

# Industrial Property

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## INDUSTRIAL PROPERTY LAWS AND TREATIES

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# World Intellectual Property Organisation

## WIPO Convention

### Accessions

#### PANAMA

The Government of Panama deposited, on June 17, 1983, its instrument of accession to the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967.

Panama will belong to Class C for the purpose of establishing its contribution towards the budget of the WIPO Conference.

The said Convention entered into force, with respect to Panama, on September 17, 1983.

WIPO Notification No. 122, of June 29, 1983.

#### HAITI

The Government of Haiti deposited, on August 2, 1983, its instrument of accession to the Convention Establishing the World Intellectual Property Organization.

The said Convention will enter into force, with respect to Haiti, on November 2, 1983.

WIPO Notification No. 123, of August 3, 1983.

## International Unions

### Paris Convention

#### I. Accession to the Stockholm Act (1967)

##### HAITI

The Government of Haiti deposited, on August 2, 1983, its instrument of accession to the Stockholm Act of July 14, 1967, of the Paris Convention for the Protection of Industrial Property of March 20, 1883.

The said accession will take effect, with respect to Haiti, on November 3, 1983.

Paris Notification No. 105, of August 3, 1983.

#### II. Application to the Isle of Man

The Director General of the World Intellectual Property Organization (WIPO) was informed by the Government of the United Kingdom and Northern Ireland, by a notification received on July 27, 1983, referring to Article 24(1) of the Paris Convention for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967, that the said Convention shall apply to the Isle of Man.

Pursuant to the provisions of Article 24(3)(a) of the said Convention, the notification referred to above shall take effect on October 29, 1983.

Paris Notification No. 104, of July 29, 1983.

## Patent Cooperation Treaty (PCT)

### Application to the Isle of Man

The Director General of the World Intellectual Property Organization (WIPO) has been informed by the Government of the United Kingdom of Great Britain and Northern Ireland, by a notification received on July 27, 1983, referring to Article 62(3) of the Patent Cooperation Treaty (PCT) done at Washington on June 19, 1970, that the said Treaty shall be applicable to the Isle of Man.

The said notification will take effect on October 29, 1983.

PCT Notification No. 40, of July 29, 1983.

## Budapest Treaty (Microorganisms)

### I. Ratification

#### SWEDEN

The Government of Sweden deposited, on June 23, 1983, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

Pursuant to the provisions of Article 16(2), the said Treaty will enter into force, with respect to Sweden, on the date indicated in its instrument of ratification, that is, on October 1, 1983.

Budapest Notification No. 31, of June 28, 1983.

### II. Change in Fees under Rule 12.2 of the Regulations under the Budapest Treaty

#### AGRICULTURAL RESEARCH CULTURE COLLECTION

The following notification addressed to the Director General of WIPO by the Government of the United States of America under Rule 12.2(a) of the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was received on July 29, 1983, and is published below by the International Bureau of WIPO pursuant to Rule 12.2(b) of the said Regulations.

The fees set forth in the said notification of the Government of the United States of America will apply as

from the thirtieth day following the date (September 30, 1983) of the publication of the said fees in the present issue of *Industrial Property*, that is, as from October 30, 1983 (see Rule 12.2(c) of the Regulations under the Budapest Treaty).

"As a result of recent policy changes, the Agricultural Research Culture Collection (NRRL) henceforth will charge a user fee for deposit and distribution of microbial cultures maintained in conjunction with U.S. and foreign patent applications. \* User fees apply to patent cultures only; as it has in the past, the Agricultural Research Culture Collection will continue to exchange other microbial germplasm with the scientific community without charge. The fee schedule will apply to all patent cultures deposited after September 30, 1983. \*\* A fee of \$500.000 will be charged for each strain, payable at the time of deposit. A \$20.00 fee will be charged for the distribution of all released patent cultures that have been deposited after September 30, 1983. There will be no charge for distribution of patent cultures already on deposit or for others received before this date. Checks, in U.S. dollars, should be made payable to the Agricultural Research Service, United States Department of Agriculture. United States Department of Agriculture laboratories and designated cooperators will be exempt from fee assessment."

[End of text of the notification of the Government of the United States of America]

\* Heretofore no fees have been charged by the Agricultural Research Culture Collection (see *Industrial Property*, 1981, p. 22).

\*\* By virtue of Rule 12.2(c) of the Regulations under the Budapest Treaty, the fees will enter into force on October 30, 1983 (see the second paragraph of the communication).

Budapest Communication No. 15 (this Communication reproduces the text of the notification of the Government of the United States of America and is the subject of Budapest Notification No. 32).

## Nairobi Treaty (Olympic Symbol)

### Ratification

#### GREECE

The Government of Greece deposited, on July 29, 1983, its instrument of ratification of the Nairobi Treaty on the Protection of the Olympic Symbol, adopted at Nairobi on September 26, 1981.

The said Treaty entered into force, with respect to Greece, on August 29, 1983.

Nairobi Notification No. 11, of July 29, 1983.

## Centenary of the Paris Convention

### Celebration of the Centenary of the Paris Convention, Organized by the Government of the French Republic

(Paris, May 25, 1983)

The Government of the French Republic was the host of a Solemn Celebration of the Centenary of the Paris Convention for the Protection of Industrial Property, which took place in Paris and Versailles on May 25, 1983, within the framework of the XXXIInd Congress of the International Association for the Protection of Industrial Property (AIPPI).

The Government invited to the Celebration the Director General of WIPO, high officials representing the Governments of member States of the Paris Union, including heads of national industrial property offices, the President of the European Patent Office, the Directors General of OAPI and the Benelux Trademark and Industrial Design Offices and other personalities playing an eminent role in the life of the Paris Convention.

As far as the members of AIPPI are concerned, those participating in the said Congress of AIPPI were, naturally, invited to and attended the various events of the Solemn Celebration.

The first of those events consisted in a solemn session, held at the *Palais des Congrès* at the Porte Maillot. Three speeches were made.

The first speech was made by Mr. Paul Mathély, President of AIPPI. He has been in that post for the last three years and, before that, for 20 years, was the Rapporteur General of AIPPI. In his speech, Mr. Mathély retraced the role—a very important role—of AIPPI in the development of the Paris Convention and the significance of that Convention in international economic relations.

The second speech was delivered by Dr. Arpad Bogsch, Director General of WIPO. His speech dealt with the reasons for which industrial property is and should continue to be protected and respected both at the national and at the international levels. And, in his speech, Dr. Bogsch paid tribute to the individuals—living or no longer living—who, as delegates of France in the various diplomatic conferences creating or revising the Paris Convention, or as leaders of the intellectual contributions of AIPPI to the development of the Paris Convention, had or have particular merits in that development.

The third speech was made by Mr. Laurent Fabius, Minister of Industry and Research of the French Republic.

He spoke in the name of the Government of France. Mr. Fabius confirmed France's attachment to industrial property in general and the Paris Convention in particular. Referring to the most important recent developments in the history of the Paris Convention, the advent of a great number of developing countries and the ongoing process of revision of the Convention in order to meet the legitimate wishes of those countries, he underlined the importance of the Convention for the economic and social development of all countries and the readiness of his Government to make every effort to promote solutions for the revision of the Convention which were acceptable to all concerned.

The text of these three speeches is reproduced below.

The second event, or series of events, took place in Versailles, in the Palace and the gardens. The guests were received by Minister Fabius and Mrs. Fabius on the upper terraces of the park in front of the Palace. There were more than 3,000 guests. Dressed as in the times of the *Roi-Soleil*, couples and soldiers, some on horseback, mingled with the guests, who were offered refreshments in the open air. The park showed all the splendor it has in that month of May, in which trees and flowers are fresh, at their best. Its beauty was enhanced by the *grandes eaux*, the world's most sumptuous fountains, which were working at full capacity.

The reception was followed by a dinner. The tables were laid in the famous *Galerie des Batailles* in the Palace and in the adjacent *Orangerie*. The fact that an excellent, five-course meal with hot dishes was served without delays to thousands of persons was one of several eloquent examples of the efficiency with which everything was organized.

Before and after the dinner, the guests were allowed to walk freely around in the *grands appartements*, the *Galerie des Glaces*, the theater and other parts of the Palace. Although many of the guests had visited the Palace before, the fact that, for that evening, it was *theirs* and was visited in the twilight of the night made the visit a special one. The legendary elegance of the Palace was at its best: it is beautifully restored and is as resplendent as it must have been when it was built some 300 years ago.

At midnight, the guests were guided to the Neptune Fountain, a few hundred meters from the Palace, for a night *fête* entitled "A Century of Versailles." The guests were seated around one side of the immense fountain. The opposite side is covered by shrubs and trees. In the framework of a presentation of the history of the Palace in a sequence of images, dancers, on small islands in the

fountain, performed ballets to the tune of Rameau's music, against the background of the powerful, multi-colored waters of the splendid fountains. The spectacle ended with fireworks. Their exceptional length, richness, variety and elegance—viewed, as they were by the guests, from an unusually short distance, against the jets of the waters of the fountains—constituted a worthy finale to an event which will remain vivid in the memories, and will be one of the most pleasant ones in the lives, of all those who had the good fortune to be present.

