent, the request shall contain a statement to that effect.

(Unity of application)

7. — An application for design registration shall relate to a single design corresponding to an article in the classes of articles prescribed by an ordinance of the Ministry of International Trade and Industry.

(Design of a set of articles)

8. — (1) In the case of a design of articles of two or more kinds that are customarily sold or used together as a set of articles, forming the articles prescribed by an ordinance of the Ministry of International Trade and Industry (hereinafter referred to as a "set of articles"), an application for design registration may be made as for one design, provided that the set of articles is a coordinated whole.

(2) In the case of the preceding subsection, design registration may be effected only where each of the designs of the articles forming the set of articles is eligible for registration under Sections 3, 5 and 9(1) and (2).

(First-to-file rule)

9. — (1) Where two or more design applications relating to the same or a similar design are filed on different dates, only the first applicant may obtain a design registration for the design.

(2) Where two or more design applications relating to the same or a similar design are filed on the same date, only one such applicant, agreed upon after mutual consultation among all the applicants, may obtain a design registration for the design. If no agreement is reached or no consultation is possible, none of the applicants shall obtain a design registration for the design.

(3) Where a design application is withdrawn or invalidated, such application shall, for the purposes of the two preceding subsections, be deemed never to have been made.

(4) A design application filed by a person who is neither the creator of the design nor the successor in title to the right to obtain a design registration shall, for the purposes of subsections (1) and (2), be deemed not to be a design application.

(5) The President of the Patent Office shall, in the case of subsection (2), order the applicants to hold consultations for an agreement under that subsection and to report the result thereof, within an adequate time limit.

(6) Where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, the President of the Patent Office may deem that no agreement under subsection (2) has been reached.

(Similar designs)

10. — (1) The owner of a design right may obtain registration of a design which is similar only to his registered design (hereinafter referred to as a "similar design").

(2) The preceding subsection shall not apply in the case of a design that is similar only to a similar design registered under that subsection.

(Division of design applications)

10^{bis}. — (1) An applicant for a design registration may divide a design application comprising two or more designs into one or more new design applications.

(2) A design application may not be divided under the preceding subsection after the examiner's decision or the trial decision with respect to the application has become final and conclusive.

(3) Where a design application has been divided under subsection (1), the new design application shall be deemed to have been filed at the time of filing of the original application. However, this provision shall not apply for the purposes of Section 4(3) of this Law and Section 43(1) and (2) of the Patent Law (Law No. 121 of 1959)¹ as applied under Section 15(1) of this Law.

11. — (1) An applicant for a design registration may divide a design application under Section 8(1) so as to make applications for each of the designs of articles forming a set of articles.

(2) Where a design application has been divided under the preceding subsection, the application under Section 8(1) shall be deemed to have been withdrawn.

(3) Section 10^{bis}(2) and (3) shall apply mutatis mutandis to the division of a design application under subsection (1).

(Conversion of applications)

12. — (1) An applicant may convert his application for registration of a similar design into an application for registration of an independent design (meaning a design application other than an application for registration of a similar design — hereinafter referred to as an "application for registration of an independent design").

(2) An applicant may convert his application for registration of an independent design into an application for registration of a similar design.

(3) A design application may not be converted under the two preceding subsections after the examiner's decision or the trial decision with respect to the application has become final and conclusive.

(4) Sections 10^{bis}(3) and 11(2) shall apply mutatis mutandis to the conversion of a design application under subsection (1) or (2).

13. — (1) An applicant for a patent may convert his application into a design application. However, this provision shall not apply after 30 days from the transmittal of the exam-

iner's first decision that the patent application is to be refused.

(2) An applicant for a utility model registration may convert his application into a design application. However, this provision shall not apply after 30 days from the transmittal of the examiner's first decision that the utility model application is to be refused.

(3) The period prescribed in the proviso to subsection (1) shall, when the time limit prescribed in Section 121(1) of the Patent Law has been extended in accordance with Section 4(1) of that Law, be deemed to have been extended only for that period as extended.

(4) The period prescribed in the proviso to subsection (2) shall, when the time limit prescribed in Section 35(1) of the Utility Model Law (Law No. 123 of 1959)² has been extended in accordance with Section 4(1) of the Patent Law as applied under Section 55(1) of the Utility Model Law, be deemed to have been extended only for that period as extended.

(5) Sections 10^{bis}(3) and 11(2) shall apply mutatis mutandis to the conversion of an application under subsection (1) or (2).

(Secret designs)

14. — (1) An applicant for a design registration may demand that the design be kept secret for a period which shall be designated in the demand and shall not exceed three years from the date on which the establishment of the design right was registered.

(2) A person who desires to make the demand under the preceding subsection shall, at the time of filing the design application, submit to the President of the Patent Office a document stating the following:

- (i) the name and the domicile or residence of the applicant for a design registration;
- (ii) the period for which secrecy is demanded.

(3) An applicant for a design registration or the owner of a design right may extend or reduce the period for which secrecy is demanded under subsection (1).

(4) In any of the following cases, the President of the Patent Office shall allow persons other than the owner of the design right to have access to a design for which secrecy has been demanded under subsection (1):

- (i) when the consent of the owner of the design right has been obtained;
- (ii) when so requested by a party or an intervenor in the examination, trial, retrial or litigation relating to the design or any identical or similar design;
- (iii) when so requested by a court;
- (iv) when so requested by an interested person submitting to the President of the Patent Office a document stating the name of the owner of the design right and the registration number and other documents prescribed by an ordinance of the Ministry of International Trade and Industry.

¹ *Industrial Property*, 1974, p. 140.

² *Industrial Property*, 1974, p. 185.

(Application mutatis mutandis of Patent Law)

15. — (1) Section 37 (joint applications), Section 40 (amendment of specification etc. and change of gist) and Section 43 (declarations of priority claim) of the Patent Law shall apply mutatis mutandis to design applications.

(2) Sections 33 and 34(1) and (2) and (4) to (7) (right to obtain patent) of the Patent Law shall apply mutatis mutandis to the right to obtain a design registration.

(3) Section 35 (employees' inventions) of the Patent Law shall apply mutatis mutandis to the creation of a design by an employee, an executive officer of a legal entity or a national or local public official.

Chapter III — The Examination**(Examination by examiner)**

16. — The President of the Patent Office shall have applications for design registration examined by an examiner.

(Examiner's decision of refusal)

17. — The examiner shall make a decision that a design application is to be refused where it falls under any of the following paragraphs:

(i) the design in the design application is not registrable in accordance with Section 3, 5, 8(2), 9(1) or (2) or 10(1) of this Law, Section 37 of the Patent Law — as applied under Section 15(1) of this Law — or Section 25 of the Patent Law as applied under Section 68(3) of this Law;

(ii) the design in the design application is not registrable in accordance with the provisions of a treaty;

(iii) the design application does not comply with the requirements of Section 7;

(iv) the applicant for a design registration who is not the creator of the design has not succeeded to the right to obtain registration for the design concerned.

(Decision to register design)

18. — Where the examiner finds no reason for refusing a design application, he shall make a decision that the design is to be registered.

(Application mutatis mutandis of Patent Law)

19. — Section 47(2) (qualifications of examiners), Section 48 (exclusion of examiners), Section 50 (notification of reasons for refusal), Section 53 (declining of amendments), Section 63 (formal requirements of examiner's decision) and Section 65 (relationship with litigation) of the Patent Law shall apply mutatis mutandis to the examination of design applications.

Chapter IV — The Design Right**1. The Design Right****(Registration of establishment of design right)**

20. — (1) A design right shall come into force upon registration of its establishment.

(2) The establishment of a design right shall be registered when the annual fee for the first year under Section 42(1)(i) has been paid.

(3) When registration under the preceding subsection has been effected, the following shall be published in the Design Gazette (*Ishō Kōhō*):

(i) the name and the domicile or residence of the owner of the design right;

(ii) the number and the date of the design application;

(iii) the registration number and the date of registration of the establishment;

(iv) the contents of the request and the drawing, photograph, model or sample attached to the request.

(4) In the case of a design for which secrecy has been demanded under Section 14(1), the matters referred to in paragraph (iv) of the preceding subsection shall, notwithstanding Section 14(1), be published immediately after the period designated under Section 14(1) has expired.

