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The Agreement conferring on the World Intellectual Property Organization the status of specialized agency in the United Nations system entered into force on December 17, 1974, when it was unanimously approved by the General Assembly of the United Nations by Resolution 3346(XXIX).

The General Assembly of the World Intellectual Property Organization had approved the same agreement on September 24, 1974 (see Industrial Property, 1974, page 399).

The text of the agreement will be published in the January 1975 issue of Industrial Property.
WIPO Convention

I. Ratification

MONACO


By virtue of Article 29bis of the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works, Monaco, which was not bound by Articles 22 to 38 of the Stockholm Act (1967) of the said Convention, having ratified the Paris Act (1971), fulfills the condition set forth in Article 14(2) of the WIPO Convention.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Monaco on March 3, 1975.

WIPO Notification No. 62, of December 6, 1974.

II. Accession

DAHOMEY

The Government of Dahomey deposited on December 9, 1974, its instrument of accession to the WIPO Convention.

Dahomey has fulfilled the conditions set forth in Article 14(2) of the Convention by concurrently acceding to the Stockholm Act (1967) of the Paris Convention for the Protection of Industrial Property and to the Paris Act (1971) of the Berne Convention, as provided for in Article 29bis of that Act.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Dahomey on March 9, 1975.

WIPO Notification No. 63, of December 12, 1974.

INTERNATIONAL UNIONS

Paris Convention

I. Ratification of the Stockholm Act

NIGER

The Government of Niger deposited on December 6, 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.

Concurrently with depositing the said instrument of ratification, Niger indicated, pursuant to Article 16(4)(b), that it wished to belong to Class VII.

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 Niger on March 6, 1975.

Paris Notification No. 55, of December 6, 1974.

II. Accessions to the Stockholm Act

DAHOMEY

The Government of Dahomey deposited on December 9, 1974, its instrument of accession to the Paris Convention, as revised at Stockholm on July 14, 1967.

The instrument of accession contains the following declaration:

"The Government of the Arab Republic of Egypt declares that it does not consider itself bound by the provisions of paragraph (1) of Article 28 of the said Convention."

(Original)

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 Egypt on March 6, 1975.

Paris Notification No. 54, of December 6, 1974.

Madrid Agreement (Indications of Source)

Accession to the Lisbon Act and to the Additional Act of Stockholm

EGYPT

The Government of Egypt deposited on December 3, 1974, its instrument of accession to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891, as revised at Lisbon on October 31,
1958, as well as to the Additional Act of Stockholm of July 14, 1967, of the Madrid Agreement.

Pursuant to the provisions of Article 5(2) of the Additional Act of Stockholm, the Madrid Agreement as revised at Lisbon as well as the said Additional Act will enter into force with respect to Egypt on March 6, 1975.

Madrid (Indications of Source) Notification No. 15, of December 6, 1974.

Madrid Agreement (Marks)

I. Ratification of the Stockholm Act

NETHERLANDS

The Government of the Kingdom of the Netherlands deposited on December 4, 1974, its instrument of ratification, for the Kingdom in Europe, 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 the Netherlands on March 6, 1975.

Madrid (Marks) Notification No. 24, of December 6, 1974.

II. Accession to the Stockholm Act

EGYPT

The Government of Egypt deposited on December 3, 1974, its instrument of accession to the Madrid Agreement, 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 Egypt on March 6, 1975.

Madrid (Marks) Notification No. 23, of December 6, 1974.

Nice Agreement

Ratification of the Stockholm Act

NETHERLANDS

The Government of the Kingdom of the Netherlands deposited on December 4, 1974, its instrument of ratification, for the Kingdom in Europe, 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 the Netherlands on March 6, 1975.

Nice Notification No. 29, of December 6, 1974.

Strasbourg Agreement

Ratification

SPAIN

The Government of Spain deposited on November 26, 1974, its instrument of ratification of the Strasbourg Agreement Concerning the International Patent Classification of March 24, 1971, with the declaration that it intends to avail itself of the reservations provided for by Article 4(4)(i) and (ii).

Pursuant to the provisions of Article 13(1)(b), the Strasbourg Agreement will enter into force with respect to Spain on November 29, 1975.

Strasbourg Notification No. 20, of November 29, 1974.
CONVENTIONS NOT ADMINISTERED BY WIPO

International Patent Institute

Accession by Italy to the Agreement of The Hague

By letter of November 21, 1974, the Minister for Foreign Affairs of the Netherlands notified the Director General of the International Patent Institute (IIB) of the deposit by Italy of its instrument of accession to the Agreement of The Hague setting up the IIB, of June 6, 1947, as revised at The Hague on February 16, 1961.

Pursuant to Article 20(3), the Agreement entered into force with respect to Italy on December 15, 1974. On this date, the following two agreements also entered into force: the Agreement between the Italian Government and the IIB setting up a sub-office of the Institute in Italy, signed at Rome on April 12, 1972, and the Working Agreement between the IIB and the Italian Central Patent Office, signed at Rome on November 30, 1972.

WIPO MEETINGS

WIPO Symposium on the Role of Patent Information in Research and Development
(Moscow, October 7 to 11, 1974)

Note *

The WIPO Symposium on the Role of Patent Information in Research and Development was organized by the World Intellectual Property Organization (WIPO) in cooperation with the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR.

It took place in the main conference room of the headquarters building of the Council for Mutual Economic Assistance in Moscow, from October 7 to 11, 1974.

The Symposium was opened and chaired by Dr. Arpad Bogsch, Director General of WIPO.

Mr. V.A. Kirillin, Deputy Chairman of the Council of Ministers of the USSR, welcomed the participants in the name of the Government of the Soviet Union.

The principal host of the Symposium was Mr. Yuri Maksarev, Chairman of the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR.

The participants heard 27 lectures dealing with the following topics: dissemination and use of patent information for research and development, rationalization of search and examination through international cooperation, classification and retrieval of scientific and technical information contained in patent documents, standardization and publication of patent documents.

* This Note has been prepared by the International Bureau.

The lecturers came from 15 different countries and three intergovernmental organizations. They are all eminent specialists in the topics treated at the Symposium. Their lectures were given in English, French, German or Russian. Simultaneous translation was provided in the other three languages and in Japanese.

Here is the list, in alphabetical order, of the lecturers:
Mr. E. Aracama-Zorraquín, Lawyer, Professor at the University of Buenos Aires (Argentina)
Mr. E. Armitage, C.B., Comptroller-General, UK Patent Office (United Kingdom)
Mr. E. I. Artemiev, Deputy Chairman, State Committee for Inventions and Discoveries of the Council of Ministers of the USSR (Soviet Union)
Mr. O. Auracher, Director General, International Patent Documentation Center (INPADOC) (Austria)
Mr. D. H. Barlow, Director, Information Services in Physics, Electro-Technology, Computers and Control (INSPEC), Institution of Electrical Engineers (United Kingdom)
Mr. J. B. van Benthem, President, Patent Office (Netherlands)
Mr. G. Borggård, Director General, Royal Patent and Registration Office (Sweden)
Mr. I. V. Chervyakov, Counsellor, Council for Mutual Economic Assistance (Moscow)
Mr. C. M. Dann, Commissioner of Patents (United States of America)
Mr. G. Finniss, Director General, International Patent Institute (Rijswijk)
Mr. V. V. Guzy, Head, Patent Department, Ukrainian Institute for Chemical Engineering (Soviet Union)
Mr. J. Hemmerling, President, Office for Inventions and Patents (German Democratic Republic)

Mr. G. Horváth, Vice-President, Union of the Hungarian Pharmaceutical Industry (Hungary)

Mr. K. Host-Madsen, Patent Attorney (Denmark)

Mr. M. Hyams, Managing Director, Derwent Publications Ltd.

Mr. I. Ivanov, Academy of Sciences (Soviet Union)

Mr. R. Meyer, Director, Eastman Kodak Company (United States of America)

Mr. K. Otani, Engineer General, Patent Office (Japan)

Mr. R. Motycka, Director of the Central Library of Patent Literature, Office for Inventions and Discoveries (Czechoslovakia)

Mr. K. Otani, Engineer General, Patent Office (Japan)

Mr. K. Pfanner, Deputy Director General, World Intellectual Property Organization (Geneva)

Mr. F. Savignon, Director, National Institute of Industrial Property (France)

Mr. R. Seibert, Patent Attorney (Federal Republic of Germany)

Mr. E. Tasnádi, President, National Office of Inventions (Hungary)

The text of the lectures is being published by WIPO in English.

The number of registered participants was 819, coming from 43 different countries and four intergovernmental organizations (see below).

An Organizing Committee, consisting of officials of the Soviet Government and presided over by Mr. E. I. Artemiev, Deputy Chairman of the State Committee for Inventions and Discoveries of the Council of Ministers of the USSR, was responsible for much of the material organization and most of the hospitality. Both were excellent in every respect and contributed decisively to the success of the Symposium.

List of Participants *

* The names of the participants are listed in alphabetical order. A list containing their titles and functions may be obtained from the International Bureau; such a list is also included in WIPO's publication of the lectures at the Symposium, which will shortly be available.

**WIPO MEETINGS**

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Austria:

- O. Anracher; W. Hamburger; W. A. Hamburger; O. Leberl; W. Meysner; H. Pawlow; W. Polak; G. Quarda.

Belgium:

- E. Fahe; L. Gruszow (Mrs.); G. Pirmolin; H. Vanderborght.

Bulgaria:

- N. K. Grasheva (Mrs.); I. V. Ivanov; P. S. Kirov; P. Z. Nikolov; L. C. Prodanov; V. N. Raynov; S. D. Stoyanov; G. V. Yanchev.

Canada:

- J. J. Ellis; A. Gariopy; G. Primak; A. Swabey.

Cuba:

- M. Rodriguez Baz (Miss); J. Rodriguez-Padilla.