All this was organized with perfection, with generosity and cordial hospitality. It was the responsibility of dozens of persons. It is impossible to name them all. But at least one should mention those whom the writer of these lines could identify among the organizers: Mrs. Simone Carpentier from the French National Institute of Industrial Property and the eminent officers of the French Group of AIPPI, Mr. Bernard de Passemar, Mr. Marc Santarelli and Mr. Jean M. Burguburu.

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**Speech by Mr. Paul Mathély,  
President of AIPPI**

Mr. Minister for Industry and Research,  
Your Excellencies,  
Ladies and Gentlemen,  
Dear Colleagues,

We are gathered here to celebrate the centenary of an event that has had considerable significance in the history of law.

That event was the conclusion in Paris, on March 20, 1883, of a treaty called a Union Convention that established a supranational legal order for the protection of industrial property.

The centenary celebration had to take place in Paris, and before the world of industrial property grouped within AIPPI.

It had to be in Paris, as it was France that brought about the Union Convention.

It had to be before AIPPI, as it was our predecessors who conceived it.

Industrial property law, to which we all, dear colleagues, devote our studies and our work, is one of the major legal disciplines of our time.

It derives its importance from what it governs: its subject matter is one of the mainsprings of our civilization.

This subject matter consists first of industrial inventions, which in the course of this century have wrought prodigious changes in the condition of man on earth.

By lessening suffering and prolonging life, by multiplying power and energy, by shrinking space and by disseminating information and knowledge, inventions have made the economy and society what they are today.

The subject matter of industrial property consists also of distinctive signs, which control the organization of markets.

By channeling distribution and business, distinctive signs allow the greatest number of people to obtain the goods they desire and have selected, in any place and at any time.

Thus by protecting industrial property, wherein lies its strength, our law is the guarantor of progress.

Now industrial property law was inescapably destined to be more than a juxtaposition of distinct, independent national laws and to evolve into a higher law common to a set of countries.

For by their very nature industrial inventions and distinctive signs are themselves destined to be exploited everywhere, in the same fashion, regardless of frontiers and without concern for the diversity of social or economic systems.

This is how, a hundred years ago, it occurred to certain alert and perceptive minds that industrial property needed to be given supranational status.

Who was going to give it that status?

The initiative was taken by specialized practitioners.

It came from our forebears, dear colleagues, from the curators of industrial property who preceded us.

They came together for the first time in history, in 1873, at a Congress in Vienna, with the intention of drawing up an international system of protection for industrial property.

As it was an experiment, the work was incomplete and imperfect.

The plan itself, however, was worked out and given expression.

A second Congress was held in Paris, on the occasion of the Universal Exposition of 1878.

That Congress, which was thoroughly prepared and officially sponsored by Governments, carried out decisive work.

With Bozérian presiding over it, Thirion acting as Secretary-General and Professor Lyon-Caen as one of its guiding lights, the Congress proceeded to make a complete examination of industrial property law.

From that examination emerged a definite proposal, which contained the main features of the treaty that was to establish the supranational legal system governing industrial property.

So it was indeed our predecessors who devised and defined this institution.

Today we can be justly proud of this fact.

While the institution had been designed, it had yet to be integrated in positive law.

And to achieve that end, an effort of political will had to be made and political action taken, which lay within the competence of the States.

The French Government took this task upon itself.

At the closing meeting of the 1878 Congress, the French Minister of Commerce, Mr. Teisserenc de Bort, accepted on behalf of his country the responsibility of convening a Conference of States to prepare the conclusion of the treaty.

That Conference was convened in Paris. It met on November 4, 1880. Twenty-one countries were represented. The French legal expert Bozérian, who had presided over the 1878 Congress, was elected President of the Conference, and the discussions were based on the proposals worked out at that Congress: the Swiss Ambassador, who was the doyen of all the delegates acknowledged the part played by our preparatory work and its quality.

On November 20 the work was finished and the draft treaty established.

It remained to conclude it.

The French Government conducted a diplomatic campaign to attract support.

Then, on March 6, 1883, it convened a Conference of Plenipotentiaries for the second time in Paris.

On March 20 the treaty was signed.

The work was accomplished.

The French Republic has the historical merit of having achieved this accomplishment.

Gathered together before you, Mr. Minister, the people of industrial property pay tribute to France.

What was the system that the Paris Convention had established?

It can be defined in four major provisions.

First, the provision that forms the very foundation of the institution, namely, that the contracting countries constitute themselves into a Union. That means that, for the protection of industrial property, the contracting countries form just one, ideally single, territory on which a single law common to them all applies.

Then there is the essential feature of the system, namely, the establishment of the rule whereby the nationals of each country are subject, in all the other countries individually, to the national industrial property laws: in this way the wide diversity of different laws is respected, but all are assured of the equal application of those laws.

In order that all might be given the possibility of benefiting from the laws of every other country, the Convention created an original and ingenious legal tool: this was the right of priority, which for a limited period affords full immunity for the organization of protection in the various countries.

Finally, by providing for the adjustment or repeal of national laws on specific points, the Convention prescribed a common rule and thereby introduced the harmonization of law.

Such was the Union Convention.

In 1883 eleven States adopted the treaty, namely, France, Belgium, Brazil, Guatemala, Italy, the Netherlands, Portugal, El Salvador, Serbia, Spain and Switzerland.

The Ambassadors accredited by those States are present at this ceremony.

Allow me, Your Excellencies, to salute the countries that you represent as founders of the Union.

Eleven member countries in 1883, 92 member countries today: the Union covers virtually the entire world.

Conferences of States have met eight times in the course of a hundred years in order to enrich and perfect the original text.

During that time the institution has developed and progressed, surely and steadily.

It has done so under the direction of distinguished men to whom we owe respect and gratitude: formerly Professor G. Bodenhausen, and today Dr. Arpad Bogsch.

Why is the institution so persistently successful?

Because it is useful and efficient, both economically and socially.

The role of law is to promote human activities by guiding and supporting them.

The law introduced by the Union Convention protects the factors of progress constituted by industrial property and protects it on a worldwide scale.

The Convention thus contributes to the fullest extent to the transfer of technology and the distribution of wealth.

Through this exchange it benefits both men and nations.

It has to be said that the present economic order is a challenge to the Union system.

It would be a mistake, indeed a fatal mistake, to deny the fact.

On this anniversary, our duty is to state categorically that the Union system, with its constant improvements, deserves to be firmly maintained.

The Union Convention is not only a practical work, however.

It also has great spiritual significance.

And that significance should be highlighted on this anniversary.

The Union Convention addresses itself to mankind and to mankind's greatest possession, namely, its creations and its initiatives.

The Convention erases differences or conflicts of interest, race or regime, considering all men equally, in themselves, for their values as human beings.

Moreover it crosses barriers and extends its influence to the people of the whole world, bringing them together in a spirit of understanding and solidarity.

We must exalt the exemplary virtue of the work accomplished a hundred years ago, an example of humanism, indeed, of universal humanism.

**Speech by Dr. Arpad Bogsch,  
Director General of WIPO**

Your Excellency, Mr. Laurent Fabius, Representative of the Government of the French Republic, Minister for Industry and Research,  
Mr. Paul Mathély, President of the International Association for the Protection of Industrial Property,  
Your Excellencies, Ladies and Gentlemen,

It is in my capacity as Director General of the World Intellectual Property Organization that I have the honor of taking the floor. Among the tasks that this Organization has the mission to fulfill is the administration of the Paris Convention for the Protection of Industrial Property.

In this capacity, I would like to begin by congratulating the French Government and the International Association for the Protection of Industrial Property for having had the idea of organizing this ceremony and by thanking them for having invited the World Intellectual Property Organization. We are just halfway through the present Paris Congress and it is already obvious that from all points of view its organization is excellent. Praise is due to a large number of people, and in particular to Mr. Paul Mathély, President of the Association, and to Mr. Bernard de Passemare, President of the French Group, the Group which has taken on the considerable, but—let us hope—satisfying, task of organizing this Paris Congress.

Your Excellencies, Ladies and Gentlemen,

We are here to celebrate the centenary of the Paris Convention, an international treaty to which, at this moment, 92 States are party and which was brought into being to protect industrial property.

This being the aim of the Paris Convention, I feel we might well reflect, in the light of 100 years of experience, on three questions:

*First*, why is it desirable, indeed necessary, to protect industrial property?

*Second*, how can the protection of industrial property be ensured at the international level?

*Third*, to whom do we owe the institution of this international protection, assumed today thanks to the Paris Convention?

First, then, what are the reasons for protecting industrial property? In other words, why should legislation—one of the expressions of the will of a people and of its government—afford rights to the creators of inventions, to the owners of trademarks, to the legitimate users of appellations of origin for products and to the authors of industrial designs? The main reason—at least this is my very firm conviction—is justice. To recognize the rights of these creators fulfills the sense of justice that is within all of us as human beings. In addition, the fact of expressing this sense of justice by the legal protection of industrial property cannot but lead to advantages for society and for the economy. Protection of this kind

encourages creativeness in the technical field. And it promotes trade. Technical progress is the very basis for improving the physical conditions of life, particularly in the fields of food, health and communications. Trade, for its part, provides easier access to the fruits of this improvement. Apart from the spiritual values, these are the fields that have the greatest influence on the happiness and well-being of mankind.