(Term of design right)

21. — The term of a design right shall be 15 years counted from the date of registration of its establishment.

(Design right relating to similar design)

22. — The design right relating to a similar design shall be incorporated in the design right relating to the design (hereinafter referred to as the "principal design") to which such similar design is similar and for which a design registration (other than a registration for a similar design) was obtained first.

(Effects of design right)

23. — The owner of a design right shall have an exclusive right to commercially exploit the registered design and designs similar thereto. However, where the design right is the subject of an exclusive license, this provision shall not apply to the extent that the exclusive licensee has an exclusive right to exploit the registered design and designs similar thereto.

(Scope of registered design)

24. — The scope of a registered design shall be decided on the basis of the statement in the request and the design represented in the drawing attached to the request or shown in the photograph, model or sample attached to the request.

25. — (1) A request for interpretation may be made to the Patent Office with respect to the scope of a registered design and designs similar thereto.

(2) Where such a request is made, the President of the Patent Office shall designate three trial examiners to give the requested interpretation.

(3) Proceedings concerning an interpretation other than those provided for in the preceding subsection shall be prescribed by Cabinet Order.

(Relationship with another's registered design, etc.)

26. — (1) When a registered design would utilize another person's registered design or design similar thereto, patented invention or registered utility model under an application filed prior to the filing date of the design application concerned, or when the part of a design right relating to the registered design conflicts with another person's patent right, utility model right or trademark right under an application filed

prior to the filing date of the design application concerned, or conflicts with another person's copyright taking effect prior to that date, the owner of the design right, exclusive licensee or non-exclusive licensee shall not commercially exploit the registered design.

(2) When a design similar to a registered design would utilize another person's registered design or design similar thereto, patented invention or registered utility model under an application filed prior to the filing date of the design application concerned, or when the part of a design right relating to designs similar to the registered design conflicts with another person's design right, patent right, utility model right or trademark right under an application filed prior to the filing date of the design application concerned, or conflicts with another person's copyright taking effect prior to that date, the owner of the design right, exclusive licensee or non-exclusive licensee shall not commercially exploit the design similar to the registered design.

(Exclusive licenses)

27. — (1) The owner of a design right may grant an exclusive license on such right.

(2) An exclusive licensee shall have an exclusive right to commercially exploit the registered design and designs similar thereto to the extent laid down in the license contract.

(3) Section 77(3) to (5) (transfer etc.), Section 97(2) (surrender) and Section 98(1)(ii) and (2) (effects of registration) of the Patent Law shall apply *mutatis mutandis* to exclusive licenses.

(Non-exclusive licenses)

28. — (1) The owner of a design right may grant a non-exclusive license on such right.

(2) A non-exclusive licensee shall have the right to commercially exploit the registered design and designs similar thereto to the extent prescribed in this Law or laid down by the license contract.

(3) Section 73(1) (joint ownership), Section 97(3) (surrender) and Section 99 (effects of registration) of the Patent Law shall apply *mutatis mutandis* to non-exclusive licenses.

(Non-exclusive license by virtue of prior use)

29. — Where, at the time of filing of a design application — or at the time of filing of the original design application or of submission of an amendment when the design application is deemed to have been filed at the time of submission of the amendment in accordance with Section 40 of the Patent Law as applied under Section 15(1) of this Law or in accordance with Section 53(4) of the Patent Law as applied *either* under Section 19 of this Law *or* under Section 159(1) of the Patent Law as applied under Section 52 of this Law *or* under Section 159(1) of the Patent Law as applied under Section 174(1) of that Law as applied under Section 57 of this Law —, a person who has created a design or design similar thereto by himself without knowledge of the design in a design application or has learned how to create the design from a person

just referred to, has been commercially exploiting the design or design similar thereto in Japan or has been making preparations therefor, such person shall have a non-exclusive license on the design right under the design application. Such license shall be limited to the design which is being exploited or for which preparations for exploitation are being made and to the purpose of such exploitation or the preparations therefor.

(Non-exclusive license due to exploitation prior to registration of demand for invalidation trial)

30. — (1) When a person coming within any of the paragraphs set out below has been commercially exploiting a design or design similar thereto in Japan or has been making preparations therefor, prior to the registration of a demand for a trial under Section 48(1), without knowing that the design registration falls under any of the paragraphs of the subsection referred to, such person shall have a non-exclusive license on the design right or on the exclusive license existing at the time when the design registration was invalidated, such non-exclusive license being limited to the design which is being exploited or for which preparations for exploitation are being made and to the purpose of such exploitation or the preparations therefor:

(i) the original owner of the design right, where one of two or more design registrations granted for the same or a similar design has been invalidated;

(ii) the original owner of the design right, where his design registration has been invalidated and a design registration for the same or a similar design has been granted to the person entitled;

(iii) in the cases referred to in the two preceding paragraphs, a person who, at the time of registration of the demand for a trial under Section 48(1), has an exclusive license on the design right that has been invalidated or a non-exclusive license which is effective, under Section 99(1) of the Patent Law as applied under Section 28(3) of this Law, against the design right or the exclusive license.

(2) The owner of the design right or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the preceding subsection.

(Non-exclusive license after expiration of design right, etc.)

31. — (1) Where one design application was filed prior to or on the filing date of another design application and part of the design right (relating to designs similar to the registered design concerned) under the first-mentioned application conflicts with the design right under the other application and the term of the first-mentioned design right has expired, the owner of the original design right shall, to the extent of such right, have a non-exclusive license on the other design right or the exclusive license existing at the time when his design right expired.

(2) Where a patent right or a utility model right under an application filed prior to or on the filing date of a design application conflicts with the design right under that application, the preceding subsection shall apply *mutatis mutandis*

where the term of the patent right or utility model right has expired.

32. — (1) Where one design application was filed prior to or on the filing date of another design application and part of the design right (relating to designs similar to the registered design concerned) under the first-mentioned application conflicts with the design right under the other application and the term of the first-mentioned design right has expired, a person who, at the time of expiration, has an exclusive license on the expired design right or a non-exclusive license which is effective under Section 99(1) of the Patent Law, as applied under Section 28(3) of this Law, against the expired design right or the exclusive license, shall, to the extent of the expired right, have a non-exclusive license on the other design right or on the exclusive license existing when the first-mentioned design right expired.

(2) Where a patent right or a utility model right under an application filed prior to or on the filing date of a design application conflicts with the design right under that application, the preceding subsection shall apply *mutatis mutandis* where the term of the patent right or utility model right has expired.

(3) The owner of the design right or the exclusive licensee shall have a right to a reasonable remuneration as consideration for the non-exclusive license under the two preceding subsections.

(Arbitration decision on grant of non-exclusive license)

33. — (1) Where a registered design or design similar thereto falls under any of the cases provided for in Section 26, the owner of the design right or the exclusive licensee may request the other person referred to in that section to hold consultations on the grant of a non-exclusive license to exploit the registered design or the design similar thereto or of a non-exclusive license on the patent right or the utility model right.

(2) If no agreement is reached or no consultation is possible under the preceding subsection, the owner of the design right or the exclusive licensee may request the President of the Patent Office for an arbitration decision.

(3) If, in the case of the preceding subsection, the grant of a non-exclusive license would unduly injure the interests of the other person referred to in Section 26, the President of the Patent Office shall not render an arbitration decision ordering a non-exclusive license to be granted.

(4) Sections 84, 85(1) and 86 to 91^{bis} (arbitration procedure etc.) of the Patent Law shall apply *mutatis mutandis* to arbitrations under subsection (2).

(Transfer etc. of non-exclusive license)

34. — (1) A non-exclusive license, with the exception of one which results from an arbitration under Section 33(2) of this Law, Section 92(2) of the Patent Law or Section 22(2) of the Utility Model Law, may be transferred, but only together with the business in which it is exploited or only with the consent of the owner of the design right (or the owner and the

exclusive licensee in the case of a non-exclusive license on an exclusive license) or in the case of inheritance or other general succession.