Czechoslovakia:

- M. Andreás; L. Antony; M. Babičková (Mrs.); E. Bahlošová (Mrs.); J. Bednář; M. Bělohlávková; J. Bica; E. Bránšová; E. Dudišská (Mrs.); H. Dušková (Mrs.); K. Effenberger; J. Fabian; K. Finka; A. Henkel; Z. Hranický; K. Hly; K. Kovář; S. Kračmar; G. Kyselová (Mrs.); M. Limberská (Mrs.); R. Motyčka; K. Musil; O. Petráček; N. Pšiková (Mrs.); P. Rezáč; K. Ševčík; O. Staša; Z. Štěpánek; J. Švejda; J. Teysler; M. Vitek; A. Valachová (Mrs.); J. Wandas.

Denmark:

- N. Bach; B. Eriksen; K. Host-Madsen; C. N. Jorgensen; M. Kokvedgaard; R. P. Kristensen; E. Meszel (Miss).

Egypt:

- M. Bakri; A. A. Omar.

Finland:

- E. Jokinen (Mrs.); H. Keisala; K. Koivistoa; A. R. Kolster; L. Lehtonen; B. Leisten (Mrs.); E. Pakkula; E. Salonen (Mrs.); S. Suominen; P. Sysio; A. Virtanen.

France:

- P. Aubel; M. Bressand; B. Bulteau; S. Carpentier (Mrs.); L. Chereau; M. Cornutot; M. Coutel; D. Cuvelot; J. Duval-Valacha (Mrs.); G. Foldes; M. R. Hirsch; H. Huet (Mrs.); J. Kesseler; G. Korsakoff; J. Legas; J. Lenoir; J. J. Martin; F. Mennesson; A. Netter; B. Drs; B. de Passemar; B. Philip; J. Piettre (Mrs.); Y. Plasseraud; P. Rotter; F. Savignon; J. Tévenin; Z. Weinstein.

German Democratic Republic:

- R. Blumstengel; W. Boecker; J. Hemmerling; H. Hünninger; H. Konrad; U. Rolke (Mrs.); W. Schüler; F. Weber.

Germany, Federal Republic of:

- F. Eideneier; W. Eitme; J. Erben; M. Grosshauser; K. Haertel; K.-D. Kirschner; F. Kretschmer; H. Mathias; W. Moll; H. Pätzold; E. H. E. Pietsch; M. Reinelt; R. Rüger; H.-O. Scholl; A. Schuller; R. Seibert; G. Strauss; C. Suhr; R. Volhard; A. Wittmann; R. Zeillentin.

Hungary:

- M. Ács (Mrs.); A. Albert; A. Alhás (Miss); J. Balajti (Miss); B. Balogh; G. Béres; A. Bozó; I. Caiki; P. Erdély; L. Falucskai; T. Gárgyán; L. Gongboz (Mrs.); B. Györgyei; L. Heinold; E. Hanzély (Mrs.); G. Horváth; S. Horváth; L. Iker; O. Ipsich; G. Jávor; M. Kárpáthy (Miss); B. Kende; G. Kereszteti; S. Keresztes; V. Klenk; E. Koczka (Mrs.); I. Kovács; K. Kranz; G. Lévai; L. Ligetby; B. Majoros; A. Mándi; L. Máráti; T. Mármarosi; K. Molnár; L. Nagy; D. Nasinszky; Z. Pasz; I. Palkó; L. Pásztor; T. Purovtský; G. Pszatá; G. Rutikay; G. Simon; T. Somlai; M. Spieler (Miss); A. Szabó; L. Szakács; M. Tabori; L. Takáts; E. Tasnádi; L. Tavassy; J. Tolnai; F. Zima.

India:

- L. S. Davar; I. S. Shah (Miss); N. S. Shah (Miss).

Ireland:

- L. O`Broin.
Committee of Experts on the International Protection of Appellations of Origin and Other Indications of Source

First Session

(Geneva, November 4 to 8, 1974)

Note *

Pursuant to a decision of the Executive Committee of the Paris Union, a Committee of Experts on the International Protection of Appellations of Origin and Other Indications of Source met in Geneva from November 4 to 8, 1974.

The task of the Committee of Experts was to examine new solutions to the problem created by the fact that the Lisbon Agreement Concerning the International Protection of Appellations of Origin and their International Registration, concluded in 1958, has met with only relatively limited success: so far, only eleven States are bound by it. The discussions of the Committee of Experts were based on documents prepared by the International Bureau, written observations submitted by the Governments of the Federal Republic of Germany and Canada and proposals by the Government of Cuba. 20 States members of the Paris Union were represented on the Committee of Experts; one other member State, three intergovernmental organizations and four international non-governmental organizations were represented by observers.

The list of participants follows this Note.

In the course of the general discussion, the majority of the delegations showed interest in a new international system of protection of appellations of origin and other indications of source. It was also stressed that the problem was particularly difficult to solve owing to the great differences between national laws on the subject.

The Committee of Experts examined in detail the possible main features of the future international system of protection. The principles stated below were approved by

* This Note has been prepared by the International Bureau.
the majority of the delegations. The future system should cover all kinds of terms and signs referring directly or indirectly to a geographical source which are included in existing bilateral or multilateral agreements. Protection would be afforded at two levels: on one hand, all geographical indications would be the subject of a provision prohibiting deceptive practices in relation to the geographical origin of a product; on the other hand, some denominations would receive additional protection under a special system based on a registration procedure. To be eligible for registration, denominations would not necessarily have to enjoy protection, in the country of origin, on the basis of a specific official instrument or act. Registered denominations would be reserved for goods from the country of origin, and special provisions would have to be adopted to cover the cases of homonyms and denominations common to more than one country. The conditions for the use of registered denominations would be determined by the law of the country of origin; in this connection, consideration was given to various ways of facilitating application of the law of a foreign country. There would be no requirement for the international registration to specify the persons or entities entitled to use the denomination concerned. The content of protection should be similar to that provided for in Article 3 of the Lisbon Agreement. The sanctions applicable would be those provided for (civil, penal and administrative) at the national level in the countries in which protection is sought. The right to sue should be given to certain groups of persons.

Other problems were not solved by the Committee of Experts, or at least not fully, and will have to be reexamined. These include: the possibility of limiting the protection of registered denominations to certain categories of goods, the question of geographical indications which have become generic terms, and conflicts between a registered denomination and a trademark.

The Committee of Experts did not come to any final conclusion as to whether the future international system should be set up by means of a revision of the Lisbon Agreement so as to incorporate the substantive provisions of the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, or by means of a new treaty.

Finally, the Committee of Experts recommended that for its next session, in 1975, the International Bureau should prepare a draft of a treaty on the new international system of protection.

**List of Participants**

**I. States**

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

**II. Observer**

United States of America: R. Prohme.

**III. Intergovernmental Organizations**


**IV. Non-Governmental Organizations**


**V. Officers**

Chairmen: E. M. Haddrick (Australia); Vice-Chairmen: J. M. Rodriguez Padilla (Cuba); E. Steup (Mrs.) (Germany, Federal Republic of); Secretary: L. Bauemer (WIPO).

**VI. WIPO**

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

**Patent Cooperation Treaty**

**Interim Committees**

1974 Sessions

(Geneva, November 12 to 19, 1974)

**Note**

The three PCT Interim Committees, namely: the Interim Advisory Committee for Administrative Questions, the Interim Committee for Technical Assistance, and the Interim Committee for Technical Cooperation, were convened from November 12 to 19, 1974, in Geneva. Twenty-one States, two intergovernmental organizations, seven non-governmental organizations and two interested firms were represented.

The list of participants follows this Note.

* This Note has been prepared by the International Bureau.

1 This was the fifth session of the PCT Interim Advisory Committee for Administrative Questions, and the fourth session of the PCT Interim Committee for Technical Assistance and of the PCT Interim Committee for Technical Cooperation. For a Note on the 1973 sessions of the Interim Committees, see Industrial Property, 1973, p. 324.
Interim Advisory Committee for Administrative Questions

Administrative Instructions. This Committee examined a document containing a second revised draft of the Administrative Instructions relating to Chapters I and II of the PCT as well as to matters found in the other Chapters of the PCT. The Committee approved without comment a number of sections in this draft. As for the remainder, the Committee agreed that they should be revised in the light of the comments and suggestions made.

Draft Forms. The Committee noted a progress report on the first session of the Working Group on Forms, which met in Geneva from September 9 to 13, 1974. The Committee agreed that the draft forms should be revised by the International Bureau, taking into account the comments and suggestions of that Working Group. The revised draft forms are to be submitted to the next session of the Committee.

Interim Committee for Technical Assistance

Technical Assistance Projects. This Committee considered a progress report on the project concerning the modernization of the Brazilian patent system.

The Committee also noted a progress report on other technical assistance projects, including those concerned with the establishment of regional patent documentation services or centers under the aegis of the Industrial Development Centre for Arab States (IDCAS) and the African and Malagasy Industrial Property Office (OAMPI).

Acquisition of PCT Minimum Documentation by Developing Countries. The Committee discussed various means of determining, for the purpose of transfer of technology, the availability of backlog patent documents for developing countries. The Committee agreed that the International Bureau should survey the PCT minimum documentation countries to determine whether patent document collections were available.

Usefulness of INPADOC Services for Developing Countries. The Committee considered a document dealing with the usefulness of the services of the International Patent Documentation Center (INPADOC) for developing countries. The Committee requested the International Bureau to examine in close cooperation with the competent Austrian authorities the possibilities for the use of INPADOC services for the benefit of developing countries. In principle, the Committee approved the suggestion to conduct pilot projects to test the value of these services to developing countries. The International Bureau was asked to submit a report on the results of this study to the next session of the Committee.

Program for 1975. The Committee approved the following program for the year 1975: continuation of the Brazilian project; continuation of the study concerning the establishment of a regional patent documentation center within OAMPI and preparatory work connected with that project as well as with the task of preparing OAMPI for the possibility of acting as an International Searching Authority under the PCT; continuation of the work concerning the establishment of a patent documentation center of IDCAS; work in connection with other possible requests within the framework of the PCT technical assistance program; a study of the usefulness of INPADOC services to developing countries; a survey on the availability of patent document collections for the purpose of technical assistance to developing countries.