These are matters that concern all nations, indeed the whole of mankind. However, the laws governing them are made by States, and the law of one State applies only on the territory of that State. Action must therefore be taken to enable those laws—laws protecting industrial property—to apply not only to nationals of the State promulgating them but also to foreigners.

How can this be done?

That, in fact, is the second of the three questions I have mentioned.

The only way of achieving this aim is by means of an international treaty.

By means of a treaty by virtue of which those who have concluded it or who adhere to it—that is to say, States—undertake to adopt the necessary measures to protect industrial property and to apply those measures not only to their own nationals but also to nationals, individuals or enterprises, of *all* the Contracting States.

This treaty is the Convention whose centenary we are celebrating today. It was concluded in Paris at the invitation of France, the host country for the diplomatic conference which, at two sessions held in 1880 and 1883, drew up the first text of the Convention.

Since its creation in 1883, the Convention has been revised six times: in 1900 at Brussels, in 1911 at Washington, in 1925 at The Hague, in 1934 at London, in 1958 at Lisbon and in 1967 at Stockholm.

I give the names of these capitals in order to pay special homage to those countries which were the hosts of the revision conferences.

The task of those conferences has been to improve—in the light of experience gained with time and in the light of the evolution of social and economic needs—to improve, I say, what is known as the international system of protection of industrial property.

This task still continues, and a revision conference is proceeding now. I shall speak of this at the end of my address.

But before that, Your Excellencies, Ladies and Gentlemen, I would like to say a word on the third question I have referred to, that is to say, to whom do we owe the institution of the international protection of industrial property by virtue of the Paris Convention.

We owe this, of course, to those men who conceived the idea of concluding an international treaty, who applied themselves to the periodical revisions of the treaty once it had been concluded, who persuaded their governments to participate in that task, who represented their countries at the Paris Conference in the last



century and in the diplomatic conferences of revision, and also to the men who worked to have their parliaments ratify the Paris Convention and its revised texts.

It would be impossible to speak, or even cite the names, of all those who won renown in this great work.

I shall therefore restrict myself to mentioning a few of them, particularly those from two circles—France and the International Association for the Protection of Industrial Property—since we are at a ceremony organized by the French Government as a part of the Congress of that Association.

As far as France is concerned, the first person who must be mentioned is Charles Jagerschmidt, a senior official of the Ministry of Foreign Affairs, who was the author, in 1880, of the preliminary draft that was to become the Paris Convention as a result of the diplomatic conference that met in 1880 and 1883. That conference was presided over by two other Frenchmen, Senator Jules Bozérian, a lawyer of the Paris Bar, and Anne-Charles Hérisson, Minister for Trade. The imagination and the intellectual courage of those three delegates of France were decisive for the success of this diplomatic undertaking.

All this took place before or during the year 1883. At the various revision conferences that followed, the French delegates continued to make an intellectual and political contribution of the highest importance. I shall mention the names of some of these French delegates: Michel Pelletier, Georges Maillard, Marcel Plaisant, Guillaume Finnis, Marcel Boutet, François Savignon, Georges Vianès.

As regards the International Association for the Protection of Industrial Property, it should be recalled—and this I do with great pleasure—that this Association, founded in 1897, of which one of the main founder members was Eugène Pouillet, President of the Paris Bar, played a decisive intellectual part in the evolution of the Paris Convention.

This intellectual role manifested itself and was expressed in the opinions and recommendations that have been discussed and adopted by the various organs of your Association. Your Association may take the credit for taking the initiative in a large number of judicious reforms which were subsequently decided upon by the Paris Convention revision conferences. It has sometimes recommended that certain proposals originating elsewhere should not be adopted, since they were not felt to be very desirable. By this attitude, both constructive and critical, your Association has made a most important contribution to the proper development of the Paris Union. For such a task, the membership of your Association is eminently appropriate: your members are almost all lawyers who, as industrial property attorneys or agents, are specialists in contact with questions of industrial property in international daily relations.

This intellectual influence of the International Association for the Protection of Industrial Property has been the fruit of the work of coordination carried out by the one of your officers who bears the title of *Rapporteur General*. There have been five of these so far, all of whom have been French and have been attorneys of the Paris Bar: Georges Maillard for 13 years, André Taillefer for 14 years, Fernand-Jacq for 24 years, Paul Mathély for 22 years, having since become President of your Association in 1980. Since that date, Geoffroy Gaultier has been your *Rapporteur General*.

During that same period, your Association has had but three Secretaries General. The first was Albert Osterrieth, a German lawyer. He was followed by two Swiss patent agents, father and son, Eugen and Rudolf Blum. The former was Secretary General for 41 years and the latter has filled this office since 1961, that is to say for 22 years.

Their devotion to the cause, their gracious nature and their organizational talents have been and are still behind the impressive growth of the membership of your Association. From 600 at the beginning of the 1920s, when the Association was reorganized, membership has risen to the present 6,000.

The third officer of your Association is its Treasurer. Stephen Ladas, a great American lawyer, held this office for many years. Since his passing away, another very well-known American specialist, Gabriel Frayne, holds this position.

I should cite many more individuals who have left their mark on your Association. Time does not permit it. I should nevertheless like to mention one more and also to return to one I have already mentioned.

George Bodenhausen represents a particularly close link between your Association and the Paris Convention. Not only was he President of the Netherlands Group of your Association at the time when he practiced law in the Netherlands, not only is he now an Honorary Member of the Association, but he was for ten years the Head of the International Bureau, in Geneva, which administers the Paris Convention. His success in administering the Paris Convention was surely due to a great extent to the fact that he came from the professional circles represented by your Association.

Finally, I must return to the person of your President, Paul Mathély, since he is the very incarnation of the aims of the International Association for the Protection of Industrial Property. He is a practitioner of industrial property since he is a lawyer specialized in that field. He is a scholar in industrial property since he is the author of fundamental monographs in this field of law and he has exerted and still exerts considerable influence, in his former role as *Rapporteur General* and in his role today as President of your Association, on the development of the Paris Convention.

Permit me to salute him and to congratulate him for all these positions he has filled with such brilliance and such success.

We are now at the threshold of a second century of the Paris Convention. We are also, as I have already mentioned, in the middle of a revision conference. The conference began in 1980 in Geneva and has continued in 1981 at Nairobi and in 1982 at Geneva. It will also continue next year. Its length should not discourage us. This is not the first diplomatic conference that has needed a number of sessions to reach its goal. And this conference must resolve a number of questions that arise for the first time. What one has to do is to respond to the wishes of the developing countries. And there are also the wishes of the socialist countries. Solutions must be found that are acceptable both to the industrialized countries—whether market economy or planned economy—and to the developing countries. This requirement alone is enough to demonstrate the complexity of our task. However, the effort is amply worthwhile. What is at stake is the universal nature of the Paris Convention. It is necessary not only to arrive at solutions which are acceptable to all the States party to the Paris Convention, but also to make it possible for States that are not yet party to accede to the Convention.

Your Excellencies, Ladies and Gentlemen,

Permit me to seize this opportunity to appeal to all of you, representatives of governments and professionals in the field of industrial property, that your governments and your Association should continue with a firm will to revise the Paris Convention in response to these demands.

I invite the French Government, Your Excellency, to contribute to this task through its international experience and through its relations with all the nations of the world, particularly with the developing countries.

And I also invite the International Association for the Protection of Industrial Property—in line with its traditional role in the improvement of the Paris Convention—to contribute to this task its professional knowledge, its experience and its presence in almost every country.

May the future of the Paris Convention be a fruitful one! May this Convention continue to serve the advancement of mankind by furthering cooperation between all nations of the world!

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**Speech by Mr. Laurent Fabius,  
Minister of Industry and Research  
of the Government of the French Republic**

Ladies and Gentlemen,

Just a hundred years ago the official signing ceremony of what was subsequently dubbed the Paris Convention took place under the chairmanship of the French Minister for Foreign Affairs, Mr. Challemeil-Lacour. It was to be the basic charter in the field of the protection of

industrial property and it gave birth to the International Union which pursues the same objective.

It is therefore a special honor, an honor redolent of present and past history, for me, as Minister of Industry and Research of the Government of the French Republic, to welcome you to Paris today. In 1883 the Union for the Protection of Industrial Property consisted of eleven States. Today its membership is 92. These two figures are in themselves a sufficient indication of the wide appeal and usefulness of the Paris Convention. For that reason it is fitting that we should take advantage of the fact that the XXXIInd Congress of the International Association for the Protection of Industrial Property is taking place in Paris to give special prominence to the celebration of this anniversary.

You, Mr. President, and you, Mr. Director General, have both given an account of the great events that accompanied the successive improvements and amendments made to the Paris Convention. It was, and still is, one of the instruments of the development of trade and industry at world level. You have thus mentioned its history, so I shall confine myself to some reflections: on its inherent significance, on the dissemination of technology for which it stands, on the guidance that it can give to the political decision-makers of every persuasion, and finally on the manner in which it must expect to evolve.

— 1 —

Ladies and Gentlemen, it is no exaggeration to say that the Paris Convention, signed on March 20, 1883, was a veritable declaration of inventors' rights. Since then the declaration has widened its influence. Recognizing in this way the rights in creation, innovation and invention, those expressions of the freedom of mankind that have contributed so much to its advancement, was a decisive act. As you no doubt know, Honoré de Balzac, one of the greatest of French authors, devoted some very elegant pages to his description of "the sufferings of the inventors." His hero, David Séchard, was a minor inventor at work on a new process for the manufacture of paper. The birth of an invention is often a painful delivery and, as Balzac shows us, its novelty must be protected. Moreover it is right and proper that all, from the smallest to the largest, from the least developed to the most heavily industrialized country and from the humblest to the most sophisticated invention, should be covered, protected and recognized equally by this Paris Convention.