(2) A non-exclusive licensee may, except in the case of a non-exclusive license resulting from an arbitration under Section 33(2) of this Law, Section 92(2) of the Patent Law or Section 22(2) of the Utility Model Law, establish a pledge on the non-exclusive license but only with the consent of the owner of the design right (or the owner and the exclusive licensee in the case of a non-exclusive license on an exclusive license).

(3) A non-exclusive license resulting from an arbitration under Section 33(2) of this Law, Section 92(2) of the Patent Law or Section 22(2) of the Utility Model Law shall be transferred together with the design right, patent right or utility model right to which the non-exclusive licensee is entitled and shall be extinguished at the same time as the design, patent or utility model right.

(Pledges)

35. — (1) Where a design right or an exclusive or non-exclusive license is the subject of a pledge, the pledgee may not exploit the registered design or designs similar thereto except as otherwise provided by contract.

(2) Section 96 (attachment) of the Patent Law shall apply *mutatis mutandis* to pledges on a design right, exclusive license or non-exclusive license.

(3) Section 98(1)(iii) and (2) (effects of registration) of the Patent Law shall apply *mutatis mutandis* to pledges on a design right or exclusive license.

(4) Section 99(3) (effects of registration) of the Patent Law shall apply *mutatis mutandis* to pledges on a non-exclusive license.

(Application *mutatis mutandis* of Patent Law)

36. — Section 69 (limits of patent right), Section 73 (joint ownership), Section 76 (extinguishment of patent right in absence of heir), Section 97(1) (surrender) and Section 98(1)(i) and (2) (effects of registration) of the Patent Law shall apply *mutatis mutandis* to design rights.

2. Infringement

(Injunctions)

37. — (1) The owner of a design right or exclusive licensee may require a person who is infringing or is likely to infringe the design right or exclusive license to discontinue or refrain from such infringement.

(2) The owner of a design right or exclusive licensee who is acting under the preceding subsection may demand the destruction of the articles by which the act of infringement was committed, the removal of the facilities used for the act of infringement, or other measures necessary to prevent the infringement.

(3) In the case of a design for which secrecy has been demanded under Section 14(1), the owner of the design right or exclusive licensee may not take the action provided for in subsection (1) until he has given a warning in the form of a

document which states the matters referred to in each paragraph of Section 20(3) and has been certified by the President of the Patent Office.

(Acts deemed to be infringement)

38. — Acts of manufacturing, assigning, leasing, displaying for the purpose of assignment or lease, or importing, in the course of trade of elements to be used exclusively for the manufacture of an article to which the registered design or a design similar thereto has been applied shall be deemed to be an infringement of the design right or exclusive license.

(Presumption etc. of amount of damage)

39. — (1) Where the owner of a design right or exclusive licensee claims, from a person who has intentionally or negligently infringed the design right or exclusive license, compensation for damage caused to him by the infringement, the profits gained by the infringer through the infringement shall be presumed to be the amount of damage suffered by the owner or exclusive licensee.

(2) The owner of a design right or exclusive licensee may claim, from a person who has intentionally or negligently infringed the design right or exclusive license, an amount of money which he would normally be entitled to receive for the exploitation of the registered design or designs similar thereto, as the amount of damage suffered by him.

(3) The preceding subsection shall not preclude a claim to damages exceeding the amount referred to therein. In such a case, where there has been neither willfulness nor gross negligence on the part of the person who has infringed the design right or the exclusive license, the court may take this into consideration when awarding damages.

(Presumption of negligence)

40. — A person who has infringed a design right or exclusive license of another person shall be presumed to have been negligent as far as the act of infringement is concerned. However, this provision shall not apply with respect to the infringement of a design right or exclusive license relating to a design for which secrecy has been demanded under Section 14(1).

(Application mutatis mutandis of Patent Law)

41. — Section 105 (production of documents) and Section 106 (measures for recovery of reputation) of the Patent Law shall apply mutatis mutandis to the infringement of a design right or exclusive license.

3. Annual Fees

(Annual fees)

42. — (1) A person who obtains registration of a design right or the owner of a design right shall pay as annual fees the amount specified below, for each case and for each of the 15 years under Section 21:

- (i) first to third year: 900 yen per annum;
- (ii) fourth to tenth year: 1,800 yen per annum;
- (iii) eleventh to fifteenth year: 3,600 yen per annum.

(2) A person who obtains registration of a similar design shall pay, as a registration fee, 900 yen for each case.

(3) The two preceding subsections shall not apply to design rights belonging to the State.

(Time limit for payment of annual fees)

43. — (1) The annual fee for the first year under Section 42(1)(i) or the registration fee under Section 42(2) shall be paid within 30 days from the transmittal of the examiner's decision or trial decision that the design registration is to be effected.

(2) The annual fee for the second and subsequent years under Section 42(1) shall be paid during the preceding year or prior thereto.

(3) Upon the request of a person liable to pay an annual or registration fee, the President of the Patent Office may extend the period prescribed in subsection (1) by a period not exceeding 30 days.

(Late payment of annual fees)

44. — (1) Where the owner of a design right is unable to pay an annual fee within the time limit prescribed in Section 43(2), he may pay the annual fee belatedly within six months from the expiration of that time limit.

(2) In the case of late payment of an annual fee in accordance with the preceding subsection, the owner of the design right shall, in addition to the annual fee provided for in Section 42(1), pay a surcharge of the same amount as the annual fee.

(3) Where the owner of a design right fails to pay an annual fee and the surcharge under the preceding subsection within the time limit for late payment under subsection (1), the design right shall be deemed to have been extinguished retroactively from the moment that the time limit prescribed in Section 43(2) expired.

(Application mutatis mutandis of Patent Law)

45. — Section 110 (payment of annual fees by an interested person) and Section 111 (refund of annual fees) of the Patent Law shall apply mutatis mutandis to the annual fees under this Law.

Chapter V — Trial

(Trial against examiner's decision of refusal)

46. — (1) A person who has received the examiner's decision that his application is to be refused and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the examiner's decision.

(2) Where, due to reasons outside his control, a person is unable to demand a trial under the preceding subsection within the time limit prescribed therein, he may, notwithstanding that subsection, make the demand within 14 days from the date when the reasons ceased to be applicable but not later than six months following the expiration of the said time limit.

(Trial against ruling to decline amendment)

47. — (1) A person who has received a ruling to decline an amendment under Section 53(1) of the Patent Law as applied under Section 19 of this Law and is dissatisfied may demand a trial thereon within 30 days from the transmittal of the ruling. However, this provision shall not apply when a new application for design registration has been filed under Section 53(4) of the Patent Law as applied under Section 19 of this Law.

(2) Section 46(2) shall apply *mutatis mutandis* to the demand for a trial under the preceding subsection.

(Trial for invalidation of design registration)

48. — (1) In the following cases, a trial may be demanded for the invalidation of a design registration:

(i) where the registration has been effected contrary to Section 3, 5, 8(2), 9(1) or (2) or 10(1) or to Section 37 of the Patent Law as applied under Section 15(1) of this Law or to Section 25 of the Patent Law as applied under Section 68(3) of this Law;

(ii) where the registration has been effected contrary to the provisions of a treaty;

(iii) where the registration has been effected in respect of a design application filed by a person who is not the creator of the design and has not succeeded to the right to obtain a design registration for the design concerned;

(iv) where, after the registration, the owner of the design right has become a person who can no longer enjoy such right under Section 25 of the Patent Law as applied under Section 68(3) of this Law or the registration no longer complies with a treaty.

(2) Even after the extinguishment of a design right, a trial under the preceding subsection may be demanded.

(3) Where a trial under subsection (1) has been demanded, the trial examiner-in-chief shall notify the exclusive licensee with respect to the design right and other persons who have any registered rights relating to the design registration.

49. — Where a design registration has been effected for any of the following designs, a trial on the design registration may not be demanded under Section 48(1) after five years from the registration of the establishment of the design right:

(i) a design which was publicly known in a foreign country prior to the filing of the design application concerned;

(ii) a design which was described in a publication distributed in a foreign country prior to the filing of the design application concerned;

(iii) a design which could easily have been created, prior to the filing of the design application concerned, by a person with ordinary skill in the art to which the design pertains, on the basis of a design referred to in the two preceding paragraphs.