Interim Committee for Technical Cooperation

Minimum Documentation: Non-Patent Literature. This Committee considered a progress report setting forth various alternative proposals for the establishment of a list of periodicals to be included in the PCT minimum documentation. The Committee agreed upon a list of 169 periodicals. The Committee further agreed that the wording "published items" referred to in Rule 34.1(b)(iii) of the PCT Regulations should consist of those pertinent articles, abstracts and other contents of the listed periodicals which appear in issues whose publication date precedes by not more than five years the time at which any international search is effected. The Committee noted that the prospective International Searching Authorities would, within the next six months, start including in their documentation any of the 169 periodicals which they were not collecting at the present time.

A representative of the Information Services in Physics, Electro-Technology, Computers and Control (INSPEC) (operated by the Institution of Electrical Engineers, London) informed the Committee of the progress made to date in respect of the Patent Associated Literature (PAL) system, a system designed to facilitate access by national offices to selected areas of non-patent literature. He said that since March 1, 1974, INSPEC had been sending the PAL full-text copy service to the Patent Offices of Brazil, Germany (Federal Republic of), Japan and the United States of America. He called the attention of the Committee to new services which arose from the full-text copy service and which were being offered by INSPEC and he announced the expansion of the full-text copy service into other areas of technology.

Minimum Documentation: Patent Documents. The Committee considered and arrived at some tentative principles concerning the treatment of patent families within the framework of the PCT minimum documentation.

The Committee considered a progress report concerning those patent documents in the English, French and German languages which, if sorted out and placed at the disposal of the International Searching Authorities, would become part of the PCT minimum documentation (PCT Rule 34.1(c)/(vi)).

Searching Under the PCT. The Committee agreed that the International Bureau should proceed with a survey of search practices on the basis of a questionnaire to be sent to all prospective International Searching Authorities. The Committee further instructed the International Bureau to prepare a comparative analysis which would include the earlier reports of the German Patent Office and the International Patent Institute on searches performed in an "isolated" way (that is,

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without directly linked examination), as well as any other relevant material available, once the replies to the questionnaire on search practices had been evaluated.

Guidelines for the Preparation of Abstracts. In keeping with a request of the competent body of the Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT), the Committee compared the ICIREPAT guidelines for the preparation of abstracts with the provisions of the PCT dealing with the abstract. The Committee agreed that its advice be forwarded to the competent body of ICIREPAT so that it might be considered by that body in any future revision of the guidelines.

List of Participants *

I. States

II. Intergovernmental Organizations

III. Non-Governmental Organizations

IV. Observer Organizations

V. WIPO
A. Bogsch (Director General); K. Pfanner (Deputy Director General); P. Claus (Technical Counsellor, Head of Section, Industrial Property Division); J. Franklin (Technical Counsellor, Head, PCT Section, Industrial Property Division); N. Scherrer (Counsellor, PCT Section); Y. Gyrtdymov (Technical Officer, PCT Section); F. Iizuka (Consultant, PCT Section); J. Kohnen (Legal Officer, PCT Section).

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

Law amending the Patent Law, 1970  
(of November 8, 1973)

I. — The Patent Law, 1970, is hereby amended as follows:

(1) Subsection (3) shall be added to Section 57 and shall read as follows:

"(3) The Patent Office shall further be responsible for
issuing, on request, written assessments of the state of the art
(searches) in relation to specific technical problems, in so far
as the solutions thereto may be subordinated to uniform
principles."

(2) Section 59(8) shall read as follows:

"(8) A temporary member shall be asked to serve only
where in a particular case no permanent member is available
for the subject in question or where his inclusion appears
necessary having regard to the special nature of the case,
the speed with which it has to be settled or the burden of
work on the permanent member concerned."

(3) Section 80(5) shall read as follows:

"(5) Institutions under public law may, at their request,
be provided free of charge with one copy each of all patent
documents (Patentschriften) issued as from the time of
receipt of the respective request, when those documents are
made accessible to the public."

(4) Subsection (5) of Section 80 shall become subsection (6).

(5) Section 81(2) shall read as follows:

"(2) The inspection of documents relating to searches
Section 57(3)) shall be permitted only with the consent of
the applicant for the search or his successor in title."

(6) Subsections (2) to (5) of Section 81 shall become subsections (3)
to (6).

(7) Section 111 shall be followed by the heading "B. Searching " and
by Section 111a, which shall read as follows:

"Requirements for Applications and Processing thereof

111a. — (1) An application for a search may only relate
to a single concrete technical problem (Section 57(3)). The
search requested in the application may be directed to a
particular point of time in the past.

"(2) The application shall be submitted to the Patent
Office in writing, in two copies. Each copy shall be accom-
panied by a precise description, a concise statement of the
technical problem, and drawings where necessary. The descrip-
tion and the statement may be in English or French, but the
Patent Office may require a translation in German.

(3) The technically qualified member who is competent
according to the allocation of activities (Section 61) shall be
called upon to process the application. Copies of the enclosures
provided by the applicant (subsection (2)) shall be attached
to the said member's report.

(4) If the application, the description, the statement or
the drawings contain defects, the applicant shall be called
upon to remedy them within a specified period. If the defects
are not remedied, the application shall be rejected by adminis-
trative decision. This decision may be contested by means of
an appeal. Sections 70 to 73 shall apply mutatis mutandis to
such an appeal."

(8) The heading "B. Challenge of a Patent" shall read "C. Chal-
lenge of a Patent."

(9) In Section 168(1), the full stop at the end of (v)/(d) shall be
replaced by a semicolon and the following inserted as (vi):

"(vi) for an application for a search

(Section 111(a)(1)) . . . . . . . 4,000"

(10) The following sentence shall be added to Section 168(5):

"The amount of 3,800 schillings shall be refunded on the
fee fixed in subsection (1)(vi) if the application is rejected
or withdrawn before the date of issue of the search report."

II. — This Federal Law shall enter into force on January 1, 1975.

III. — The Federal Minister for Commerce, Trade and Industry shall
be responsible for the implementation of this Law.

BRAZIL

Order No. 391  
(relating to the Industrial Property Code)  
(of October 1, 1973)

The President of the National Institute of Industrial Property (INPI), in the exercise of his functions and in consideration of the provisions of the Industrial Property Code 1

Decides to define concepts and lay down rules concerning patents.

1. Nature of Patent Applications

1.1 — Inventions

Invention means any result of inventive activity which ful-
fills the requirement of novelty and is capable of industrial
application.

1 Industrial Property, 1971, p. 146.
1.1 — Inventive activity

Inventive activity means creative activity whose result does not, in the view of a person skilled in the art, obviously follow from the prior art.

1.1.2 — Novelty

Anything which does not form part of the prior art shall be considered to be new.

1.1.3 — Industrial application

Inventive activity shall be considered capable of industrial application where it can be carried out or made use of in any branch of industry, including agriculture.

1.1.4 — Prior art

Prior art shall be understood as everything which, in any branch of activity, has been made public anywhere in the world by any known means of disclosure, including oral disclosure, before the filing date of the patent application or its earliest priority date.

1.1.5 — Unity of invention

Unity of invention means the requirement that a patent application must relate to one invention only or to a group of inventions so linked as to constitute a single inventive concept.

I) Independent claims

Claims shall be considered to be independent where, subject to unity of invention, they are directed to the protection of a product, to one or more processes for its manufacture, to one or more ways of using it or to one or more apparatus or methods especially devised for the processes referred to.

II) Dependent claims

Claims shall be considered to be dependent where, subject to unity of invention, they are directed to the protection of specific features of an independent claim, even when they can be considered as another invention.

1.1.6 — Unpatentable inventions

Results of inventive activity which do not fulfill the requirements of novelty, industrial application and unity of invention or which fall under any of the statutory prohibitions (Section 9 of the Industrial Property Code) shall be unpatentable.

1.2 — Utility models

Utility model means any modification in an implement, working tool or utensil, designed to increase its efficiency, improve its function or make it easier to use, by means of a new form or a different arrangement of its components.

1.3 — Industrial model

Industrial model means any original three-dimensional shape capable of bringing about a new ornamental configuration, and designed to serve as a pattern or model for manufacturing a product.

1.4 — Industrial design

Any new and original combination of lines and colors designed as an ornament or intended to produce a decorative effect on the products to which it is applied, shall be considered an industrial design when it is capable of being reproduced and exploited in industry.

2. Filing

Filing means the act by which INPI receives and records the patent application, after carrying out the preliminary examination as to form.

2.1 — The filing is intended to guarantee the priority, as from that moment, for the person indicated in the application as the inventor, assignee or duly authorized person.

3. Right of Priority

The right of priority means the right guaranteed to the person who has filed a patent application enabling him to file an identical application in another country which also recognizes such right, by a treaty or a convention.

3.1 — The right of priority in Brazil must satisfy the following conditions:

I) the application may claim the priority of one or more earlier-filed applications;

II) the application must be filed within twelve months, in the case of patents for inventions or utility models, and six months, in the case of industrial designs, in each case counted from the filing date of the first application;

III) during those periods, the right of priority claimed shall not be invalidated by an application having the same characteristics, or by publication, use, exploitation or the grant of a patent;

IV) failure to present the substantiating documents of the country of origin, within a maximum period of 180 days from the filing in Brazil, shall entail the loss of the right of priority claimed.

4. Publication

Publication means the disclosure of a patent application after 18 months from the filing date or earliest priority date.

4.1 — Early publication

Early publication means the right of the applicant to request disclosure of his application before the 18 months have elapsed, in order to accelerate the procedure.

4.2 — Specification

Specification means the file containing an integral copy of the patent application. (After publication in the Industrial Property Review, any interested person may obtain the specification from INPI.)

5. Examination

5.1 — Request for examination

Request for examination means the right of any interested person to request the examination of a patent application within 24 months from the date of publication.
5.1.1 — Where examination is not requested in time, the patent application shall be shelved, due to the fact that it is deemed to have been finally withdrawn.

5.2 — Opposition

Opposition means the written declaration, presented by any interested person within 90 days after the publication of a request for examination, to the effect that a patent should not be granted.