The international character of the Convention is furthermore an instrument of peace in the midst of the economic war that is raging throughout the world. One of the essential objectives of the Paris Convention is that of guaranteeing protection abroad to the nationals of its member States: technically, no patent application may be refused, neither may any patent be invalidated, on the ground that the sale of the patented product or of a product obtained by the patented process is subject to

restriction or limitation by national law. In other words, often at odds with current trends, the Paris Convention has proposed common rules of play that transcend the diversity of legislation and its contradictions.

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It was not by chance that the Convention was originally designed to facilitate relations between countries at different stages of industrialization. It has indeed greatly contributed to the dissemination of technology, which is a matter of prime concern to those countries, and this is the second reflection that I wanted to make on the subject of industrial property.

The Paris Convention has undoubtedly been responsible for a great increase in the filing of patents in the country of origin and in other countries. The main reason for not patenting an invention or innovation has often been the desire to keep it secret and to preserve that secrecy. Indeed, the first French Patent Law, promulgated while France was in the throes of the Revolution, actually stated in its preamble that nothing could compel an inventor to make his invention available to society. Yet all patent legislation is more than for the mere protection of inventors: it is a compromise between that protection and the determination to allow society to benefit from inventions. It is thus clear that the Paris Convention for the Protection of Industrial Property, by improving the protection for inventors, has given them more incentive than ever to file patents and thereby to develop the dissemination of technology.

This is a fundamental matter, as it is at the very root of the transfer of technology which is so necessary. The accessibility of patents is one of the main factors in technology transfer between nations or between enterprises. The purchase of a patent is not of course sufficient in itself to secure the acquisition of new technology. The accompanying technological skills are necessary, which ultimately makes for market inequalities in the access of certain countries to the patent market. However, the existence of this international Convention remains an essential safeguard against technology transfer being effected in a disorderly and unjust fashion.

—3—

The celebration of this centenary has provided the politicians with the opportunity to draw up comparative lists of the patents filed in each country. One of the effects of the international Convention is indeed that it allows comparisons to be made between nations. The proportion of national patents to foreign patents and the development in their numbers are indicators that have to be watched. In this way the relation between inven-

tive activity and economic performance can be more readily evaluated. Measurements are made to determine the effect of research and development on the filing of patents. Delays and obstacles that would inhibit the innovative potential of a country can be detected. An innovative economy cannot, in the international context that the patent context has now become, dispense with this measuring instrument, even though it is not the only one that has to be used.

In the case of France, for all the excellence of our level of scientific achievement, we have to make an additional effort to improve our "patent and licensing" balance. I shall soon be given the opportunity to make some bold proposals in this connection. We have to encourage innovation by exploiting the potential of industrial property more fully, and we can only do that, I think, by seeking a fair balance between the interests of the inventor and those of society, by developing the rights of the person who does the inventing—the employee, for instance—and by making all areas of research and industry aware of the importance of industrial property. Your presence in Paris, Ladies and Gentlemen, and the centenary that we are celebrating will help promote that awareness.

The Eureka 83 exhibition, which is taking place now at the Beaubourg Center, provides a very useful survey of a century of the French technology that has shaped our culture. And, when I spoke of awareness of the problems of industrial property and patents, I was thinking with regret of the still small place occupied by technological studies in too many educational establishments. Without any doubt, it is necessary to introduce those concepts more completely in our educational systems. I wager that our youth would find nothing dull or tedious about the subject since it concerns creation and innovation, with regard to which the various nations convey a positive image both of and to their youth. That is one of the indirect effects of the Paris Convention.

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However, and this is my last comment, the most noteworthy fact concerning the Paris Union seems to me to be its expansion during the last two decades to include a great many developing countries which, within this Union as in other international areas, have become the majority. As it was originally designed above all to facilitate relations between countries possessing a certain degree of industrialization, it is not surprising that the Paris Convention, in its present state, has not afforded to the least developed countries all the advantages that they expected of it.

I am well aware that, following the extraordinary session of the United Nations General Assembly in May 1974, the Paris Convention has had to be revised to try to respond to the legitimate aspirations of those countries. I am also aware that the World Intellectual Prop-

erty Organization engaged in extensive preparatory work before the convening of the Diplomatic Conference, which has held three sessions, in Geneva, then in Nairobi, and again in Geneva in 1982. In spite of the progress made, one cannot help regretting that this work could not be completed. Of course the major obstacle to be overcome is that of the very profound inequality between States in terms of their industrial development. A hundred years have passed between the period during which the technology exporters held sway and now, when we are being challenged by the technology importers. The duty of the Paris Union is to provide the various countries with reasonable solutions, at the same time striving to preserve its own cohesion and the spirit of understanding between countries in this privileged area of industrial property. The French Government for its part will do its utmost to bring about solutions that are acceptable to all. And I am sure that the determination of those who enliven this institution will be able to overcome the difficulties still outstanding.

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Ladies and Gentlemen, 18 months after the Paris Convention, a Frenchman and his associates filed patent No. 164,364 for "a new device whereby metal piles and pylons may be constructed to a height in excess of 300 meters." That Frenchman was Gustave Eiffel. It was he who built the Tower that everyone now identifies with Paris. It was already able to qualify for protection under the provisions of the Paris Convention, which had come into force three months earlier. Eiffel's invention was thus protected and his technology thereafter thoroughly disseminated.

Yes, Ladies and Gentlemen, a century has already passed, with all its technological, economic and social developments, since a step was taken whose purpose was to establish the rights of intelligence, of know-how and of creative potential. Our ambition is the same today, albeit in a different form. When a human right is at stake, we must take arms in the sure knowledge that our action should always tend towards the extension of such rights. The Paris Union has had a glorious past. I wish it, I wish you, a propitious future.

## Activities of Other Organizations

### International Association for the Protection of Industrial Property

#### XXXIInd CONGRESS

(Paris, May 23 to 27, 1983)

The International Association for the Protection of Industrial Property (AIPPI) held its XXXIInd Congress in the "Palais des Congrès" in Paris from May 23 to 27, 1983.

In the long history of Congresses organized by AIPPI, this one had a special importance. It was convened in Paris because, one hundred years ago, on March 20, 1883, the Paris Convention for the Protection of Industrial Property was adopted and signed in a diplomatic conference convened in Paris by the French Government.

In addition to dealing with the usual agenda of AIPPI Congresses, this Congress also celebrated the centenary of the Paris Convention. Part of those celebrations were jointly organized by the French Government and are the subject of a separate note in the present issue of this periodical.

In recognition of the importance of this Congress of AIPPI, the President of the French Republic, Mr. François Mitterrand, had accepted the patronage of

honor of the Congress and had addressed a message to Mr. Paul Mathély, the President of AIPPI. The presidential message was communicated to the participants of the Congress. It underlined the eminent role that AIPPI plays and has played in the past in the life of the Paris Convention, and wished further success in the work of AIPPI.

More than 3,000 participants from some 65 countries attended the Congress. Most of them were members of AIPPI. Invited guests included representatives of governments and representatives of intergovernmental organizations and of international non-governmental organizations. The World Intellectual Property Organization (WIPO) was represented by its Director General, Dr. Arpad Bogsch. He was accompanied by Dr. Klaus Pfanner, Deputy Director General, and Dr. Ludwig Baeumer, Director, Industrial Property Division.

The Congress was chaired by Mr. Paul Mathély, President of AIPPI.

The Centenary of the Paris Convention was commemorated in a special plenary meeting of the Congress. In that meeting two lectures were given.

Mr. Geoffrey Gaultier, Reporter General of AIPPI, gave a lecture on the history of the preparatory work leading to the convocation of the diplomatic conferences of 1880 and 1883 and on the history of those conferences themselves. The said preparatory work, as is known, was mainly carried out in two international

congresses convened in connection with international exhibitions, one held in Vienna in 1873 and the other held in Paris in 1878. The Ministry of External Affairs of France put the archives of the two diplomatic conferences held in Paris at the disposal of Mr. Gaultier. Thanks to this hitherto untapped source, the lecture contained many interesting details which were disclosed for the first time.

The other lecture was given by Professor G. H. C. Bodenhausen, Honorary Member of the Bureau of AIPPI, former Director General of WIPO and author of a well-known commentary on the Paris Convention. He retraced the history of the development of the Paris Convention in its various Revision Conferences. He also recalled the important role played by AIPPI in that development and in those Conferences.

The ongoing revision of the Paris Convention was on the agenda of the Congress.

Other matters on the agenda included the legal and economic significance of industrial design protection; the influence of laws on restraint of trade or transfer of technology on know-how agreements; trademarks and consumer protection; the protection of scientific discoveries; the protection of groups of chemical substances and selection inventions.

Parallel to the Congress, the Executive Committee of AIPPI and the Council of Presidents of AIPPI also held meetings.

The Executive Committee adopted several resolutions concerning the questions that had been considered by the Congress; those resolutions are reproduced below.