50. — (1) Where a trial decision that a design registration is to be invalidated has become final and conclusive (other than a design registration of a similar design — and in this subsection “design registration” shall be understood in

this way), the design right shall be deemed never to have existed. However, where a design registration falls under paragraph (iv) of Section 48(1) and a trial decision that the registration is to be invalidated has become final and conclusive, the design right shall be deemed not to have existed from the time when the registration first fell under that paragraph.

(2) When a trial decision that the design registration of the principal design is to be invalidated has become final and conclusive, the design registration of a similar design shall become invalid.

(3) Where a trial decision that a design registration of a similar design is to be invalidated has become final and conclusive or a design registration of a similar design becomes invalid by virtue of the preceding subsection, the design right relating to the similar design shall be deemed never to have existed. However, where the design registration of the similar design falls under paragraph (iv) of Section 48(1) and the trial decision that the design registration of the similar design is to be invalidated has become final and conclusive, or where the design registration of the principal design falls under the said paragraph and the trial decision that the design registration of the principal design is to be invalidated has become final and conclusive so that the design registration of the similar design has become invalid by virtue of the preceding subsection, the design right relating to the similar design shall be deemed not to have existed from the time when the design registration of the similar design or the design registration of the principal design first fell under Section 48(1)(iv).

(Application mutatis mutandis of provisions concerning examination)

51. — (1) Section 18 shall apply *mutatis mutandis* where a demand for a trial under Section 46(1) is considered acceptable. However, this provision shall not apply where a trial decision is rendered ordering a further examination in accordance with Section 160(1) of the Patent Law as applied under Section 52 of this Law.

(2) Section 50 (notification of reasons for refusal) of the Patent Law shall apply *mutatis mutandis* where a reason for refusal not contained in the examiner's decision is found in the trial under Section 46(1).

(Application mutatis mutandis of Patent Law)

52. — Sections 131(1) and (2), 132 to 154, 155(1) and (2), 156 to 158, 159(1), 160(1) and (2), 161, 162 and 163 as well as Sections 167 to 170 (demands for trial; trial examiners; trial proceedings; relationship with litigation, and costs of trial) of the Patent Law shall apply *mutatis mutandis* to trials under this Law.

Chapter VI — Retrial and Litigation**(Demand for retrial)**

53. — (1) Any party may demand a retrial against a final and conclusive trial decision.

(2) Sections 420(1) and (2) and 421 (grounds for retrial) of the Code of Civil Procedure (Law No. 29 of 1890) shall apply *mutatis mutandis* to demands for a retrial under the preceding subsection.

54. — (1) Where the demandant and the defendant in a trial have in collusion caused a trial decision to be rendered, with the purpose of injuring the rights or interests of a third person, such person may demand a retrial against the final and conclusive trial decision.

(2) In such a retrial, the demandant and the defendant shall be made joint defendants.

(Restriction on effects of design rights restored by retrial)

55. — (1) Where a design right relating to an invalidated design registration has been restored through a retrial, the effects of the design right shall not extend to any article to which the registered design or a design similar thereto has been applied and which was imported into Japan, or manufactured or acquired there, in good faith after the time when the trial decision became final and conclusive but before the demand for a retrial was registered.

(2) Where a design right relating to an invalidated design registration has been restored through a retrial, the effects of the design right shall not extend to the following acts:

(i) the exploitation of the design or designs similar thereto in good faith after the trial decision became final and conclusive but before the registration of the demand for a retrial;

(ii) acts of manufacturing, assigning, leasing, displaying for the purpose of assignment or lease, or importing, in good faith, of elements to be used exclusively for the manufacture of articles to which the registered design or a design similar thereto has been applied, after the trial decision became final and conclusive but before the registration of the demand for a retrial.

56. — Where a design right relating to an invalidated design registration has been restored through a retrial or where the establishment of a design right under a design application which was refused by a trial decision has been registered through a retrial, and where a person has, in good faith, been commercially exploiting the design or a design similar thereto in Japan or has, in good faith, been making preparations therefor, after the trial decision became final and conclusive but before the registration of the demand for a retrial, such person shall have a non-exclusive license on the design right, the license being limited to the design which is being exploited or for which preparations for exploitation are being made and to the purpose of such exploitation or the preparations therefor.

(Application mutatis mutandis of Patent Law)

57. — Section 173 (time limit for demand for retrial) and Section 174(1) to (3) and (5) (application of provisions on trial, etc.) of the Patent Law shall apply mutatis mutandis to retrials under this Law.

58. — *Deleted.*

(Actions against trial decisions, etc.)

59. — (1) An action against a trial decision or a ruling to decline an amendment under Section 53(1) of the Patent Law as applied under Section 159(1) of the Patent Law as applied

either under Section 52 of this Law or under Section 174(1) of the Patent Law as applied under Section 57 of this Law or an action against a ruling of dismissal of a demand for a trial or retrial shall come under the exclusive jurisdiction of the Tokyo High Court.

(2) Section 178(2) to (6) (time limit for institution of action, etc.) and Sections 179 to 182 (defendant in the action; notification of institution of action; annulment of trial decision or ruling, and sending of certified copy of judgment) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.

(Actions on amount of remuneration)

60. — (1) Where a person who is concerned in an arbitration decision under Section 33(2) is dissatisfied with the amount of remuneration fixed in the decision, he may institute an action for the increase or decrease of the remuneration.

(2) Section 183(2) (time limit for institution of action) and Section 184(ii) (defendant in the action) of the Patent Law shall apply mutatis mutandis to actions under the preceding subsection.

(Relationship between administrative appeal and litigation)

60^{bis}. — Section 184^{bis} (relationship between administrative appeal and litigation) of the Patent Law shall apply mutatis mutandis to actions for the annulment of measures (with the exception of measures under Section 68(6)) taken under this Law or an order or ordinance thereunder.

Chapter VII — Miscellaneous Provisions

(Amendment)

60^{ter}. — With respect to a procedure relating to a design application, a demand or other procedure relating to design registration, the person carrying on such procedure may make an amendment only during the pendency of the case in the examination, trial or retrial.

(Registration in Design Register)

61. — (1) The following matters shall be registered in the Design Register kept in the Patent Office:

(i) the establishment, transfer, extinguishment or restriction on disposal of a design right;

(ii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of an exclusive or non-exclusive license;

(iii) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a design right or an exclusive or non-exclusive license.

(2) The Design Register, either in whole or in part, may be prepared by means of magnetic tapes (including other materials on which matters can be accurately recorded by an equivalent method — hereinafter referred to as “magnetic tapes”).

(3) Other matters relating to registration that are not provided for in this Law shall be prescribed by Cabinet Order.

(Issuance of design registration certificate)

62. — (1) When the establishment of a design right has been registered, the President of the Patent Office shall issue a design registration certificate to the owner of the registered design.

(2) Re-issuance of the certificate shall be prescribed by ordinance of the Ministry of International Trade and Industry.

(Request for certification etc.)

63. — Anyone may request the President of the Patent Office to issue a certificate, a copy or an extract of documents, to allow the inspection or copying of documents, models or samples or to issue documents whose contents are recorded in the part of the Design Register prepared by magnetic tapes, where such documents, models or samples relate to design registrations. However, this provision shall not apply in the case of the following documents, models or samples if the President of the Patent Office considers it necessary to keep them secret:

(i) a request or a drawing, photograph, model or sample attached thereto, where the design registration concerned has not been effected;

(ii) a document, model or sample, where the secrecy of the design concerned has been demanded under Section 14(1);

(iii) documents concerning a trial under Section 46(1), where a design registration has not been effected with respect to the design application pending in the trial case;

(iv) documents liable to contravene public order or morality.

(Indication of existence of design registration)

64. — The owner of a design right or an exclusive or non-exclusive licensee shall take steps, as prescribed in an ordinance of the Ministry of International Trade and Industry, to mark the articles to which a registered design or a design similar thereto has been applied, or the packaging of such articles, with a statement to the effect that the articles are covered by a registered design or a design similar thereto (hereinafter referred to as "indication of a design registration").