5.2.1 — The purpose of opposition is to furnish evidence for the examination in the form of an analysis of the inventive activity referring to the absence of novelty, substantiated by the prior disclosures, or of industrial application or unity of invention, or to the statutory prohibitions (Sections 9 and 13 of the Industrial Property Code).

5.3 — Search

Search means the determination of the prior art on the filing date, taking into account granted patents, published applications, inventors' certificates and the other material contained in any publication.

5.4 — Analysis

The analysis or examination properly so called means the examination of the material relating to the application and the material provided in opposition proceedings or obtained through the search.

5.4.1 — During the analysis, the applicant may be invited to clarify, amend or complete the title, description, claims, abstract or drawings within the limits originally requested.

5.4.2 — Where this invitation is not complied with or contested within 90 days, the application shall be finally shelved.

5.5 — Decision

The decision means the act by which, at the end of the analysis, a patent application is granted or rejected, the result being published.

6. Appeals

Appeal means the written declaration, made by any interested person within 60 days, relating to decisions concerning patent applications.

6.1 — During the examination of the appeal, the applicant may be invited to clarify, amend or complete the title, description, claims, abstract or drawings within the limits originally requested.

6.2 — Where this invitation is not complied with or contested within 90 days, the application shall be finally shelved.

7. Issue of Patents

Issue of the patent means the notification whereby the applicant is invited to produce to INPI proof of payment of the corresponding fee, within 60 days, and receives the letters patent guaranteeing his right of property and exclusive use, under the conditions laid down by the Industrial Property Code.

7.1 — Where proof of payment of the fee due is not produced within the time limit referred to, the patent application shall be finally shelved.

8. Patent Term

The patent term means the period during which the patentee is guaranteed the property and exclusive use with respect to the subject of the patent, counted from the filing date, such period — provided that the conditions laid down by the Industrial Property Code are observed — being:

I) 15 years in the case of patents for inventions;

II) ten years in the case of patents for utility models and industrial designs.

9. Annual Fees

Annual fee means the fee to which a patent is subject, as from the beginning of the third year following the filing date and within the first 180 days of each yearly period, with the purpose of:

I) maintaining the patent application in force, guaranteeing the priority arising from the filing, when the corresponding patent has still to be granted;

II) ensuring the maintenance in force of the industrial property rights, after the grant of the patent and during its term.

9.1 — Yearly period

Yearly period means the period which, from year to year, starts from the filing date.

9.2 — Restoration

Restoration means the opportunity given to a patentee who has failed to pay an annual fee within the first 180 days of each period to request, within the 30 days which follow, and without any notification, the maintenance of the patent.

10. Compulsory Licenses

Compulsory license means a contract, other than a voluntary contract, under which a patentee authorizes a third party to use and exclusively exploit the invention.

10.1 — The purpose of a compulsory license is to prevent a patent from being forfeited, the licensee being obliged to provide all necessary information relating to the patent's use and working.

10.2 — The license may be requested where the patentee has not actually begun to exploit the invention in Brazil within three years after the patent's issue or where the use or exploitation has been discontinued for more than one year.

10.3 — In the public interest, the license may be non-exclusive.

11. Expiry

Expiry means the termination of the rights guaranteed to the patentee.
11.1 — Surrender

Surrender means the voluntary declaration of the patentee or his successors in title causing the expiry of the patent before the end of the statutory term of protection.

11.2 — Forfeiture

Forfeiture means the expiry of the patent where it has not actually been worked within the prescribed periods, where the corresponding annual fees have not been paid in time, or where an agent has not been retained in Brazil in accordance with Section 116 of the Industrial Property Code.

11.2.1 — Without prejudice to the cases of automatic forfeiture, forfeiture proceedings may be initiated by any interested person or by INPI where:

I) actual working of the patent has not been started in Brazil within four years — or within five years where a license of exploitation has been granted — from the date of issue of the patent;

II) working of the patent has been discontinued for more than two successive years.

11.2.2 — Actual working shall not be considered to have taken place where the production has been supplemented by importation, except in the case of an international agreement for the “complementation” of products (complementação) to which Brazil is a party.

11.3 — Revocation

Revocation means the extinguishment of a patent by the administration where, at the instance of INPI or of any interested person, it is proved that the patent was granted contrary to the provisions in Section 58 of the Industrial Property Code.

11.3.1 — Revocation proceedings may only be brought within one year after the grant of the patent.

11.4 — Annulment

Annulment means the extinguishment of a patent by the courts, which may take place at any time following the action of INPI or of any interested person, when the patent infringes third-party rights or the provisions in Section 55 of the Industrial Property Code.

12. Public Domain

Public domain means the material relating to all applications which have been shelved or rejected, all expired patents, all patents granted abroad and not applied for in Brazil and all technology not protected by a patent and forming part of the prior art.

12.1 — All technology considered to be in the public domain may be exploited by any interested person, without any authorization or remuneration.

This Order shall enter into force on January 1, 1974.
Chapter II — Trademark Registration and Applications Therefor

(Registrability of trademarks)

3. — (1) Any person may obtain a trademark registration of a trademark to be used on goods in connection with his business, except in the case of the following trademarks:

(i) trademarks which consist solely of a mark indicating, in a common way, the common name of the goods;

(ii) trademarks which are customarily used on the goods;

(iii) trademarks which consist solely of a mark indicating, in a common way, the origin, place of sale, quality, raw materials, efficacy, use, quantity, shape or price of the goods, or the method or time of manufacturing, processing or using them;

(iv) trademarks which consist solely of a mark indicating, in a common way, a commonplace surname or name of a legal entity;

(v) trademarks which consist solely of a very simple and commonplace mark;

(vi) in addition to those mentioned in the five preceding paragraphs, trademarks which do not enable consumers to recognize the goods as being connected with a certain person’s business.

(2) In the case of a trademark falling under paragraphs (ii) to (v) of the preceding subsection, where, as a result of the use of such trademark, the consumers are able to recognize the goods as being connected with a certain person’s business, trademark registration may be obtained notwithstanding the preceding subsection.

(Unregistrable trademarks)

4. — (1) Notwithstanding Section 3, trademark registration shall not be effected in the case of the following trademarks:

(i) trademarks which are identical with, or similar to, the national flag, the imperial chrysanthemum crest, a decoration, a medal of merit, or a foreign national flag;

(ii) trademarks which are identical with, or similar to, a State coat of arms or other emblem (other than a national flag) of a country party to the Paris Convention (meaning the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958 — referred to in this Section as “the Paris Convention”) which have been designated by the Minister for International Trade and Industry;

(iii) trademarks which are identical with, or similar to, a mark indicating the United Nations or another international organization and designated by the Minister for International Trade and Industry;

(iv) trademarks which are identical with, or similar to, the Red Cross ensign on a white ground or the title Red Cross or Geneva Cross;

(v) trademarks comprising a mark identical with, or similar to, an official seal or sign which indicates supervision or certification by the Government of Japan or of a country party to the Paris Convention or a local public entity and which has been designated by the Minister for International Trade and Industry, where the trademark is used on goods identical with, or similar to, the goods on which such seal or sign is used;

(vi) trademarks which are identical with, or similar to, a famous mark indicating a State or a local public entity or an agency thereof or a non-profit organization or enterprise working in the public interest;

(vii) trademarks liable to contravene public order or morality;

(viii) trademarks containing the portrait of another person or the name, famous pseudonym, professional name or pen name of another person or the famous abbreviation thereof (except where the consent of the person concerned has been obtained);

(ix) trademarks comprising a mark which is identical with, or similar to, a prize awarded at an exhibition held by the Government or a local public entity (hereinafter referred to as the “Government etc.”) or at one which is not held by the Government etc. but has been designated by the President of the Patent Office, or at an international exhibition held in a foreign country by its government etc. or a person authorized thereby (except where the recipient of such a prize uses the mark as part of his trademark);

(x) trademarks which are well known among consumers as indicating goods as being connected with another person’s business, and trademarks similar thereto, which are used on such goods or similar goods;

(xi) trademarks which are identical with, or similar to, another person’s registered trademark applied for prior to the filing date of the trademark application concerned and which are used on the designated goods (meaning the goods designated in accordance with Section 6(1) (including its application under Section 68(1)) — hereinafter referred to as the “designated goods”) covered by the trademark registration referred to or on similar goods;

(xii) trademarks which are identical with another person’s registered defensive mark (meaning a mark registered as a defensive mark — hereinafter referred to as a “registered defensive mark”) and which are used on the designated goods covered by the defensive mark registration;

(xiii) trademarks which are identical with another person’s trademark (other than a trademark which had not been used by that person during a period of at least one year preceding the day on which the trademark right became extinguished) where one year has not elapsed since the date of extinguishment of the trademark right (or the date on which a trial decision that a trademark registration is to be invalidated became final and conclusive — hereinafter referred to as the “date of extinguishment of the trademark right”), or with a trademark similar to such a trademark, and which are used on the designated goods covered by the trademark right or on similar goods;

(xiv) trademarks which are identical with, or similar to, names registered under Section 7(1) of the Agricultural Seed and Seedlings Law (Law No. 115 of 1947) and which are used on the seeds or seedlings concerned or on similar goods;
(xv) trademarks which are liable to cause confusion with goods connected with another person's business (other than the goods mentioned in paragraphs (x) to (xiv));

(xvi) trademarks liable to be misleading as to the quality of the goods.

(2) Where registration of a trademark falling under paragraph (vi) of the preceding subsection is applied for by the State, a local public entity or an agency thereof or a non-profit organization working in the public interest or a person carrying on a non-profit enterprise working in the public interest, the said paragraph shall not apply.

(3) In the case of a trademark falling under paragraphs (viii), (x) or (xv) of subsection (1), the respective provisions shall not apply where the trademark does not fall under the respective paragraph at the time when the trademark application is filed.

(4) Where a trial decision that a trademark registration is to be cancelled under Section 53 has become final and conclusive and the demandant in the trial applies for registration of the trademark covered by the registration cancelled by the trial decision, or a trademark similar thereto, paragraph (xiii) of subsection (1) shall not apply.