At the close of the Congress, the Executive Committee unanimously elected Mr. Edward Armitage (former Comptroller-General of the United Kingdom Patent Office) as the new President of AIPPI, and Dr. Alfred Briner (Switzerland) as the new Secretary General of AIPPI. The outgoing President, Mr. Paul Mathély (France), and the outgoing Secretary General, Mr. Rudolf Blum (Switzerland), made farewell addresses and were thanked and feted by the participants. The Director General of WIPO was among the speakers who paid tribute to their merits in general and in the field of cooperation between WIPO and AIPPI in particular.

Various splendid social events accompanied the working part of the Congress. The presidents of the national groups of AIPPI were given a lunch at the *Pavillon Gabriel* and the Executive Committee of AIPPI was given a dinner in the *Château de Ferrières*. Smaller groups of participants were received by Mr. Alain Pöher, President of the French Senate in the *Palais du Luxembourg* and by Mr. Jacques Chirac, Mayor of Paris in the *Hôtel de Ville*. All participants were invited to a reception on the lawns of the *Bagatelle* in the *Bois de Boulogne*. Spouses were escorted to various museums, fashion shows and a boat trip on the river Seine. Because of the high number of participants, the traditional, elegant closing banquet was held in four different places,

one of them being the marvellous, XIIIth century hall of the *Conciergerie*.

It is a tradition in AIPPI Congresses to offer an elegant and rich social program to the participants. The one in Paris was on the scale that was commensurate with the importance of the centenary of the Paris Convention. The French Group of AIPPI was the host. The excellence of the organization of the Congress and the warm hospitality of the host will be always and gratefully remembered by all the participants.

## Resolutions Adopted\*

### QUESTION 53

#### Influence of Laws on Restraint of Trade or Transfer of Technology on Know-How Agreements

##### The AIPPI

##### A: Reaffirms

the Melbourne resolution of 1974 to the effect that know-how is a transmissible economic asset belonging to an enterprise which develops or properly acquires it and which should be protected by law to prevent improper acquisition, use or disclosure;

##### and affirms

that excessive regulations and inflexible control of know-how agreements risk discouraging the owners of know-how from transferring it to third parties;

##### B: Recognizes

that agreements for the transmission of know-how are of a *sui generis* character which are indispensable to economic and technical progress but which may be subject to laws concerning restraint of trade and transfer of technology;

##### C: Resolves consequently

(I) that laws concerning restraint of trade and transfer of technology should only affect agreements which materially and substantially reduce competition or will otherwise have a significantly detrimental effect on national or international economic interests;

(II) that such agreements should be considered as to their overall effect in the economic context in which they are made;

(III) that *inter alia* the following provisions should, subject to the foregoing, not be prohibited:

\* Text of the Resolutions communicated by AIPPI.

- (1) transmission of the know-how exclusively to the transmittee;
- (2) limitations in regard to application of the know-how, either to a given field of use or to a geographical area;
- (3) a prohibition on use of the know-how by the transmittee after expiry of the term of the agreement for as long as it is not within the public domain;
- (4) an obligation to maintain confidentiality of the know-how for as long as it is not within the public domain both during the term of the agreement and after it expires;
- (5) an obligation to continue payment of royalties after the know-how becomes public knowledge unless secrecy is of the essence of the contract;
- (6) duration of the agreement for whatever term the parties may agree; and

D: *Decides*

to continue its studies especially with respect to the following points:

- mixed patent/know-how agreements
- the consequence of disclosure of the know-how by third parties.

#### QUESTION 61

##### Protection of Scientific Discoveries

The AIPPI

*resolves* that it should not at this present stage decide on pursuing the study of the protection of scientific discoveries.

#### QUESTION 62

##### International Protection of Appellations of Origin and Indications of Source

The AIPPI,

*having taken note* of the work of the third session of the Diplomatic Conference which was held at Geneva from October 4 to 30, 1982, *is pleased* that the study of the protection of geographical indications has been commenced and has yielded positive results.

*On the subject of the amendment of Article 6ter*

The AIPPI

*approves* the proposal of Committee I to insert the "official names of States" that are countries of the

Union in the list of items with respect to which registration or use as a trademark is prohibited.

However, bearing in mind that such provision is of very limited effect, it should be accompanied by a complementary provision assuring protection to names that do not always correspond to the official names of States but are names commonly used to designate States; such provision should be placed in the context of new Article 10quater, such as was originally provided (WIPO document PR/DC/4).

*On the subject of Article 10quater*

##### 1. The AIPPI

*has examined* the suggestions of the Working Group of Committee I with respect to paragraphs (1), (2), (5) and (6) of Article 10quater.

##### (1) *On paragraph (1)(a)*

*approves* the rules set out in paragraph (1)(a) according to which each country of the Union undertakes to refuse or cancel the registration of a mark, or prohibit the use of a mark, if such mark contains or consists of a geographical or other indication designating or evoking a country of the Union in relation to articles which do not originate from that country, if use of the indication in relation to such articles is of such nature as to mislead the public about the true country of origin.

In effect, the expression *geographical or other indication* extends to all marks, including graphic representations;

##### (2) *On paragraph (1)(b)*

*welcomes* the provisions set out in paragraph (1)(b) according to which names commonly used to designate States of the Union and their translations, modified forms, adjectival or abbreviated forms are entitled to the benefits of the protection afforded by paragraph (a);

##### (3) *On paragraph (2)*

also *welcomes* the fact that paragraph (2) sets out that the provision of paragraph (1) apply to geographical indications which, although literally accurate, are nonetheless susceptible of misleading the public as to the origin of the products;

##### (4) *On paragraph (5)*

*approves* paragraph (5) establishing a rule of interpretation according to which all the circumstances of the case must be taken into account, particularly the reputation of the geographical indication but also the duration of the use of the mark.

The AIPPI has always pointed out the impropriety of the French version of the text which requires taking into

account l'étendue dans laquelle the place designated or evoked is known whereas one should read *en tenant compte de la mesure dans laquelle...*

(5) *On paragraph (6)*

*approves* the principle of paragraph (6) according to which the provisions of Article 10*quater* do not prevent countries of the Union from concluding bilateral or multilateral agreements concerning the protection of geographical indications.

*Congratulates* the Working Group of Committee I which has considerably improved the text of the basic proposals.

II. While appreciating the progress that has been achieved,

the AIPPI

*wishes* that the Diplomatic Conference, during its next session, adopt not only paragraphs (1), (2), (5) and (6) of proposed Article 10*quater* but also paragraphs (3) and (4) of the basic proposals, for reasons set out in the resolution of the Executive Committee at Toronto in 1979, and take into account the suggestions expressed in such resolution with respect to paragraph (4).

#### QUESTION 67

#### Revision of the Paris Convention

##### I. Article 5A Paris Convention (Geneva proposal 1982)

The AIPPI *notes* with satisfaction that the new draft Article 5A responds to one major concern expressed by the AIPPI, by providing that a compulsory license should never be exclusive.

(1) *Considering* that the new subparagraph (8)(b) follows the present wording of Article 5A(4) insofar as it allows forfeiture in case of *insufficient* working, a provision which is pertinent only as far as the grant of compulsory licenses (non-voluntary licenses) is concerned.

*Considering*, however, that such possibility would prejudice the interests of small and medium-sized enterprises in developing countries in working their own patents.

The AIPPI *takes the position* that:

all references to *sufficient* or *insufficient* working in the new draft Article 5A(8)(b) be deleted.

(2) *Considering* that some of the harshness of forfeiture or revocation arising from the new text of Article 5A(8)(b) could be avoided by incorporating an improvement which draws on the basic idea of suspension and calls for preserving as much as possible the patent right. With these views, the AIPPI *proposes* a solution found in national patent law and in Article 5*bis* of the Paris Convention, namely, to provide for the *restoration* of the forfeited or revoked patent under certain conditions.

Consequently, the AIPPI *proposes* that draft Article 5A (8), be completed by adding two new subparagraphs (c) and (d) reading as follows:

"(c) A patent which has been forfeited or revoked in accordance with subparagraph (b) above, shall be restored in case the patentee starts, either by himself or through a voluntary licensee, the working of the patented invention within a period of three years after the date forfeiture or revocation took place.

"(d) Any person having commenced working the patented invention in the country during the time of forfeiture or revocation may continue such working notwithstanding the restoration of the patent as provided in subparagraph (c) above."

##### II. Article 5*quater* Paris Convention (Geneva proposal 1982)

It has been the position of the AIPPI that Article 5*quater* should be maintained. The AIPPI *notes*, however, that the new text for the revision of Article 5A (Annex I\*) *proposes* that any developing country shall have the right not to apply Article 5*quater* and that this proposal seems to be an integral part of the "package" involving the solution of all issues under Article 5A.

The AIPPI is of the opinion that any country of the Union could solve difficulties it may have with Article 5*quater* by simply reducing the scope of protection of process patents afforded by the national law.

Under these circumstances the AIPPI *resolves that*:

the proposed amendment to Article 5*quater* is acceptable as part of the package solution envisaged for Article 5A (Annex I).