(Prohibition of false marking)

65. — The following acts shall be unlawful:

(i) the marking of an article to which a registered design or a design similar thereto has not been applied, or the packaging of such article, with an indication of a design registration or confusingly similar indication;

(ii) the assignment, lease or display for the purpose of assignment or lease of an article to which a registered design or design similar thereto has not been applied, where such article or its packaging is marked with an indication of a design registration or confusingly similar indication;

(iii) the inclusion in an advertisement of an indication that an article is covered by a registered design or a design similar thereto, or of a confusingly similar indication, for the purpose of causing others to produce or use the article or of assigning or leasing it, where a registered design or a design similar thereto has not been applied to the article.

(Design Gazette)

66. — (1) The Patent Office shall publish the Design Gazette (*Ishō Kōhō*).

(2) In addition to those provided for in this Law, the Design Gazette shall contain the following matters:

(i) the extinguishment of design rights (with the exception of extinguishment due to expiration of term and extinguishment under Section 44(3));

(ii) demands for a trial or retrial or withdrawals thereof and final decisions of a trial or retrial;

(iii) requests for an arbitration decision or withdrawals thereof and arbitration decisions;

(iv) final judgments in an action under Section 59(1).

(Fees)

67. — (1) The persons specified in the left-hand column of the attached table³ shall pay the fee prescribed by Cabinet Order within the limit of the amounts specified in the right-hand column of the table.

(2) The preceding subsection shall not apply where the person specified in the left-hand column of the table is the State.

(3) A fee paid by mistake or in excess shall be refunded upon the request of the person making the payment.

(4) No request for a refund of a fee under the preceding subsection may be made after one year from the date of payment.

(Application mutatis mutandis of Patent Law)

68. — (1) Sections 3 to 5 (time limits and dates) of the Patent Law shall apply mutatis mutandis to the time limits and dates prescribed in this Law.

(2) Sections 6 to 16, 17(2) and (3) and 18 to 24 as well as Section 194 (proceedings) of the Patent Law shall apply mutatis mutandis to design applications, demands and any other proceedings relating to design registrations.

(3) Section 25 (enjoyment of rights by aliens) of the Patent Law shall apply mutatis mutandis to design rights and other rights relating to design registrations.

(4) Section 26 (effect of treaties) of the Patent Law shall apply mutatis mutandis to design registrations.

(5) Sections 189 to 192 (transmittal) of the Patent Law shall apply mutatis mutandis to transmittal under this Law.

(6) Section 195^{ter} (restriction on appeals under Administrative Appeal Law) of the Patent Law shall apply mutatis mutandis to rulings to decline an amendment, examiners' decisions, trial decisions and rulings of dismissal of a demand for trial or retrial under this Law as well as to measures from which no appeal lies under this Law.

Chapter VIII — Penal Provisions

(Offense of infringement)

69. — (1) Any person who has infringed a design right or an exclusive license shall be liable to imprisonment with labor

³ This table is not published here.

not exceeding three years or to a fine not exceeding 300,000 yen.

(2) The prosecution for the offense under the preceding subsection shall be initiated upon complaint.

(Offense of fraud)

70. — Any person who has obtained a design registration or a trial decision by means of a fraudulent act shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 100,000 yen.

(Offense of false marking)

71. — Any person infringing Section 65 shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 100,000 yen.

(Offense of perjury, etc.)

72. — (1) A witness, expert witness or interpreter who, having taken an oath under this Law, has made a false statement or has given a false expert opinion or has interpreted falsely before the Patent Office or a court commissioned thereby shall be liable to imprisonment with labor for a term of not less than three months nor more than ten years.

(2) Where a person committing the offense in the preceding subsection has made a voluntary confession before the examiner's decision or trial decision concerning the case has become final and conclusive, his sentence may be reduced or suppressed.

(Offense of divulging secrets)

73. — Where any present or former official of the Patent Office has divulged or made surreptitious use of the secrets relating to a design in a design application to which he had access in the course of his duties, he shall be liable to imprisonment with labor not exceeding one year or to a fine not exceeding 50,000 yen.

(Dual liability)

74. — Where an officer representing a legal entity or a representative, employee or any other servant of a legal entity or of a natural person has committed an act in violation of Section 69(1), 70 or 71, with regard to the business of the legal entity or natural person, the legal entity or the natural person shall, in addition to the offender, be liable to the fine prescribed in those sections.

(Administrative penalties)

75. — Where a person who has taken an oath under Section 267(2) or 336 of the Code of Civil Procedure — as applied under Section 151 of the Patent Law as applied *either* under Section 52 of this Law *or* under Section 174(1) to (3) of the Patent Law as applied under Section 57 of this Law — has made a false statement before the Patent Office or a court commissioned thereby, he shall be liable to an administrative penalty not exceeding 5,000 yen.

76. — Where a person who has been summoned by the Patent Office or a court commissioned thereby in accordance with this Law has failed to appear or has refused to take an

oath, to make a statement, to testify, to give an expert opinion or to interpret, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 5,000 yen.

77. — Where a person who has been ordered by the Patent Office or a court commissioned thereby to produce or show documents or other evidence in accordance with the provisions of this Law relating to the examination or preservation of evidence has failed to comply with the order, without a legitimate reason, he shall be liable to an administrative penalty not exceeding 5,000 yen.

Supplementary Provision

(Law No. 125 of 1959)

The entry into force of this Law shall be established by another law.

Extract from Law No. 91 of 1970

.....

Supplementary Provisions

(Entry into force)

1. — This Law shall enter into force on January 1, 1971.

.....

(Transitory measures incident to revision of Design Law.)

7. — Sections 2, 3 and 5 of these Supplementary Provisions⁴ shall apply *mutatis mutandis* to the transitory measures that are incident to the revision of the Design Law under Section 3⁵.

.....

(Delegation to Cabinet Order)

9. — In addition to those provided for in the preceding sections, the transitory measures necessary for the implementation of this Law shall be prescribed by Cabinet Order.

II

Utility Model Law

(Law No. 123 of April 13, 1959, as amended)

EXPLANATORY NOTE

On page 195 of the April 1974 issue of this review, the Supplementary Provisions relevant to the Japanese Utility Model Law were published (extract from Law No. 91 of 1970). Section 6 of these provisions reads:

"Sections 2 to 5 of these Supplementary Provisions shall apply *mutatis mutandis* to the transitory measures that are incident to the revision of the Utility Model Law *under Section 2*."

The words italicized here refer to Section 2 of the main provisions of Law No. 91 of 1970, which have not been published in this review. That section provides for the partial revision of the Utility Model Law (Law No. 123 of 1959).

⁴ See *Industrial Property*, 1974, p. 165.

⁵ "Section 3" means Section 3 of the main provisions of Law No. 91 of 1970, which are not published here. That section provides for the partial revision of the Design Law (Law No. 125 of 1959).

ITALY

I

Presidential Decree
on the Simplification of Administrative Procedures
 in the field of Patents for Industrial Inventions,
 Utility Models, Industrial Designs and Trademarks
 (No. 540 of June 30, 1972)

1. — Applications for patents for industrial inventions, utility models, industrial designs and trademarks¹, applications for the transcription of instruments concerning patent applications or patents, representations and documents relating to priorities, and appeals, shall be filed either with the Central Patent Office ("Ufficio Centrale Brevetti"), or with such offices or public bodies as are determined by decree of the Minister for Industry, Commerce and Handicraft². The days and hours of opening to the public of all the aforementioned offices or bodies shall be determined by decree of the same Minister.

On receipt of the application or documents, the aforementioned offices or bodies shall draw up a record of filing. Within the following ten days they shall transmit the applications and documents, together with copies of the records of filing, by registered mail to the Central Patent Office.

The record of filing, which shall be signed by the party filing the application or documents and countersigned by the receiving officer, shall inter alia state:

- (i) the day and hour of filing;
- (ii) the name and address of the applicant and of his agent, if any;
- (iii) the title of the invention and a list of the documents appended, in the case of an application for a patent of invention; the title of the model or design and a list of the documents submitted, in the case of a utility model or industrial design; the data concerning the mark and the documents submitted, in the case of a trademark.

Where the patent application appears to be inadmissible under Section 3, the office or body with which it has been filed shall draw up the record of filing after the application or documents have been put in order, except where the applicant requests that a record be made of the initial filing also. In such cases the observations of the receiving office and the replies of the applicant shall be entered on the record, which shall immediately be transmitted to the Central Patent Office.