(Applications for trademark registration)

5. — (1) Any person desiring a trademark registration shall submit a request to the President of the Patent Office, together with sheets of paper containing a reproduction of the trademark for which registration is sought and any necessary explanations; the request shall state the following:

(i) the name and the domicile or residence of the applicant for a trademark 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 designated goods and the class of goods as prescribed by a Cabinet Order referred to in Section 6(1).

(2) Where a person desires a trademark registration for a trademark that is similar to one which has been registered in his name or for which he has applied for registration and such trademark is to be used on the designated goods covered by the registered trademark or the trademark in the application, the number of the relevant trademark registration or application shall be stated in the request; the same shall apply where he desires a trademark registration for a trademark which has been registered in his name or for which he has applied for registration, or for a similar trademark, and such trademark is to be used on goods similar to the designated goods covered by the registered trademark or the trademark in the application.

(3) In the portion of the sheets of paper referred to in subsection (1) which contains the reproduction of a trademark, any part which is in the same color as the sheets themselves shall be deemed not to form part of the trademark. However, this provision shall not apply where the area to be colored is specified and it is stated on the sheets that the color to be applied is the same as that of the sheets.

(Unity of application)

6. — (1) An application for trademark registration shall relate to a single trademark and shall designate one or more items of goods on which the trademark is to be used, in one class of the classification of goods prescribed by Cabinet Order.

(2) The classes of goods referred to in the preceding subsection shall not be determinative of the scope of similarity of goods.

(Associated trademarks)

7. — (1) Unless he applies for a trademark registration of an associated trademark, the owner of a trademark right shall not obtain registration of a trademark which is similar to one registered in his name and which is to be used on the designated goods covered by the registered trademark, or of a trademark which is identical with the registered trademark or trademark similar thereto and which is to be used on goods similar to the designated goods covered by the registered trademark.

(2) When the establishment of a trademark right has been registered in respect of a trademark application relating to an associated trademark, the trademark and the registered trademark with which it is connected shall become associated trademarks with respect to each other.

(3) The owner of a trademark right shall obtain registration of an associated trademark only where the trademark concerned is similar to one registered in his name and is to be used on the designated goods covered by the registered trademark or where it is identical with a trademark registered in his name or trademark similar thereto and is to be used on goods similar to the designated goods covered by the registered trademark.

(First-to-file rule)

8. — (1) Where two or more trademark applications relating to identical or similar trademarks which are to be used on identical or similar goods are filed on different dates only the earliest applicant may obtain a trademark registration for the trademark concerned.

(2) Where two or more trademark applications relating to identical or similar trademarks which are to be used on identical or similar goods are filed on the same date, only one applicant, agreed upon after mutual consultation among all the applicants, may obtain a trademark registration for the trademark.

(3) Where a trademark application is abandoned, withdrawn or invalidated or where an examiner's decision or trial decision on a trademark application has become final and conclusive, such application shall, for the purposes of the two preceding subsections, be deemed never to have been made.

(4) 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.

(5) Where no agreement is reached in the consultations under subsection (2) or where the report under the preceding subsection is not made within the time limit designated in accordance with that subsection, registration of the trademark concerned may be obtained only by one applicant chosen by
the drawing of lots conducted in a fair and just manner by the President of the Patent Office.

(Special provisions for time of filing of application)

9. — (1) In the case of a trademark used on goods exhibited at an exhibition held by the Government etc. — or at one which is not held by the Government etc. but has been designated by the President of the Patent Office, or at an international exhibition held by the government etc. or a person authorized thereby in the territory of a country which is not held by the Government etc. but has been designated at an exhibition held by the Government etc. — or at one designated at a national exhibition held by the government etc. or a person authorized thereby in the territory of a country which is not a party to the Paris Convention but which has been designated by the President of the Patent Office —, provided that the person who exhibited the said goods has applied for a trademark registration, designating those goods, within six months from the date when they were exhibited, the trademark application shall be deemed to have been filed at the time when the goods were exhibited.

(2) Any person who desires the application of the preceding subsection with respect to a trademark in a trademark application shall submit a written statement to that effect to the President of the Patent Office simultaneously with the trademark application. Within 30 days from the filing of the trademark application, he shall also submit to the President of the Patent Office a document proving that the trademark and goods in the trademark application are a trademark and goods falling under the said subsection.

(Division of trademark applications)

10. — (1) An applicant for a trademark registration may divide a trademark application designating two or more items of goods as designated goods into one or more new trademark applications.

(2) A trademark 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 trademark application has been divided under subsection (1), the new trademark 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 9(2) of this Law and Section 43(1) and (2) of the Patent Law (Law No. 121 of 1959) as applied under Section 13(1) of this Law.

(Conversion of applications)

11. — (1) An applicant may convert his application for registration of an associated trademark into an application for registration of an independent trademark (meaning a trademark application other than an application for registration of an associated trademark — hereinafter referred to as an “application for registration of an independent trademark”).

(2) An applicant may convert his application for registration of an independent trademark into an application for registration of an associated trademark.

(3) A trademark 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) Where the conversion of a trademark application under subsection (1) or (2) has been made, the original trademark application shall be deemed to have been withdrawn.

(5) Section 10(3) shall apply mutatis mutandis to the conversion of a trademark application under subsection (1) or (2).

12. — (1) An applicant may convert his application for registration of a defensive mark into an application for trademark registration.

(2) An application may not be converted under the preceding subsection after the examiner's decision or the trial decision with respect to the application for registration of a defensive mark has become final and conclusive.

(3) Sections 10(3) and 11(4) shall apply mutatis mutandis to the conversion of an application under subsection (1).

(Application mutatis mutandis of Patent Law)

13. — (1) Sections 40 and 42 (amendment of specification, etc. and change of gist) and Section 43 (declarations of priority claim) of the Patent Law shall apply mutatis mutandis to trademark applications.

(2) Sections 33 and 34(4) to (7) (right to obtain patent) of the Patent Law shall apply mutatis mutandis to the rights deriving from a trademark application.

Chapter III — The Examination

(Examination by examiner)

14. — The President of the Patent Office shall have applications for trademark registration and oppositions to the grant of registration examined by an examiner.

(Examiner's decision of refusal)

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

(i) the trademark in the trademark application is not registrable in accordance with Section 3, 4(1), 7(1) or (3), 8(2) or (5), 51(2) or 53(2) of this Law or Section 25 of the Patent Law as applied under Section 77(3) of this Law;

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

(iii) the trademark application does not comply with the requirements of Section 6(1);

(iv) the trademark in the trademark application is a trademark or is similar to a trademark which is covered by

1 Industrial Property, 1974, p. 140.
the rights of a person who has the right to the trademark (but only where such right is equivalent to the trademark right; it is hereinafter referred to as the "right to the trademark") in a country party to the Paris Convention and which is used on goods covered by the right of such person or on similar goods, and the trademark application concerned was made, without legitimate reason and without the authorization of the person who has the right to the trademark, by his agent or representative or by a person who was his agent or representative at any time during the year preceding the filing date of the application. However, this provision shall apply only where the person who has the right to the trademark files an opposition to the grant of registration on the ground that the said application falls under this paragraph.

(Publication of applications)

16. — (1) Where the examiner finds no reason for refusing a trademark application, he shall render a ruling that the application is to be published.

(2) When a ruling that a trademark application is to be published has been rendered, the President of the Patent Office shall publish the application after transmitting the ruling to the applicant for the trademark registration.

(3) The publication of the application shall be effected by publishing the following particulars in the Trademark Gazette (Shōhyō Kōho):

(i) the name and the domicile or residence of the applicant;

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

(iii) the contents of the papers accompanying the request and containing a reproduction of the trademark for which a trademark registration is sought;

(iv) the designated goods;

(v) the number and date of the publication of the application;

(vi) other necessary particulars.

(4) Section 51(4) (public inspection of the application files) of the Patent Law shall apply mutatis mutandis to the publication of applications under this Law.

(Application mutatis mutandis of Patent Law)

17. — Section 47(2) (qualifications of examiners), Section 48 (exclusion of examiners), Section 50 (notification of reasons for refusal) and Sections 53 to 65 (declining of amendments; filing of oppositions to grant of patent; formal requirements of examiner’s decision; amendment after ruling for the publication of applications, and relationship with litigation) of the Patent Law shall apply mutatis mutandis to the examination of trademark applications.

Chapter IV — The Trademark Right

1. The Trademark Right

(Registration of establishment of trademark right)

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

(2) The establishment of a trademark right shall be registered when the registration fee under Section 40(1) has been paid.

(3) Upon registration under the preceding subsection, the name and the domicile or residence of the owner of the trademark right, the registration number and the date of registration of the establishment shall be published in the Trademark Gazette.

(Term of trademark right)

19. — (1) The term of a trademark right shall be ten years counted from the date of registration of its establishment.

(2) The term of a trademark right may be renewed upon application for registration of renewal. However, this provision shall not apply where the registered trademark has become a trademark falling under Section 4(1)(i) to (iii), (v), (vi) or (xvi).

(Registration of renewal of term)

20. — (1) Any person desiring registration of renewal of the term of a trademark right shall submit a request to the President of the Patent Office stating the following:

(i) the name and the domicile or residence of the applicant and, in the case of a legal entity, the name of an officer representing it;

(ii) the registration number of the trademark registration.

(2) Applications for registration of renewal shall be made within six to three months prior to the date of expiration of the term.

(3) Where, due to reasons outside his control, a person is unable to apply for registration of renewal within the time limit prescribed in the preceding subsection, he may make such application within 14 days from the date when the reasons ceased to be applicable but not later than two months following the expiration of the said time limit.

(4) When an application has been made for registration of renewal of the term of a trademark right, the term shall be deemed to have been renewed. However, this provision shall not apply when the examiner’s decision that the renewal is to be refused has become final and conclusive or when renewal of the term of the trademark right has been registered.