##### III. Article I Paris Convention (Geneva proposal 1982)

The AIPPI *is of the opinion* that it is extremely important that the Paris Convention includes clear definitions of both patents and inventors' certificates. It came to the conclusion that neither definition contained in the Geneva proposals satisfactorily defines a patent right. In

\* Annexes not reproduced here (Editor's note).



particular the AIPPI *notes* that the proposal advanced by the Group B countries (Annex II) is deficient insofar as it may include certain types of inventors' certificates which reserve the right to exploit the invention to the State and confer on the holder of the title only the right to prevent others from exploiting the invention. On the other hand the proposal of the Group D countries (Annex III) is deficient insofar as it reduces the patent right to a mere right of industrially working the patented invention and thereby excludes the right to sell or import.

Consequently the AIPPI *urges*

the countries of the Union to continue their efforts to come to a satisfactory definition of the patent right which distinguishes this right clearly from any type of inventor's certificate.

#### IV. Duration of Protection

##### The AIPPI

*notes* with concern that recently enacted patent laws of some countries drastically reduce the duration of patents;

*recalls* that only a sufficient duration of a patent ensures the promotion of the technical and economic development of all countries;

*underlines* that the system of the Paris Convention necessarily presupposes a patent protection which is sufficient, in particular as regards the duration of patents.

Therefore, at its XXXIInd Congress celebrating the centenary of the Paris Convention, the AIPPI invites all countries to provide in their national laws for a sufficient duration of patents.

#### V. On the Continuation of the Work of the AIPPI

Furthermore, the AIPPI *resolves* that Working Committee 67 should continue, on the basis of the work of the AIPPI, to study the definition of a patent and an inventor's certificate, including the important issue of sufficient duration of protection.

#### QUESTION 73

##### Legal and Economic Significance of Industrial Design Protection

After having considered the resolution of the meeting of the Executive Committee in Moscow, the Reports of

the National Groups and the Summary Report on Question 73 (Yearbook 1983/III):

#### I. The AIPPI

*notes* that a system of dual protection for industrial designs by copyright and by specific registration prevails in most States. This system presents some difficulties, for example:

- uncertainty on the part of third parties in the absence of an obligation to deposit under the copyright system;
- the fact that the copyright system can confer a term of protection which seems to be excessive for industrial designs.

The AIPPI *considers* that States should make changes where such dual protection exists. Such changes could consist in the institution of specific provisions relating to the protection of industrial designs, within the copyright law, which could avoid the inconvenience of such dual protection. The nature of such changes and the further question of the protection of technical drawings and of three-dimensional reproductions produced therefrom should be the subject of further study by the AIPPI.

#### II. National Law

##### The AIPPI

*expresses* the opinion that protection of industrial designs by specific legislation that is independent of the rules relating to copyright or unfair competition has real advantages. The AIPPI considers that it is desirable that each State have specific legislation for the protection of industrial designs, and suggests that countries adopt the following regulations for such legislation in the interests of harmonization of the different national laws:

##### 1. Object of protection

(a) The definition of the object of protection of a design should be as defined at the AIPPI Congress in Tokyo, *viz.*:

*The appearance of an industrial object may be protected as an industrial design; this appearance may result among other things from an assembly of lines or colors, from the shape of the article itself or from its ornamentation.*



The expression *industrial object* should be interpreted liberally, covering handicrafts (*objet artisanal*), for example.

(b) A design the characteristics of which are dictated solely by its function should not be suitable for protection by the legislation specifically on the protection of designs.

## 2. Novelty

(a) Novelty is essential for valid protection. Novelty should be absolute, both territorially and timewise.

(b) Nevertheless, a period of grace of six months should be instituted for the benefit of an author whereby he may be allowed to apply for registration of his design or model after he has disclosed it.

## 3. Formalities

(a) A deposit system which is simple, not onerous and is followed quickly by publication should be established.

(b) The deposit should be effected by filing an example of the object or a representation thereof.

(c) The deposit should be made at an official centralized organization of the State.

(d) Substantive examination should not be foreseen.

(e) Joint deposits may be made, provided that there is a certain link between the objects filed.

(f) The deposit may be kept secret for a period which should be short but should be at least one year.

(g) Publication must comprise a representation of the object. Third parties must have access to registrations.

(h) The Locarno Classification should be applied without limitation of the scope of protection.

(i) The marking of objects made in conformity with the registered industrial design should be optional.

## 4. Form and extent of protection

(a) The right of the registered industrial design is an exclusive right prohibiting use of the design by all persons other than the proprietor, except with the latter's consent.

(b) The right in respect of a registered industrial design is a monopoly right enforceable against any commercial use by all persons, even those who do not know about the industrial design.

(c) Infringement is established if the essential elements of the registered industrial design are reproduced.

(d) Infringement should be dealt with as a civil matter and possibly as a criminal matter.

(e) Registration gives rise to a simple presumption of validity of the industrial design that is to say, the burden of proof of invalidity lies with the opposing party.

(f) Failure to work the design does not result in forfeiture of the registered design.

## 5. Duration of protection

The term of protection should be 15 years, possibly divisible into several periods. A term at least equivalent to the one prevailing in practice for patents for inventions would be desirable.

# III. International Law

## *Revision of the Convention of the Paris Union*

### The AIPPI

*desires* that the priority period effective for designs should be modified from six months to one year.

# IV. The AIPPI

*decides* to continue the study on the following points:

1. How to correct the inconveniences of the application of the rules of copyright to industrial designs in countries where dual protection is available, in particular, how to resolve the question of technical drawings and three-dimensional articles produced from such drawings.

2. How to improve international arrangements for the protection of industrial designs, in particular, by modification of the Hague Agreement or by initiation of a new international convention or by regional systems of protection.

## QUESTION 80

### Trademarks and Consumer Protection

#### 1. The AIPPI

*welcomes* the fact that WIPO has examined the problem of consumer protection within the framework of

industrial property law and *considers* that the memorandum in its revised form of 1982 (WIPO document COPR/III/1) constitutes a careful and overall balanced study, which forms a valuable basis for further discussions.

## II. The AIPPI

*makes* the following observations with regard to the general problems dealt with in the WIPO memorandum:

### 1. The AIPPI *agrees* with the WIPO memorandum that

- industrial property law has in many respects a close connection with consumer protection,
- industrial property law, and in particular trademark law, is of great economic importance not only for manufacturers and merchants but also for consumers,
- because of the function of trademarks to distinguish goods or services of one enterprise from those of another, consumers are enabled to recognize goods or services with which they were content and to avoid others; thereby, trademarks present an important means which permits achievement of market transparency (i.e., the ability to distinguish more clearly the different goods or services),
- even without recognition of a direct quality function, trademarks generally enable consumers to expect a certain level of consistency as regard the quality of the goods or services,

and *is pleased to note* that the WIPO memorandum is largely of the same opinion as the AIPPI in its resolution on Question 68 (Economic Significance, Functions and Purpose of the Trademark), adopted in 1978 in Munich.

### 2. The AIPPI *emphasizes* that

- a trademark, because of its nature and its economic and legal functions, is the property of the enterprise which apposes and uses it and consumers may therefore not claim any direct right to the trademark,
- because of the economic and social relevance of trademarks to the consuming public, the interest of consumers should, however, be adequately taken into account in trademark law,
- in many respects this interest has already been taken into account in existing trademark law; but

inquiry should be made whether trademark law, within its given boundaries, should go further in considering the legitimate interests of consumers,

- in principle trademark proprietors and consumers have parallel interests, especially in relation to deceptive and confusingly similar trademarks,
- therefore, the conclusions of the WIPO memorandum can be accepted that "in principle consumer interests are best served by an effective protection and regulation of industrial property rights,"
- any erosion of the exclusive rights of the trademark proprietor can also have negative consequences for consumers.

### 3. The AIPPI *emphasizes* further that

- trademarks should not be misused to the detriment of consumers,
- in this connection, insofar as consumer interests are concerned, a distinction has to be made between a trademark itself and the way it is used in a particular case. Prevention of a misleading use of a trademark should primarily be left to the general provisions against misleading practices and to the law against unfair competition. Provided that the general provisions against misleading practices and/or the provisions against unfair competition sufficiently prevent the misleading use of a trademark, there seems to be no need for additional regulation in trademark law.

III. The position of the AIPPI as regards the particular problems examined in the WIPO memorandum and dealt with in the Summary Report of the Reporter General, is as follows:

#### 1. Deceptive Trademarks

Although the interest of consumers can only be affected directly by the *use* of a trademark that is misleading, it should be recognized as a legitimate interest of consumers that they be able to raise objection to the *registration* of an inherently deceptive trademark or to request its cancellation. It can be left to the different countries to grant consumers or their organizations *locus standi* to defend their interests in opposition or cancellation proceedings.

As to the misleading use of a trademark that is not inherently deceptive, sanctions directed against the trademark itself, especially cancellation of the trademark, are in general not appropriate. The interests of competitors and of the public can be sufficiently protected by injunctive relief and/or, if necessary, by an

action for damages based on general provisions and/or on provisions of the law against unfair competition.

## 2. Trademarks Without Distinctive Character

If a trademark is contested because of its alleged lack of distinctiveness, its descriptive character or its degeneration into a generic name, it is above all in the interest of the trademark proprietor and of competing manufacturers to be able to use freely the names that are primarily affected. It is not evident that consumers need to have *locus standi* in such proceedings.