The designated offices or bodies may make observations concerning formal defects which do not affect the admissibility of the application or documents and invite the applicant to make the necessary rectification, the filing date remaining unchanged. A record of the rectification shall also be drawn up.

2. — The applications, documents and instruments referred to in Section 1 may also be sent by registered mail with advice of receipt directly to the Central Patent Office in Rome.

On receipt, the Office shall draw up the record, the date of which shall be regarded as the filing date.

In the case of patent applications, the Office shall first ascertain whether or not they are admissible under Section 3 and shall also indicate on the record of filing the hour of receipt of the package.

The Office shall observe the same procedure when it receives applications filed in offices other than those specified in the first subsection of Section 1 or applications for which no record of filing has been drawn up.

3. — A patent application shall be inadmissible when the following are not appended to it:

- (i) for industrial inventions and utility models:
 - (a) at least one copy of the description and of the drawings referred to therein;
 - (b) the document evidencing payment of the prescribed fees;
- (ii) for industrial designs:
 - (a) the plates containing graphic or photographic reproductions of the design, showing its dimensions, or, in the case of three-dimensional designs which cannot be accurately reproduced, samples of the articles;
 - (b) the document evidencing payment of the prescribed fees;
- (iii) for trademarks:
 - (a) at least one copy of the statement of protection;
 - (b) the document evidencing payment of the prescribed fees.

Inadmissibility shall be declared by the Central Patent Office in a decision from which an appeal may be filed, within 30 days of the date of the communication, with the Commission referred to in Section 71 of Royal Decree No. 1127 of June 29, 1939³.

Any fees paid shall be reimbursed ex officio when no appeal from the decision has been filed or when such an appeal has been rejected.

4. — If the prescribed time limits for the filing of applications, instruments and documents or for the payment of fees expire on a Saturday, Sunday or national holiday, or on a day on which all the offices competent to receive the filing are for any reason closed, the date of expiration shall be extended to the first day on which those offices are open.

The same extension shall be granted when the closure is due to a local holiday or to events which concern one office only, provided that the receiving office is:

- (a) that of the residence of the applicant or, if he is resident abroad, of his agent — in cases where a patent application claiming priority is being filed;
- (b) the office in which the application was filed — in the case of procedures subsequent to the filing and of appeals.

¹ In Italy, patents are issued not only for inventions, but also for the other forms of industrial property mentioned here (*Editor's Note*).

² See the decree of the Minister referred to, published on p. 456 below.

³ See *La Propriété industrielle*, 1940, p. 84.

These time limits shall be deemed to have been observed when failure to observe them is due to the disruption, even abroad, of postal delivery services — except where special provisions of international conventions to which the Italian Republic is party specify a different rule — provided that the package was dispatched by registered mail at least five days before the expiration of the time limit — except where the disruption had already taken place — and provided also that, in the case of a package not addressed to the Central Patent Office, the filing or payment is effected within ten days after the cause of the disruption ceased to be applicable.

The party concerned shall state and prove the cause of his inability to observe the prescribed time limits.

5. — The offices or bodies competent to receive filings under Section 1 shall take the necessary steps to ensure the observance of professional secrecy.

Records of filing shall be numbered consecutively in the order in which they are submitted and shall be assembled in bound volumes.

Any applicant so requesting shall be entitled to receive a copy of the record of filing.

The Central Patent Office shall assemble the copies of records of filing in bound volumes, separately for each receiving office and according to the numerical order of the records; separate volumes shall be provided for industrial inventions, utility models and industrial designs, and trademarks. The Office shall indicate the fate of the applications on the copies.

The collections referred to in the foregoing subsection shall replace, for all purposes, the registers of patent applications.

6. — The Central Patent Office shall immediately make available to the military section for patents of the Ministry of Defense applications for patents for industrial inventions, utility models and industrial designs filed with the Office.

Where the said section considers that an application relates to an invention, model or design useful to national defense, any officer or civil servant, even if not a member of the section but delegated expressly by the Minister for Defense, may inspect the description and drawings appended to the application on the premises of the Central Patent Office.

All persons who have inspected applications and other documents relating to patents or have had knowledge of them by reason of their official duties shall be bound to secrecy.

The Ministry of Defense may, within 90 days after the filing of a patent application, ask the Central Patent Office to postpone the grant of a patent and any publication relating to the invention, utility model or industrial design. The Office shall inform the applicant accordingly and shall place him under an obligation to observe secrecy.

If, within eight months after the filing of the patent application, the competent Ministry has not informed the Office and the applicant, in so far as the latter has given his address in the State, of its intention to expropriate the invention under the provisions of Royal Decree No. 1127 of June 29,

1939, the ordinary procedure for the grant of a patent shall be resumed.

The Ministry of Defense may however request, within the period referred to in the foregoing subsection, that the grant of a patent and any publication relating to the invention, model or design be further postponed for a maximum of three years counted from the filing date of the application. In such a case the inventor or his successor in title shall be entitled to compensation determined in accordance with Sections 63 and 64 of Royal Decree No. 1127 of June 29, 1939.

In the case of utility models and industrial designs, the period of postponement provided for in the fifth subsection of this Section shall be four months and the further postponement provided for in the sixth subsection may be requested for a maximum of one year from the filing date of the application.

The time limit provided for in Section 4 of Law No. 514 of July 1, 1954 is raised to 90 days.

All the time limits laid down in this Section shall be mandatory.

7. — Section 32 of Royal Decree No. 1127 of June 29, 1939, is replaced by the following:

“Where, in the course of the procedure for the examination of patent applications, there is doubt as to whether an invention may be detrimental to health, the opinion of the Higher Council for Health shall be sought; the description and any other material necessary for a reasoned opinion shall be sent to the Council.

“If the Higher Council for Health expresses the opinion that the invention is detrimental to health, the Central Patent Office shall reject the application and shall place the applicant under an obligation to observe secrecy concerning the new invention.”

8. — Section 33 of Royal Decree No. 1127 of June 29, 1939, is replaced by the following:

“In all cases, patents issued by the Office shall contain a notice to the effect that the inventions which are the subject thereof may only be worked in accordance with the laws and regulations concerning the production and marketing of the products which are the subject of the invention.”

9. — The observations to which the examination of patent applications gives rise shall be communicated to the applicant, who shall be given a time limit for his reply. Such a time limit may, upon a reasoned request, be extended up to a maximum of six months from the date of communication of the observations.

Where, at the end of the period fixed, no reply to the observations has been received, the Office shall proceed on the basis of the material in its possession.

10. — Where the application is accepted, the Central Patent Office shall proceed with the grant of the patent.

Patents shall be established in one original and two certified copies. They shall be numbered consecutively according to their dates of issue and according to whether they relate to

industrial inventions, utility models, industrial designs or trademarks. One of the copies of the patent shall be sent to the applicant; the other shall be kept in the file of the corresponding application.

The originals shall be kept in separate collections, relating respectively to inventions, utility models, industrial designs and trademarks.

Every day the Office shall make a collection of the originals of patents, using a system of provisional bindings. A collection shall become definitive when it contains a maximum of 500 patents.

The collections of originals shall replace, for all purposes, the registers of patents.

Pending the issue of the implementing regulations referred to in Section 13, the particulars which must appear in patents shall be those provided for in Sections 31 and 32 of Royal Decree No. 244 of February 5, 1940, in the case of patents of invention, Section 33 of Royal Decree No. 1354 of October 31, 1941, in the case of utility models and industrial designs, and Sections 35 and 38 of Presidential Decree No. 795 of May 8, 1948, in the case of trademarks.

11. — The printing of the descriptions and drawings of patents for industrial inventions, provided for in Section 38, 2nd subsection, of Royal Decree No. 1127 of June 29, 1939, may be carried out by any means of graphic reproduction.

12. — The files of instruments and documents concerning applications for patents for inventions, utility models and industrial designs shall be kept by the Central Patent Office for ten years after the expiration of the patent rights.

At the end of that period, the Office may destroy the files, even without prior consultation of the Central Archives of the State, after having microfilmed the originals of the patent applications and the descriptions and drawings appended thereto.