21. — (1) The examiner shall make a decision that an application for registration of renewal is to be refused where it falls under either of the following paragraphs:

(i) the registered trademark in such application falls under the proviso to Section 19(2);

(ii) the applicant is not the owner of the trademark right concerned.

(2) Where the examiner finds no reason for refusing the application for registration of renewal, he shall make a decision that the renewal is to be registered.

22. — Section 14 of this Law as well as Section 48 (exclusion of examiners), Section 50 (notification of reasons for refusal) and Section 63 (formal requirements of examiner’s
decision) of the Patent Law shall apply mutatis mutandis to the examination of an application for registration of renewal of the term of a trademark right.

(Registration of renewal of term)

23. — (1) When the fee under Section 40(2) has been paid, the renewal of the term of the trademark right shall be registered.

(2) Section 18(3) shall apply mutatis mutandis to the registration under the preceding subsection.

(Transfer of trademark right)

24. — (1) Where there are two or more items of the designated goods, a trademark right may be transferred separately for each such item. However, this provision shall not apply if the item to be separated is similar to any other item of the designated goods.

(2) The trademark right in associated trademarks may not be transferred independently.

(3) Public notice of the transfer of a trademark right shall be given in a daily newspaper as prescribed by an ordinance of the Ministry of International Trade and Industry.

(4) The transfer of a trademark right (other than by inheritance or other general succession) shall not be registered until 30 days have elapsed since the public notice under the preceding subsection.

(5) A trademark right under a trademark application filed by the State or a local public entity, or an agency thereof, or a non-profit organization working in the public interest, referred to in Section 4(2), may not be assigned.

(6) A trademark right under a trademark application filed by a person carrying on a non-profit enterprise working in the public interest, referred to in Section 4(2), may be transferred only together with the enterprise itself.

(Effects of trademark right)

25. — The owner of a trademark right shall have an exclusive right to use the registered trademark with respect to the designated goods. However, where the trademark right is subject to a right of exclusive use, this provision shall not apply to the extent that the owner of that right has an exclusive right to use the registered trademark.

(Limits of trademark right)

26. — (1) The effects of the trademark right shall not extend to the following trademarks:

(i) trademarks indicating, in a common way, one’s own portrait, name, famous pseudonym, professional name or pen name, or a famous abbreviation thereof;

(ii) trademarks indicating, in a common way, the common name, origin, place of sale, quality, raw materials, efficacy, use, quantity, shape or price of the designated goods concerned or goods similar thereto, or the method or time of manufacturing, processing or using such goods;

(iii) trademarks customarily used on the designated goods or goods similar thereto.

(2) Paragraph (i) of the preceding subsection shall not apply where, after registration of the establishment of the trademark right, one’s own portrait, name, famous pseudonym, professional name or pen name, or a famous abbreviation thereof, has been used with the intention of violating the rules of fair competition.

(Scope of registered trademark, etc.)

27. — (1) The scope of a registered trademark shall be decided on the basis of the trademark reproduced on the papers accompanying the request.

(2) The scope of the designated goods shall be decided on the basis of the statement in the request.

28. — (1) A request for interpretation may be made to the Patent Office with respect to the effects of a trademark right.

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

(Relationship with another’s design right, etc.)

29. — Where the use in a given manner of a registered trademark on the designated goods conflicts with another person’s design right under a design application filed prior to the filing date of the trademark application concerned or with another person’s copyright taking effect prior to that date, the owner of the trademark right or of the right of exclusive or non-exclusive use shall not use the registered trademark in such a manner on the part of the designated goods giving rise to the conflict.

(Rights of exclusive use)

30. — (1) The owner of a trademark right may grant a right of exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).

(2) The owner of a right of exclusive use shall have an exclusive right to use the registered trademark on the designated goods to the extent laid down in the contract granting such right.

(3) A right of exclusive use may be transferred only with the consent of the owner of the trademark right or in the case of inheritance or other general succession.

(Rights of non-exclusive use)

31. — (1) The owner of a trademark right may grant a right of non-exclusive use with respect to his trademark right. However, this provision shall not apply to a trademark right under an application referred to in Section 4(2).
(2) The owner of a right of non-exclusive use shall have the right to use the registered trademark on the designated goods to the extent laid down in the contract granting such right.

(3) A right of non-exclusive use may be transferred only with the consent of the registered owner of the trademark right (or only with the consent of such person and of the owner of the right of exclusive use, in the case of a right of non-exclusive use with respect to the right of exclusive use) or in the case of inheritance or other general succession.

(4) Section 73(1) (joint ownership), Section 94(2) (establishment of pledge), Section 97(3) (surrender) and Section 99(1) and (3) (effects of registration) of the Patent Law shall apply mutatis mutandis to rights of non-exclusive use.

(Right to use trademark by virtue of prior use)

32. — (1) Where, from a time prior to the filing by another person of a trademark application and without any intention of violating the rules of fair competition, a person has been using in Japan the trademark in the application or a similar trademark on the designated goods in the application, or on similar goods, and, as a result, the trademark has become well known among consumers as indicating the goods as being connected with his business at the time of filing of the trademark application (or at the time of filing of the original trademark application or of submission of an amendment when the trademark 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 13(1) of this Law or in accordance with Section 53(4) of the Patent Law as applied either under Section 17 of this Law or under Section 159(1) of the Patent Law as applied under Section 56(1) 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 61 of this Law), such person shall have a right to use the trademark on the said goods provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.

(2) The owner of the trademark right or of a right of exclusive use may request the person having a right to use the trademark under the preceding subsection to mark his goods with a suitable indication so as to prevent any confusion between the goods connected with the owner's business and those connected with the other person's business.

(Right to use trademark due to use prior to registration of demand for invalidation trial)

33. — (1) When a person coming within any of the paragraphs set out below has been using in Japan a registered trademark or a similar trademark on the designated goods or similar goods, prior to the registration of a demand for a trial under Section 46(1), without knowing that a trademark registration falls under any of the paragraphs of the subsection referred to, and the trademark has become well known among consumers as indicating the goods as being connected with his business, such person shall have a right to use the trademark on the goods provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned:

(i) the original owner of the trademark right, where one of two or more trademark registrations granted for identical or similar trademarks to be used on identical or similar designated goods has been invalidated;

(ii) the original owner of the trademark right where his trademark registration has been invalidated and a trademark registration has been granted to the person entitled for identical or similar trademarks to be used on identical or similar designated goods;

(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 46(1), has a right of exclusive use with respect to the trademark right that has been invalidated or a right of non-exclusive use which is effective, under Section 99(1) of the Patent Law as applied under Section 31(4) of this Law, against the trademark right or the right of exclusive use.

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

(3) Section 32(2) shall apply mutatis mutandis to subsection (1).

(Pledges)

34. — (1) Where a trademark right or a right of exclusive or non-exclusive use is the subject of a pledge, the pledgee may not use the registered trademark on the designated goods except as otherwise provided by contract.

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

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

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

(Application mutatis mutandis of Patent Law)

35. — 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 trademark rights.

2. Infringement

(Injunctions)

36. — (1) The owner of a trademark right or of a right of exclusive use may require a person who is infringing or is likely to infringe the trademark right or right of exclusive use to discontinue or refrain from such infringement.

(2) The owner of a trademark right or of a right of exclusive use 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.

(Acts deemed to be infringement)

37. — The following acts shall be deemed to be an infringement of a trademark right or of a right of exclusive use:

(i) acts of using a trademark similar to the registered trademark on the designated goods or of using the registered trademark or a similar trademark on goods similar to the designated goods;

(ii) acts of holding, for the purpose of assignment or delivery, of the designated goods or similar goods on which or on the packaging of which the registered trademark or a similar trademark has been applied;

(iii) acts of holding of articles bearing a reproduction of the registered trademark or a similar trademark for the purpose of using such trademark on the designated goods or similar goods;

(iv) acts of assigning or delivering, or holding for the purpose of assignment or delivery, of articles bearing a reproduction of the registered trademark or a similar trademark for the purpose of causing such trademark to be used on the designated goods or similar goods;

(v) acts of manufacturing or importing of articles bearing a reproduction of the registered trademark or a similar trademark for the purpose of using such trademark, or causing it to be used, on the designated goods or similar goods;

(vi) acts of manufacturing, assigning, delivering or importing, in the course of trade, of articles to be used exclusively for manufacturing articles bearing a reproduction of the registered trademark or a similar trademark.

(Presumption etc. of amount of damage)

38. — (1) Where the owner of a trademark right or of a right of exclusive use claims, from a person who has intentionally or negligently infringed the trademark right or right of exclusive use, 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.

(2) The owner of a trademark right or of a right of exclusive use may claim, from a person who has intentionally or negligently infringed the trademark right or the right of exclusive use, an amount of money which he would normally be entitled to receive for the use of the registered trademark, 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 trademark right or the right of exclusive use, the court may take this into consideration when awarding damages.

(Application mutatis mutandis of Patent Law)

39. — Section 103 (presumption of negligence), 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 trademark right or a right of exclusive use.

3. The Registration Fee

(Registration fee)

40. — (1) A person who obtains registration of a trademark right shall pay 12,000 yen, for each case, as a registration fee.

(2) A person who obtains registration of renewal of the term of a trademark right shall pay 22,500 yen, for each case, as a registration fee.

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

(Time limit for payment of registration fee)

41. — (1) The registration fee under Section 40(1) shall be paid within 30 days from the transmittal of the examiner’s decision or trial decision that the trademark registration is to be effected.

(2) The registration fee under Section 40(2) shall be paid within 30 days from the transmittal of the examiner’s decision or trial decision that the registration of renewal of term is to be effected (or from the expiration of the term when such transmittal occurred before its expiration).

(3) Upon the request of a person liable to pay a registration fee, the President of the Patent Office may extend the period prescribed in the two preceding subsections by a period not exceeding 30 days.

(Refund of registration fee paid by mistake or in excess)

42. — (1) A registration fee paid by mistake or in excess shall be refunded on the request of the person making the payment.

(2) No refund of a registration fee under the preceding subsection may be requested after one year from the date of payment.