## 3. Confusingly Similar Trademarks

In view of the relevance of trademarks for the consuming public, in principle consumers also have an interest in the prohibition of the use of a confusingly similar trademark. That interest is, however, taken into account by an *ex-officio* examination by the Trademark Office, or by allowing the owner of a prior right to oppose the registration and/or the use of a conflicting, more recent trademark in opposition, cancellation or infringement proceedings. Experience up to the present has shown that there is little interest to consumers in preventing the registration and/or use of confusingly similar trademarks; therefore it does not seem necessary to grant *locus standi* to consumers, especially in infringement proceedings. Consumer participation would not only complicate and delay those proceedings but would also unduly restrain the freedom to determine the rights of those directly concerned, namely, the owner of the trademark in question and his adversary.

## 4. Assignment and Licensing of Trademarks

It is generally recognized that there is an economic need for the assignment and especially the licensing of trademarks. Such transactions should therefore not be subject to unduly restraining and inflexible conditions. But considering the trust that consumers generally have in trademarks, adequate and sufficient precautions are necessary in order to prevent the deception of consumers. The question of determining what particular measures within the framework of trademark law or the general provisions against misleading practices are most appropriate to achieve this goal should be the subject of further study.

## 5. Obligation to Identify Goods or Services with a Trademark

The majority of the national groups is of the opinion that there should be no obligation to label goods or to associate services with a trademark. At least in a market economy, each enterprise should be free to decide if and how it wishes to use a trademark. Insofar as consumer interests require information relating to the marking of goods or services, this requirement can be served by labeling regulations outside trademark law. These regu-

lations should not, however, lead to an undue restriction of the freedom to use or not to use a trademark.

## 6. Different Trademarks for Identical Products

It is agreed that there may be a legitimate economic reason for one and the same enterprise to use different trademarks for identical products in the same marketing areas. Furthermore there is no reason to believe that the use as such of different trademarks for identical products negatively affects the interests of consumers. Consequently, trademark law sanctions, for instance the cancellation of one or all of the respective marks, must be opposed. If misuse in particular cases should occur, it should rather be dealt with under the existing general or special provisions against misleading indications as to the price or the quality of goods or by providing appropriate information to the consumer.

## 7. Foreign Trademarks

It is agreed that no general distinction should be drawn between national and foreign trademarks. If in certain cases the manner of use of a foreign trademark for domestic goods or of a national trademark for foreign goods is likely to lead to deception as to the geographic origin of the goods, and if national trademark law provides insufficient sanctions against this result, resort can be made to the general provisions against misleading practices and/or the provisions against unfair competition.

## 8. Exhaustion of Trademark Rights

The exhaustion of trademark rights has again been brought up by the WIPO memorandum under the aspect of consumer protection. As in earlier discussions of the AIPPI, no unanimous opinion has been reached. The majority of the national groups tend towards the principle of international exhaustion and point out that the admission of parallel imports may be in the interest of consumers because they can increase competition and thus lead to lower prices. On the other hand, even in these reports of such groups it is noted that the unrestricted admission of parallel imports can lead to a disturbance of the system of distribution but can also have negative effects for consumers, for instance, if the parallel imported goods do not meet the special quality expectations of the consuming public in the importing country or because after-sales service and guarantees are not assured.

## 9. Special Jurisdictional Provisions for Consumers

If consumers are to have *locus standi* in trademark proceedings, such right should be conferred within the framework of existing procedures without the establishment of any special administrative or judicial tribunals.

## IV. The AIPPI

*decides* to continue the study of Question 80 as to the following problems:

1. What actions and sanctions are, in general, appropriate to counter the possible deception of consumers in relation to the assignment or licensing of trademarks.

2. To what extent is there a conflict between the right of an enterprise to decide whether and how to use a trademark which is basic to trademark law, and the provisions on the marketing and labeling of goods or services and, if so, how can such conflict be reconciled.

## QUESTION 81

### Protection for Groups of Chemical Substances and Selection Inventions

## The AIPPI

1. *decides* to continue the study on the basis of the Groups' Reports, the Summary Report, the Report of the Working Committee and of the contributions made at the plenary session;

2. *decides* that the question should be continued in respect of selection inventions in general.

## WIPO Meetings

### Paris Union

#### Committee of Experts on Joint Inventive Activity

(Geneva, May 2 to 6, 1983)

## NOTE\*

Convened by the Director General of WIPO in accordance with a decision of the Assembly of the Paris Union, the Committee of Experts on Joint Inventive Activity (hereinafter "the Committee of Experts") met in Geneva from May 2 to 6, 1983. Thirty States (Algeria, Austria, Belgium, Bulgaria, Cameroon, China, Congo, Costa Rica, Czechoslovakia, Egypt, France, German Democratic Republic, Greece, India, Italy, Ivory Coast, Japan, Mexico, Morocco, Niger, Nigeria, Norway, Senegal, Soviet Union, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America) designated experts to participate in the meeting; one inter-governmental organization and four international non-governmental organizations were represented by observers. The list of participants follows this Note.

The purpose of the meeting was to discuss the draft "Guide to the Legal Regulation of Questions Concerning the Results of Joint Inventive Activity in the Course of International Scientific, Technological and Economic Cooperation" prepared by the International Bur-

eau. The said Guide is intended to provide advice on the drawing up of agreements for economic and technical cooperation between partners from different countries and on the legal regulation of questions concerning the results of joint inventive activity. In addition, it will analyze the various problems that may arise in connection with cooperation agreements in respect of joint inventive activity and offers possible solutions to those problems.

The Guide is primarily intended for use by industrial enterprises and research and development institutions that are involved in international scientific, technological and economic cooperation. It may also be useful, however, to government departments that promote, plan and implement cooperation agreements or that promote international scientific, technological and economic cooperation in general.

The Committee of Experts expressed its general agreement with the purpose and contents of the Guide as contained in the draft submitted to it and made suggestions as to how the draft may be improved. Those suggestions will be taken into consideration by the International Bureau in preparing the final version of the Guide.

## LIST OF PARTICIPANTS\*

## I. States

Algeria: D. Hadj-Sadok; M. Mati. Austria: E. Dudeschek; H. Pawloy. Belgium: J. Degavre. Bulgaria: I. Kotzev. Cameroon: N. Fomekong.

\* Prepared by the International Bureau.

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

China: Kung Hsi. Congo: D. Ngassaki; C. Bayulukila. Costa Rica: E. S. Soler; L. C. Delgado. Czechoslovakia: J. Kalavsky. Egypt: A. Omar. France: P. Rouyre; B. Vidaud. German Democratic Republic: D. Schack; M. Müller. Greece: D. Denizos; P. Koroyannakis. India: L. Puri. Italy: R. Boros. Ivory Coast: N'Dah Angbeni. Japan: S. Ono. Mexico: F. Cruz Gonzales; A. Arce. Morocco: A. Lecheheb. Niger: A.M. Dioffo; A. Wright. Nigeria: A. Suleiman. Norway: P.A. Martinsen. Senegal: S. Konate. Soviet Union: V.F. Zubarev; G. Malvezov; M. Oussov. Spain: J.D. del Corral Perales; F.J. Alegria. Sweden: T. Halen. Switzerland: J. M. Souche. Turkey: M. Celin; E. Apakan. United Kingdom: R.E.S. Waller. United States of America: L. Schroeder; J. Denny; G. Dempsey.

## II. Intergovernmental Organizations

World Health Organization (WHO): R.J. Gallagher.

## III. International Non-Governmental Organizations

Center for the International Study of Industrial Property (CEIPI): P. Nuss. International Association for the Protection of Industrial Property (AIPPI): G. Kirker. International Chamber of Commerce (ICC): J. Buraas. World Federation of Engineering Organizations (WFEO): J. Wahl.

## IV. Officers

Chairman: V.F. Zubarev (Soviet Union). Vice-Chairmen: H. Pawloy (Austria); D. Ngassaki (Congo). Secretary: F. Balley (WIPO).

## V. International Bureau of WIPO

A. Bogsch (Director General); K. Pfanner (Deputy Director General); L. Bacumer (Director, Industrial Property Division); F. Balley (Head, Industrial Property Law Section, Industrial Property Division); V. Yosifov (Program Officer, Industrial Property Law Section).

## International Patent Cooperation Union (PCT Union)

### PCT Committee for Administrative and Legal Matters

Second Session  
(Geneva, April 25 to 29, 1983)

#### NOTE\*

The PCT Committee for Administrative and Legal Matters (hereinafter referred to as "the Committee") held its second session in Geneva from April 25 to 29, 1983. All States party to the PCT as well as the Inter-

national Searching Authorities and the International Preliminary Examining Authorities are members of the Committee.

The following members of the Committee were represented at the session: (i) 20 States members of the International Patent Cooperation Union (PCT Union), namely, Australia, Austria, Belgium, Brazil, Congo, Denmark, Finland, France, Germany (Federal Republic of), Hungary, Japan, Luxembourg, Netherlands, Norway, Soviet Union, Sri Lanka, Sweden, Switzerland, United Kingdom and United States of America; (ii) the European Patent Office (EPO), in its capacity as International Searching and Preliminary Examining Authority.

Representatives of Mexico, Spain, Trinidad and Tobago and Turkey participated in the session as observers.

Seven international non-governmental organizations were represented by observers: Asian Patent Attorneys Association (APAA), European Federation of Agents of Industry in Industrial Property (FEMIPI), Institute of Professional Representatives Before the European Patent Office (EPI), International Association for the Protection of Industrial Property (AIPPI), International Federation of Industrial Property Attorneys (FICPI), Union of European Practitioners in Industrial Property (UEPIP), Union of Industries of the European Community (UNICE).