13. — The implementing regulations shall be issued by decree of the Minister for Industry, Commerce and Handicraft within six months following the entry into force of this Decree ⁴.

14. — The following provisions are repealed:

(a) Sections 27(3), 34, 37(1), 40 (as amended by Law No. 514 of July 1, 1959), 90, and 92 (as amended by Law No. 1356 of October 19, 1956) of Royal Decree No. 1127 of June 29, 1939;

(b) Sections 2, 21, 22, 23, 24, 29, 30, 31, 45, 46, 47 and 59(3) of the regulations approved by Royal Decree No. 244 of February 5, 1940;

(c) Section 10(2)(b) of Royal Decree No. 1441 of August 25, 1940;

(d) Sections 2, 24, 25, 26, 27, 31, 32, 43, 44, 45 and 57(3) of the regulations approved by Royal Decree No. 1354 of October 31, 1941;

⁴ The implementing regulations were published in the *Gazzetta Ufficiale della Repubblica Italiana* of March 15, 1973.

(e) Sections 25(3), 32, 34(1), 73 and 75 of Royal Decree No. 929 of June 21, 1942;

(f) Sections 2, 25, 26, 27, 28, 33, 34 and 44(3) of the regulations approved by Presidential Decree No. 795 of May 8, 1948.

Any other provisions contrary to or incompatible with those of this Decree are also repealed.

II

Decree of the Minister for Industry, Commerce and Handicraft

(of September 25, 1972)

1. — Applications for patents for industrial inventions, utility models, industrial designs and trademarks as well as applications for the transcription of instruments concerning patent applications or patents, representations and documents relating to priorities, and appeals, must be filed with the Chambers of Commerce, Industry, Handicraft and Agriculture of the capital towns of the Provinces until December 31, 1972.

Until the same date, the Chamber of Commerce, Industry, Handicraft and Agriculture of Rome is empowered to receive also applications and documents referred to in the foregoing subsection which under Section 1 of Presidential Decree No. 540 of June 30, 1972, may be filed with the Central Patent Office.

2. — As from January 1, 1973, patent applications and the instruments referred to in the first subsection of the foregoing section must be filed with the Provincial Offices of Industry, Commerce and Handicraft of the capital towns of the Provinces.

As from the same date, the Provincial Office of Industry, Commerce and Handicraft of Rome is empowered to receive also applications and documents referred to in the second subsection of the foregoing Section.

The Chambers of Commerce, Industry, Handicraft and Agriculture shall take steps to transfer in good time the necessary staff and equipment to the Provincial Offices of Industry, Commerce and Handicraft.

III

Decrees concerning the Temporary Protection of Industrial Property Rights at Exhibitions

(of July, August and October 1974) *

Sole Section

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

IV^a *Mostra internazionale di coniglicoltura* (Erba (Como), September 6 to 9, 1974);

* Official communications from the Italian Administration.

Salone mercato internazionale dell'abbigliamento — SAMIA — e di modaselezione (Turin, September 6 to 9, 1974);

MODAMAGLIA — Salone della maglieria italiana and MODA INTIMA — Salone dell'abbigliamento intimo (Bologna, September 10 to 13, 1974);

Biennale dell'artigianato lombardo (Busto Arsizio (Varese), September 21 to 25, 1974);

VIII^e Giornate del vino italiano — VINITALY (Verona, October 2 to 6, 1974);

PACK PLAST — Salone della plastica e dell'imballaggio (Rome, October 6 to 14, 1974);

XIV^o Salone nautico internazionale and IV^o Salone internazionale delle attrezzature subacquee (Genoa, October 18 to 28, 1974);

VI^o Salone internazionale delle attività zootecniche — EUROCARNE (Verona, October 26 to 30, 1974);

VIII^a Mostra nazionale del mobile (Florence, October 26 to November 4, 1974);

XXXVI^a MITAM — Tessuti per l'abbigliamento (Milan, November 7 to 10, 1974);

XI^o TECNHOTEL — Mostra internazionale delle attrezzature alberghiere e turistiche and V^o BIBE — Mostra internazionale vini, liquori ed altre bevande (Genoa, November 16 to 24, 1974)

shall enjoy the temporary protection established by the decrees mentioned in the preamble ¹.

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.)

NEWS ITEMS

SINGAPORE

Registrar of Trade Marks and Patents

We have been informed that Mr. R. R. Magnus has been appointed Registrar of Trade Marks and Patents.

We take this opportunity of congratulating Mr. Magnus on his appointment.

BOOK REVIEWS

Les brevets d'invention - rédaction et interprétation [Patents - Drafting and Interpretation]. Published by the *Centre de recherche sur le droit des affaires*, under the direction of J. Boucourechliev and J.-M. Mouseron. Presses universitaires de France, Paris, 1973. - 428 pages.

With the development of international trade, especially Common Market trade, it is important for inventors and industrialists to know the rules of different countries relating to patent drafting and interpretation. This work compares the drafting techniques and principles of interpretation in Austria, France, Germany (Federal Republic of), the Netherlands, Switzerland, the United Kingdom and the United States of America, as well as in the context of the European patent system, which has been particularly studied by the authors. As has been pointed out by the Director of the French National Institute of Industrial Property in the Preface, this work should thus contribute "to finding, even before any case law is established, uniform concepts of patent drafting and interpretation, a prerequisite to the smooth working of the European patent, which will open up a new era in the history of patent law." G. R. W.

Estudios de Propiedad industrial y Derecho de autor en homenaje a Stephen P. Ladas [Studies on Industrial Property and Copyright in honor of Stephen P. Ladas]. Collection of articles in the *Revista mexicana de la propiedad industrial y artistica*, under the direction of David Rangel Medina. Mexico City, 1973. - 436 pages.

This collection of articles, published by the Mexican Review of Industrial and Artistic Property under the direction of David Rangel Medina, is in honor of Stephen P. Ladas, who has made his name as one of the foremost specialists in industrial property for almost half a century.

This work comprises 28 studies, covering more than 400 pages, contributed by industrial property and copyright lawyers from 15 countries and dealing with subjects as different as the protection of know-how, industrial designs, the transfer of technology, the problems of copyright in developing countries, fiduciary assignment and well-known marks — to take a few examples. It is especially interesting in that most of the authors come from Latin America and that their contributions give readers from elsewhere an outline of the questions that are of concern to this region of the world. G. R. W.

Know-how et Propriété Industrielle [Know-How and Industrial Property], by François Magnin. Preface by Professor André Françon. Librairies techniques, Paris, 1974. - 479 pages.

This work is published in the collection of the *Centre d'études internationales de la propriété industrielle* at Strasbourg (France). It is a complete revision of a book published three years ago¹ and written by the same author, who is a lecturer at the Faculty of Law and Political Science at Dijon (France), bringing the earlier work up to date and containing a large number of entirely new developments.

The author has taken into account the most recent judicial decisions on know-how in several countries, including France, Germany (Federal Republic of), Italy, the Netherlands, the United Kingdom and the United States of America. He devotes a special chapter to the decisions of the bodies of the European Economic Community on the protection of know-how and to the general impact in this field of antitrust laws, particularly in the United States of America.

In the first part, the author analyzes the concept of know-how and determines the various aspects of industrial activity to which it relates, and then concentrates on defining the concept — both *per se*, in isolation, and in relation to the concepts of the patent and trade secrets, showing the special characteristics that the ideas of novelty and secrecy have in this context.

In the second part, the author examines whether know-how should be protected and reviews the various ways in which it could be protected — protection under the general civil or criminal law or under legal provisions in the field of unfair competition or by certain specific remedies already existing or under preparation in a number of countries. He comes to the conclusion that none of these forms of protection is really effective, and finds that the problem of know-how is in fact the problem of how to protect the results of research and the secrecy necessary for the development of industrial activity. In his view, know-how can be properly protected only if enterprises, as persons under the law, are granted, by national legislation or international agreement, a right protecting the secrecy of their day-to-day activities, a right which would be parallel to the right of privacy already afforded to the individual in certain countries.