(Application mutatis mutandis of Patent Law)

43. — Section 110 (payment of annual fees by an interested person) of the Patent Law shall apply mutatis mutandis to the payment of the registration fee.

Chapter V — Trial

(Trial against examiner’s decision of refusal)

44. — (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 reason ceased to be applicable but not later than six months following the expiration of the said time limit.
new application for trademark registration has been filed

the ruling. However, this provision shall not apply when a

applied under Section 17 of this Law and is dissatisfied may

amendment under Section 53(1) of the Patent Law as applied under Sec-

tion 17 of this Law.

(2) Section 44(2) shall apply mutatis mutandis to the

demand for a trial under the preceding subsection.

(Trial for invalidation of trademark registration)

46. — (1) In the following cases, a trial may be demanded

for the invalidation of a trademark registration. In such event, if two or more items of designated goods are covered by the trademark registration, the trial may be demanded with respect to each such item:

(i) where the registration has been effected contrary to Section 3, 4(1), 7(1) or (3), 8(1), (2) or (5), 51(2) or 53(2) or to Section 25 of the Patent Law as applied under Section 77(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 trademark application filed by a person who has not succeeded to the right deriving from the trademark application;

(iv) where, after the registration, the owner of the trade-

mark right has become a person who can no longer enjoy such right under Section 25 of the Patent Law as applied under Section 77(3) of this Law or the registration no longer complies with a treaty.

(2) Even after the extinguishment of a trademark 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 owner of a right of exclusive use with respect to the trademark right and other persons who have any registered rights relating to the trademark registration.

47. — Where a trademark registration has been effected contrary to Section 3, 4(1)(viii) or (xi) to (xv), 7(1) or (3) or 8(1), (2) or (5), or contrary to Section 4(1)(x) (except where registration was obtained with the intention of violating the rules of fair competition), or where a trademark registration falls under Section 46(1)(iii), a trial on the trademark registration may not be demanded under Section 46(1) after five years from the registration of the establishment of the trademark right.

(Trial for invalidation of registration of renewal of term of trademark right)

48. — (1) In the following cases, a trial may be demanded

for the invalidation of a registration of renewal of the term of a trademark right. In such event, if two or more items of designated goods are covered by the registration of renewal, the trial may be demanded with respect to each such item:

(i) where registration of renewal has been effected contrary to the proviso to Section 19(2);  

(ii) where registration of renewal has been effected on application by a person who is not the owner of the trademark right concerned.

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

49. — Where a registration of renewal of the term of a trademark right falls under Section 48(1)(ii), a trial on the registration of renewal may not be demanded under Section 48(1) after five years from the registration of renewal.

(Trial for cancellation of trademark registration)

50. — (1) Where neither the owner of the trademark right nor the owner of a right of exclusive use nor the owner of a right of non-exclusive use has been continuously using, in Japan for three years or more, the registered trademark on each item of the designated goods, a trial may be demanded for the cancellation of registration of the trademark with respect to such designated goods. However, this provision shall not apply where there is a legitimate reason for the failure to use the trademark on those goods.

(2) In the case of registered trademarks which are associated trademarks, where neither the owner of the trademark right nor the owner of a right of exclusive use nor the owner of a right of non-exclusive use has been continuously using, in Japan for three years or more, any of such trademarks on the designated goods, notwithstanding the preceding subsection a trial may not be demanded thereunder if any of the persons referred to has been using on such goods any other registered trademark which is an associated trademark with respect to the registered trademark.

(3) The owner of the trademark right or of a right of exclusive or non-exclusive use shall be presumed not to be using the registered trademark on each item of the designated goods where he is not making such use in the city [or, in the case of the designated cities referred to in Section 252-19(1) of the Local Autonomy Law (Law No. 67 of 1947), a ward established under Section 252-20(1) of that Law], special ward, town or village corresponding to any of the places mentioned below:

(i) where the place of establishment or office of the owner of the trademark right or of the right of exclusive or non-exclusive use, as registered in the Trademark Register, is located in Japan: such location;

(ii) where the place of establishment or office of the owner of the trademark right or of the right of exclusive or non-exclusive use, as registered in the Trademark Register, is not located in Japan or where the place of establishment or office of such person is not registered in the Trademark Register but where his domicile or residence, as registered in the Trademark Register, is in Japan: such place of domicile or residence;

(iii) where neither the place of establishment or office nor the domicile or residence of the owner of the trademark right or of the right of exclusive or non-exclusive use, as registered in the Trademark Register, is located in Japan: the
place of domicile or residence of his representative with respect to his trademark registration whose domicile or residence is in Japan or, where there is no such representative, the location of the Patent Office.

(4) For the purposes of subsection (1) or the preceding subsection where, after the registration of a demand for a trial under subsection (1), the owner of the trademark right or of a right of exclusive or non-exclusive use is using the registered trademark on the designated goods to which the demand referred to relates, such person shall be deemed not to be using the trademark on such goods.

51. — (1) Where the owner of the trademark right intentionally uses a trademark similar to the registered trademark on the designated goods, or intentionally uses the registered trademark or a similar trademark on goods similar to the designated goods, in a way which may be misleading as to the quality of the goods or which may cause confusion with goods connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration.

(2) Where a trademark registration has been cancelled under the preceding subsection, the former owner of the trademark right may not obtain a trademark registration of the same or a similar trademark, for the designated goods covered by the trademark registration or for goods similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

52. — The trial under Section 51(1) may not be demanded after five years from the date on which the registered owner ceased to use the trademark in the manner referred to in that subsection.

53. — (1) Where the owner of a right of exclusive or non-exclusive use uses the registered trademark or a similar trademark on the designated goods or similar goods in a way which may be misleading as to the quality of the goods or which may cause confusion with goods connected with any other person's business, any person may demand a trial for the cancellation of the trademark registration. However, this provision shall not apply where the owner of the trademark right was both unaware of the fact and taking appropriate care.

(2) Where a trademark registration has been cancelled under the preceding subsection, the former owner of the trademark right and the former owner of the right of exclusive or non-exclusive use who had used the mark in the way referred to in the preceding subsection may not obtain a trademark registration of the registered trademark or a similar trademark, for the designated goods covered by the trademark registration or for goods similar thereto, until five years have elapsed since the date when the trial decision ordering cancellation became final and conclusive.

(3) Section 52 shall apply mutatis mutandis to the trial under subsection (1).

53(4). — Where a registered trademark is the trademark of a person who has the right to the trademark in a country party to the Paris Convention or is similar to such a trademark, and the goods relating to such right or similar goods have been made the designated goods, and moreover the trademark application concerned was made, without a legitimate reason and without the authorization of the person who has the right to the trademark, by his agent or representative or by a person who was his agent or representative at any time during the year preceding the filing date of the application, the person who has the right to the trademark may demand a trial for the cancellation of its registration.

53(5). — The trial under Section 53(4) may not be demanded after five years from the registration of the establishment of the trademark right.

54. — When a trial decision ordering cancellation of a trademark registration has become final and conclusive, the trademark right shall from that moment become extinguished.

55. — Section 46(3) shall apply mutatis mutandis to the trials demanded under Sections 48(1), 50(1), 51(1), 53(1) and 53(5).

(Application mutatis mutandis of Patent Law)

56. — (1) Sections 125, 131(1) and (2), 132 to 154, 155(1) and (2), 156 to 161, 162, 163 and 167 to 170 (effects of trial decision; 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. In such a case, “Section 123(1) or 129(1)” in Sections 132(1), 145(1), 161 and 169(1) of that Law shall read “Section 46(1), 48(1), 50(1), 51(1), 53(1) or 53(5) of the Trademark Law.”

(2) Section 155(3) (withdrawal of demand for trial) of the Patent Law shall apply mutatis mutandis to the trials under Sections 46(1), 48(1) and 50(1).

Chapter VI — Retrial and Litigation

(Demand for retrial)

57. — (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.

58. — (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 trademark right restored by retrial)

59. — Where a trademark right relating to an invalidated or cancelled trademark registration or to an invalidated registration of renewal of term has been restored through a retrial, the effects of the trademark right shall not extend to the following acts:
(i) the use in good faith of the registered trademark on the designated goods after the trial decision became final and conclusive but before the registration of the demand for a retrial;

(ii) the acts mentioned in each paragraph of Section 37 performed in good faith after the trial decision became final and conclusive but before the registration of the demand for a retrial.

60. — (1) Where a trademark right relating to an invalidated or cancelled trademark registration or to an invalidated registration of renewal of term has been restored through a retrial, or where the establishment of a trademark right or the renewal of its term, under a trademark application or application for registration of renewal which was refused by a trial decision, has been registered through a retrial, and where a person has, in good faith, been using the registered trademark in Japan or a trademark similar thereto on the designated goods or similar goods after the trial decision became final and conclusive but before the registration of the demand for a retrial and, as a result, the trademark has become well known among consumers as indicating the goods as being connected with his business at the time of registration of the demand for a retrial, such person shall have a right to use the trademark on the goods provided that he does so continuously. The same shall apply in the case of a person who has succeeded to the business concerned.

(2) Section 32(2) shall apply mutatis mutandis to the preceding subsection.

(Application mutatis mutandis of Patent Law)

61. — 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. In such a case, "Section 123(1) or 129(1)" in Section 174(3) of that Law shall read "Section 46(1), 48(1), 50(1), 51(1), 53(1) or 53bis of the Trademark Law."

62. — Deleted.

(Actions against trial decisions, etc.)

63. — (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 or under Section 56(1) of this Law or under Section 174(1) of the Patent Law as applied under Section 61 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.

(Conversion of applications)

65. — (1) An applicant may convert his application for trademark registration into an application for registration of a defensive mark.

(2) An application may not be converted under the preceding subsection after the transmittal of the ruling that the trademark application is to be published.

(3) Sections 10(3) and 11(4) shall apply mutatis mutandis to the conversion of an application under subsection (1).

(Dependence of right based on defensive mark registration)

66. — (1) Where the principal trademark right is transferred, the right based on a defensive mark registration shall be transferred together with the principal trademark right. However, if the latter right has been divided and transferred, the right based on the defensive mark registration shall be extinguished.

(Acts deemed to be infringement)

67. — The following acts shall be deemed to be an infringement of the principal trademark right or a right of exclusive use:

(i) acts of using a registered defensive mark on the designated goods;

(ii) acts of holding, for the purpose of assignment or delivery, of the designated goods on which or on the packaging of which the registered defensive mark has been applied;

(iii) acts of holding of articles bearing a reproduction of the registered defensive mark for the purpose of using such mark on the designated goods;

(iv) acts of assigning or delivering, or holding for the purpose of assignment or delivery, of articles bearing a reproduction of the registered defensive mark for the purpose of causing such mark to be used on the designated goods;
act of manufacturing or importing of articles bearing a reproduction of the registered defensive mark for the purpose of using such mark, or causing it to be used, on the designated goods.

(Application mutatis mutandis of provisions on trademarks)

68. — (1) Sections 5(1) and (3), 6(1), 10 and 13(1) shall apply mutatis mutandis to applications for registration of defensive marks. In such a case, “(iii) the designated goods and the class of goods as prescribed by a Cabinet Order referred to in Section 6(1)” in Section 5(1) shall read “(iii) the designated goods and the class of goods as prescribed by a Cabinet Order referred to in Section 6(1); (iv) the registration number of the principal trademark registration to which the application for registration of the defensive mark relates.”

(2) Sections 14 to 17 shall apply mutatis mutandis to the examination of applications for registration of a defensive mark. In such a case, “Section 3, 4(1), 7(1) or (3), 8(2) or (5), 51(2) or 53(2)” in Section 15(i) shall read “Section 64.”

(3) Sections 18 to 23, 26 to 28, 32, 33, 35, 40 to 43 and 69 shall apply mutatis mutandis to the right based on a defensive mark registration. In such a case, “has become a trademark falling under Section 4(1)(i) to (iii), (v), (vii) or (xvi)” in the proviso to Section 19(2) and “falls under the proviso to Section 19(2)” in Section 21(1)(i) shall read “is no longer registrable as a defensive mark under Section 64.”

(4) Sections 44 to 46, 53A to 54 and 56 shall apply mutatis mutandis to trials relating to defensive mark registrations. In such a case, “Section 3, 4(1), 7(1) or (3), 8(1), (2) or (5), 51(2) or 53(2)” in Section 46(1)(i) shall read “Section 64,” and “a treaty” in paragraph (iv) of the same subsection shall read “Section 64 or a treaty.”

(5) Sections 57 to 63A shall apply mutatis mutandis to retrials and litigation relating to defensive mark registrations. In such a case, “each paragraph of Section 37” in Section 59(ii) shall read “Section 67(ii) to (v).”

Chapter VIII — Miscellaneous Provisions

(Exceptional provisions on trademark right with two or more designated goods)

69. — (1) For the purposes of the provisions of Section 33(1) of this Law, Section 97(1) or 98(1)(i) of the Patent Law as applied under Section 35 of this Law, Section 46(2) (including its application under Section 48(2)) of this Law, Section 54 of this Law, Section 125 of the Patent Law as applied under Section 56(1) of this Law, Section 132(1) of the Patent Law as applied either under Section 56(1) of this Law or under Section 174(3) of the Patent Law as applied under Section 61 of this Law, Section 59, 60 or 71(1)(i) of this Law or Section 193(2)(v) of the Patent Law as applied either under Section 71(1)(i) or under Section 75(2) of this Law, relating to trademark registration or the trademark right, where there are two or more items of designated goods, trademark registration shall be deemed to have been effected, or a trademark right shall be deemed to exist, for each such item.

(2) For the purposes of the provisions of Section 59 or 60 relating to trademark registration or the trademark right, where there are two or more items of designated goods, registration of renewal of the term of the trademark right shall be deemed to have been effected for each such item.

(Exceptional provisions on trademarks etc. similar to registered trademark)

70. — (1) The references to “registered trademark” in Sections 25, 29, 30(2), 31(2), 34(1), 38(2), 50, 59(i), 64, 73 and 74 shall include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.

(2) The references to “registered defensive mark” in Sections 4(1)(xii) and 67 shall include marks which are similar to the registered defensive mark and would be considered identical if they had the same coloring.

(3) The references to “trademark similar to the registered trademark” in Sections 37(i) and 51(1) shall not include trademarks which are similar to the registered trademark and would be considered identical if they had the same coloring.

(Registration in Trademark Register)

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

(i) the establishment, renewal of term, transfer, modification, extinguishment or restriction on disposal of a trademark right;

(ii) the establishment, renewal of term, transfer or extinguishment of a right based on a defensive mark registration;

(iii) the establishment, maintenance, transfer, modification, extinguishment or restriction on disposal of a right of exclusive or non-exclusive use;

(iv) the establishment, transfer, modification, extinguishment or restriction on disposal of rights in a pledge upon a trademark right or a right of exclusive or non-exclusive use.

(2) The Trademark 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.

(Request for certification etc.)

72. — 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 or tapes ‘‘). However, this provision shall not apply in the case of documents which are liable to contravene public order or morality.

(Indication of existence of trademark registration)

73. — The owner of a trademark right or of a right of exclusive or non-exclusive use shall take steps, as prescribed in an ordinance of the Ministry of International Trade and Industry, to mark the designated goods or their packaging with a statement to the effect that the trademark is a registered trademark (hereinafter referred to as ‘‘indication of a trademark registration’’).

(Prohibition of false marking)

74. — The following acts shall be unlawful:

(i) marking with an indication of a trademark registration or confusingly similar indication in relation to a trademark which is not a registered trademark;

(ii) marking with an indication of a trademark registration or confusingly similar indication in relation to a trademark which is being used on goods which are not the designated goods;

(iii) the holding, for the purpose of assignment or delivery, of goods on which or on the packaging of which a trademark other than a registered trademark has been applied, or of goods other than the designated goods on which or on the packaging of which a registered trademark has been applied, where there is an indication of a trademark registration or confusingly similar indication in relation to such trademark.

(Trademark Gazette)

75. — (1) The Patent Office shall publish the Trademark Gazette (Shōhyō Köho).

(2) Section 193(2)(i) to (iv), (v), (vi) and (viii) (matters to be published in the Patent Gazette) of the Patent Law shall apply mutatis mutandis to the Trademark Gazette.

(Fees)

76. — (1) The persons specified in the left-hand column of the attached table \(^2\) 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 refund of a fee under the preceding subsection may be requested after one year from the date of payment.

(Application mutatis mutandis of Patent Law)

77. — (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 trademark and defensive mark applications, demands and any other proceedings relating to trademark or defensive mark registrations.

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

(4) Section 26 (effect of treaties) of the Patent Law shall apply mutatis mutandis to trademark and defensive mark registrations.

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

(6) Section 195\(^{st}\) (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 IX — Penal Provisions

(Offense of infringement)

78. — Any person who has infringed a trademark right or a right of exclusive use shall be liable to imprisonment with labor not exceeding five years or to a fine not exceeding 500,000 yen.

(Offense of fraud)

79. — Any person who has obtained a trademark or defensive mark registration or a registration of renewal of the term of a trademark right or right based on a defensive mark registration, or a trial decision, by means of a fraudulent act thereby shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 200,000 yen.

(Offense of false marking)

80. — Any person infringing Section 74 shall be liable to imprisonment with labor not exceeding three years or to a fine not exceeding 200,000 yen.

(Offense of perjury, etc.)

81. — (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.

\(^2\) This table is not published here.
(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.

(Dual liability)

82. — 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 Sections 78 to 80, 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)

83. — 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 56(1) (including its application under Section 68(4)) of this Law or under Section 59 of the Patent Law as applied under Section 17 (including its application under Section 68(2)) of this Law or under Section 174(1) to (3) of the Patent Law as applied under Section 61 (including its application under Section 68(5)) 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.

84. — 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.

85. — 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. 127 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 Trademark Law)

8. — Sections 2 and 5 of these Supplementary Provisions shall apply mutatis mutandis to the transitory measures that are incident to the revision of the Trademark Law under Section 4.

(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

Patent Law

(Law No. 121 of April 13, 1959, as amended)

CORRIGENDUM

In Section 135 of the Patent Law (Industrial Property, March 1974, p. 140 at p. 157), the word “demandant” should be replaced by “defendant.” The Section should therefore read:

(Dismissal of irregular demand by trial decision)

135. — An irregular demand for a trial which cannot be amended may be dismissed by a trial decision without giving the defendant an opportunity to submit a written reply.

4 “Section 4” means Section 4 of the main provisions of Law No. 91 of 1970, which are not published here. That section provides for the partial revision of the Trademark Law (Law No. 127 of 1959).

SENEGAL

Decree for the Temporary Protection of Inventions, Trademarks and Service Marks Exhibited at the International Fair of Dakar

(No. 741152 of November 23, 1974)

1. — Temporary protection is granted to patentable inventions and industrial designs, trademarks and service marks, with respect to products appearing in the International Fair of Dakar.

Such temporary protection consists in the fact that novelty shall not be destroyed.

2. — Any exhibitor may claim the benefit of Section 1 until the close of the Fair.

3. — The evidence to be furnished by persons wishing to avail themselves of the provisions of this decree shall be a statement identifying the article exhibited and the date when it was brought to the exhibition.

4. — Certificates of guarantee shall be issued on request.

5. — The provisions of Order No. 11672 of October 10, 1974, are and shall remain repealed.

6. — The Minister for Industrial Development and the Environment is entrusted with the implementation of this Decree, which shall be published in the Official Gazette.

3 See Industrial Property, 1974, p. 165.
Letter from the German Democratic Republic

By Joachim HEMMERLING •
CALENDAR

WIPO Meetings

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 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 16 to 27, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

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 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

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
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

January 9 to 14, 1975 (Yaoundé) — African and Malagasy Industrial Property Office — Executive 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

June 15 to 22, 1975 (Madrid) — International Chamber of Commerce — 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