The list of participants follows this Note.

It is recalled that the Assembly of the PCT Union, at its seventh session held in Geneva from June 29 to July 3, 1981, asked the International Bureau to carry out a study of possible improvements to the Patent Cooperation Treaty, particularly the PCT Regulations.<sup>1</sup>

The study carried out by the International Bureau resulted in proposals to modify two time limits in the Treaty and more than 40 Rules of the Regulations. The Committee considered those proposals and advised the International Bureau on them at its first session, held in Geneva from September 6 to 10, 1982.<sup>2</sup>

The International Bureau prepared for the second session of the Committee a revised set of proposals which took into account the recommendations of the participants of the Committee at its first session. The revised set of proposals also concerns the transfer of some Rules or parts of Rules to the Administrative Instructions of the PCT.

In its second session, the Committee considered the said revised proposals and advised the International Bureau on them. In that session it concluded its work on the proposed amendments to certain time limits in the Treaty and to the Regulations under the PCT. However, the proposed modifications to the Administrative Instructions could not, because of lack of time, be dis-

<sup>1</sup> For the Note on the seventh session, see *Industrial Property*, 1981, p. 223.

<sup>2</sup> For the Note on the first session, see *Industrial Property*, 1982, p. 302.

\* Prepared by the International Bureau.

cussed in detail, and it was understood that further consultations would take place before their promulgation.

A further revised set of proposals will be prepared by the International Bureau on the basis of the recommendations of the Committee. It will also contain proposals for transitory provisions for the entry into force of certain proposed amendments which would require amending the national law in some of the Contracting States.

The Assembly of the PCT Union will be convened for an extraordinary session in Geneva early in 1984 for decisions about the adoption of the proposed amendments and their entry into force. Questions of special interest to developing countries will also be dealt with at that session.

## LIST OF PARTICIPANTS\*

### I. Members of the Committee

**Australia:** J. Cowcher. **Austria:** N. Marterer. **Belgium:** P. Ceuninck. **Brazil:** A. R. de Holanda Cavalcanti; C. Hannickel; E. Cordeiro. **Congo:** D. Ngassaki; C. Bayulukila. **Denmark:** J. Dam. **Finland:** S. L. Lahtinen, E. Häkli. **France:** P. Guérin; G. Rajot. **Germany (Federal Republic of):** U. C. Hallmann. **Hungary:** E. Parragh. **Japan:** O. Nosa-ki; H. Aoyama; S. Ono; K. Ishimaru. **Luxembourg:** F. Schlessler. **Netherlands:** S. de Vries. **Norway:** P. T. Lossius; I. Lillevik. **Soviet Union:** Y. Gyrdymov. **Sri Lanka:** K. Jayasinghe. **Sweden:** G. Borggård; B. Sandberg; E. Tersmeden. **Switzerland:** R. Kämpf; M. Leut-

hold. **United Kingdom:** A. Sugden; J. Sharrock. **United States of America:** H. D. Hoinkes; L. O. Maassel. **European Patent Office:** L. Gruszow; M. S. Parup.

### II. Observer States

**Mexico:** F. J. Cruz Gonzalez; M. A. Arce. **Spain:** A. Casado Cerviño; S. Gozalo de Mercado. **Trinidad and Tobago:** H. Robertson. **Turkey:** E. Apakan.

### III. International Non-Governmental Organizations

**Asian Patent Attorneys Association (APAA):** T. Yamaguchi. **European Federation of Agents of Industry in Industrial Property:** F. A. Jenny. **Institute of Professional Representatives Before the European Patent Office (EPI):** F. A. Jenny. **International Association for the Protection of Industrial Property (AIPI):** G. R. Clark. **International Federation of Industrial Property Attorneys (FICPI):** H. Bardehle; P. F. Héritier; T. Ritscher. **Union of European Practitioners in Industrial Property (UEPIP):** G. E. Kirker. **Union of Industries of the European Community (UNICE):** R. Kockläuner.

### IV. Officers

**Chairman:** G. Borggård (Sweden). **Vice-Chairmen:** H. D. Hoinkes (United States of America); Y. Gyrdymov (Soviet Union). **Secretary:** B. Bartels (WIPO).

### V. International Bureau of WIPO

**A. Bogsch (Director General); K. Pfanner (Deputy Director General); F. Curchod (Director, PCT Division); J. Franklin (Deputy Head, PCT Division); B. Bartels (Head, PCT Legal Section); N. Scherrer (Head, PCT Publications, Fees and Statistics Section); Y. Plotnikov (Senior Counsellor, PCT Legal Section); T. Hirai (Examination Procedures Officer, PCT Examination Section).**

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

## **Special Studies**

### **The Liability of Industrial Property Practitioners**

**Studies by: H. Bardehle,  
J.A. DeGrandi and C.E. McCann, and D.J. Ryan**

#### **INTRODUCTION**

Because of the ever-increasing value of industrial property rights, the potential liability of industrial property agents and attorneys involves higher and higher amounts. At an informal meeting of international non-governmental organizations convened by the Director General of WIPO in January 1983, representatives of such agents and attorneys suggested that studies of the problem be undertaken; WIPO has therefore invited several renowned industrial property practitioners to express their views in articles that WIPO would publish. The articles received in response to such invitation are published below.

#### **A New Dimension in the Liability of Patent Attorneys under the PCT and the European Patent**

**H. BARDEHLE\***

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**The Potential Malpractice Liability of  
Patent Practitioners in the United States  
of America**

J.A. DeGRANDI\* and C.E. McCANN\*\*











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**Limiting the Liability  
of Industrial Property Agents**

D.J. RYAN\*











## Exhibitions

### ROMANIA

#### **Communication Concerning the Temporary Protection of Inventions, Trademarks and Service Marks Exhibited at the International Fair TIB '83—Bucharest 1983**

The International Fair—Bucharest 1983 will be held in Bucharest from October 6 to 13, 1983.

Inventions, trademarks and service marks exhibited shall enjoy the temporary protection provided by Law No. 52/1974 on Inventions and Law No. 28/1967 on Trademarks and Service Marks.

The Administration of the International Fair—Bucharest 1983 will issue certificates of guarantee, upon request, until the closing date of the Fair.

## News Items

### BELGIUM

*Director, Industrial and Commercial  
Property Service*

We have been informed that Mr. Leopold Wuyts has been appointed Director of the Industrial and Commercial Property Service.

### FRANCE

*Director of the National Institute of  
Industrial Property*

We have been informed that Mr. Jean-Claude Combaldieu has been appointed Director of the National Institute of Industrial Property.

## Calendar of Meetings

### Calendar

#### WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

#### 1983

- September 26 (Geneva) — Paris Union — Celebration of the Centenary of the Paris Convention for the Protection of Industrial Property
- September 26 to October 4 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- October 17 to 21 (Geneva) — Committee of Governmental Experts on Model Statutes for Institutions Administering Authors' Rights in Developing Countries (convened jointly with Unesco)
- October 24 to 28 (Geneva) — Nice Union — Preparatory Working Group
- November 21 to 25 (Manila) — Workshop on Industrial Property Licenses and Technology Transfer Arrangements (in conjunction with the third "Technology for the People" International Trade Fair)
- November 28 to December 2 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Special Questions and Working Group on Planning
- December 5 to 7 (Geneva) — Berne Union, Universal Copyright Convention and Rome Convention — Subcommittees on Cable Distribution of the Executive Committee of the Berne Union, of the Intergovernmental Copyright Committee and of the Intergovernmental Committee of the Rome Convention (convened jointly with ILO and Unesco)
- December 8 and 9 (Geneva, ILO Headquarters) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- December 12 to 16 (Geneva) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)

#### 1984

- February 27 to March 24 (Geneva) — Revision of the Paris Convention — Diplomatic Conference

## UPOV Meetings

### 1983

October 3 and 4 (Geneva) — Technical Committee

October 11 (Geneva) — Consultative Committee

October 12 to 14 (Geneva) — Council

November 7 and 8 (Geneva) — Administrative and Legal Committee

November 9 and 10 (Geneva) — Hearing of International Non-Governmental Organizations

### 1984

March 15 to 17 (La Minière) — Technical Working Party on Automation and Computer Programs

June 11 to 15 (Bet Dagan) — Technical Working Party for Vegetables and Subgroups

June 26 to 29 (Lund) — Technical Working Party for Agricultural Crops and Subgroups

August 21 to 23 (Hanover) — Technical Working Party for Ornamental Plants and Forest Trees

## Other Meetings Concerned with Industrial Property

### 1983

European Patent Organisation: December 6 to 9 (Munich) — Administrative Council

International Association for the Protection of Industrial Property: November 7 to 9 (Athens) — Council of Presidents

Pacific Industrial Property Association: October 19 to 21 (Washington) — 14th International Congress

Pharmaceutical Trade Marks Group: October 13 and 14 (Edinburgh) — 27th Conference

### 1984

Royal Patent and Registration Office: June 13 to 15 (Stockholm) — Symposium on the Centenary of the Swedish Patent System

### 1986

International Association for the Protection of Industrial Property: June 8 to 13 (London) — XXXIII Congress