In the third part, the author discusses contracts for the transfer of know-how. He studies them from the point of view of the various categories in which they can be placed, defines the rules governing the contracts themselves and the taxation aspects and deals in detail with the problems that arise when they are being negotiated and drafted. He had previously devoted special attention to recent judicial decisions in the United States of America which might have seemed to cast doubt on the legal value of such contracts (see, on this subject, pages 175 to 185).

An annex to this work contains the French version of the "Guide for use in Drawing Up Contracts relating to the International Transfer of Know-How," prepared by the United Nations Economic Commission for Europe, as well as the passages relating to know-how in the Model Law for Developing Countries on Inventions. Other annexes include models for a unilateral undertaking prior to a know-how contract and for an ad hoc agreement prior to such a contract as well as a model contract for the transfer of know-how.

This work, which is complemented by an extremely comprehensive bibliography, would therefore seem likely to interest both industrial property practitioners and lawyers. G. R. W.

Selection of New Publications

AHRENS (Hans-Jürgen). *Die Veröffentlichung vergleichender Werbeträgeranalysen*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG, 1974. - 260 p.

DALEWSKI (Jan). *Instytucje Prawa Wynalazczego i Licencje Według Prawa Polskiego*. Warsaw, Polskie Towarzystwo Ekonomiczne, 1972. - 104 p.

DESSEMONTET (François). *Le Savoir-faire industriel - Définition et Protection du "Know-how" en droit américain*. Geneva, Librairie Droz, 1974. - 398 p.

ESSERS (Florence) and RABINOW (Jacob). *The Public Need and the Role of the Inventor*. Washington, U. S. Government Printing Office, 1974. - 212 p.

GOMEZ SEGADÉ (José Antonio). *El secreto industrial (Know-how) - Concepto y protección*. Madrid, Editorial Tecnos, 1974. - 411 p.

HAERTEL (Kurt). *Europäisches Patentübereinkommen*. Cologne, Berlin, Bonn and Munich, Carl Heymanns Verlag KG, 1974. - 246 p.

LENIN *ob izobretatelstve i vnedrenii nauchno-tekhnicheskikh dostizheny v proizvodstvo*, compiled by I. M. Maizenberg. Moscow, Politicheskoi literaturny, 1973. - 240 p.

MEULENBROEK (B. A.). *Het collectieve merk onder de Benelux-merkenwet*. Deventer, Uitgeverij Kluwer B. V., 1974. - 187 p.

NAKAGAWA (J.) and TOYOZAKI (M.). *Jitsuyo Hohritzu Jiten*, No. 8. Tokyo, Dai-ichi Hohki Shyuppan Co., 1972. - 466 p.

¹ Reviewed in *Industrial Property*, 1971, p. 320.

PATENT POLICY COMMITTEE OF SWEDEN. *Internationellt patentsamarbete I (1970 års konvention om patentsamarbete)*. Stockholm, Kungl. Boktryckeriet P A Norstedt & Söner, 1974. - 540 p.

ROSSITTER (Derek). *A memorandum of advice on trade mark matters*. The Association of the British Pharmaceutical Industry, 1971. - 32 p.

VAN DIJK (W.). *Merkenrecht in de Beneluxlanden*. Amsterdam, Merkenbureau van der Graaf & Co. B. V., 1973. - 261 p.

VOSSIUS (Volker) and HALLMANN (Ulrich C.). *Patent Granting Procedure - Utility Model Registration - in the Federal Republic of Germany*. Munich, Wila Verlag für Wirtschaftswerbung Wilhelm Lampl, 1974. - 259 p.

CALENDAR

WIPO Meetings

December 9 to 13, 1974 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

December 16 to 18, 1974 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

January 22 to 24, 1975 (Geneva) — Publication of Licensing Opportunities — Group of Consultants

January 27 to 30, 1975 (Geneva) — International Patent Classification (IPC) — Classification of Search Files — Working Group

February 3 to 14, 1975 (Geneva) — International Patent Classification (IPC) — Ad hoc Working Party for the Revision of the Guide to the IPC

February 11 to 17, 1975 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Group of Governmental Experts

February 17 to 28, 1975 (Munich) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

February 18, 1975 (Geneva) — WIPO Coordination Committee (Extraordinary Session)

February 20 to 28, 1975 (Geneva) — Revision of the Hague Agreement concerning the International Deposit of Industrial Designs — Committee of Experts

March 10 to 14, 1975 (Geneva) — Mechanization of Trademark Searches — Committee of Experts

March 17 to 21, 1975 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (2nd Session)

April 7 to 11, 1975 (Geneva) — International Classification of Goods and Services for the Purposes of the Registration of Marks — Temporary Working Group

April 7 to 11, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

April 14 to 18, 1975 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)

April 14 to 25, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

April 22 to 29, 1975 (Geneva) — Inventions relating to Microorganisms — Committee of Experts

May 5 to 9, 1975 (Geneva) — International Patent Classification (IPC) — Training Course

May 12 to 23, 1975 (Washington) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

May 26 to 30, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (2nd session)

June 4 to 6, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

June 9 to 20, 1975 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

June 16 to 21, 1975 (Washington) — Sub-Committee on Reprographic Reproduction of the Executive Committee of the Berne Union

Invitations: States members of the Committee — *Observers:* Participants in the Working Group on Reprographic Reproduction of Works Protected by Copyright (Paris, May 1973) — *Note:* Meeting held jointly with the Sub-Committee of the Intergovernmental Copyright Committee established by the Universal Copyright Convention

June 23 to 27, 1975 (Geneva) — Protection of Computer Programs — Advisory Group

September 8 to 12, 1975 (Geneva) — International Classification of Goods and Services for the Purposes of the Registration of Marks — Preparatory Committee and Committee of Experts

September 15 to 26, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

September 17 to 19, 1975 (Geneva) — ICIREPAT — Plenary Committee (PLC)

- September 22 and 23, 1975 (Geneva) — Trademark Registration Treaty (TRT) — Interim Advisory Committee
- September 23 to 30, 1975 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions — Ordinary Sessions
- October 1 to 3, 1975 (Geneva) — Scientific Discoveries — Committee of Experts
- October 1 to 3, 1975 (Geneva) — International Patent Classification (IPC) — Bureau
- October 6, 1975 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee
- October 7 to 9, 1975 (Geneva) — International Patent Classification (IPC) — Committee of Experts
- October 13 to 17, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)
- October 20 to 24, 1975 (Geneva) — ICIREPAT — Technical Committee for Standardization (TCST)
- October 27 to November 3, 1975 (Geneva) — PCT — Interim Committees
- November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- November 10 to 14, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (3rd session)
- December 1 to 4, 1975 (Geneva) — International Protection of Appellations of Origin and Other Indications of Source — Committee of Experts
- December 1 to 12, 1975 (Munich) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee
- December 8, 9 and 16, 1975 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (jointly organized with the International Labour Organisation and Unesco)
- December 10 to 12, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)
- December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)
- December 15 to 19, 1975 (Geneva) — International Classification of the Figurative Elements of Marks — Provisional Committee of Experts

UPOV Meetings in 1975

Council: October 7 to 10 — Consultative Committee: March 5 and 6; October 6 and 10 — Technical Steering Committee: April 17 and 18; November 6 and 7 — Committee of Experts on International Cooperation in Examination: January 15 to 17; April 14 to 16; November 3 to 5 — Committee of Experts on the Interpretation and Revision of the Convention: February 25 to 28; December 2 to 5.

Note: All these meetings will take place in Geneva at the headquarters of UPOV

Technical Working Parties: (i) for Vegetables: May 28 to 30, 1975 (Lund - Sweden); (ii) for Forest Trees: August 19 and 20, 1975 (Hannover - Federal Republic of Germany); (iii) for Ornamental Plants: September 9 to 11, 1975 (Hornum - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

- December 9 to 11, 1974 (Rijswijk) — International Patent Institute — Administrative Board
- February 5 to 7, 1975 (Paris) — International Literary and Artistic Association — Working Session, Executive Board and General Assembly
- April 21 to 25, 1975 (Hamburg) — International Confederation of Societies of Authors and Composers — Congress
- May 3 to 10, 1975 (San Francisco) — International Association for the Protection of Industrial Property — Congress
- September 17 to 20, 1975 (London) — Union of European Professional Patent Representatives — General Assembly
- May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress