

# Industrial Property

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# INTERNATIONAL UNION

## Vacancy

### in the post of Director of United International Bureaux

The Swiss Federal Council, in accordance with a Resolution adopted by the Permanent Bureau of the Consultative Committee of the Paris Union, has invited Member countries of the Paris Union for the Protection of Industrial Property and of the Berne Union for the Protection of Literary and Artistic Works to submit to it by the 31<sup>st</sup> August, 1962, possible candidatures for the appointment of

#### Director of the United International Bureaux

shortly becoming vacant by reason of the retirement of the present holder on reaching the age limit.

Persons interested may thus present in good time their applications to the Governments of their respective countries.

### Arrangement of Nice

concerning the International Classification of Goods and Services to which Trade Marks apply of 15<sup>th</sup> June, 1957

#### *Adhesion of Belgium*

(6<sup>th</sup> June, 1962)

The following communication has been received from the Swiss Federal Political Department:

*(Translation)*

« In compliance with the instructions dated 6<sup>th</sup> May, 1962 issued by the Swiss Federal Political Department and in application of Article 6 (3) of the Arrangement concerning the International Classification of Goods and Services to which Trade Marks apply, signed at Nice on 15<sup>th</sup> June, 1957, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that, in a Note dated 5<sup>th</sup> March, 1962, received on 6<sup>th</sup> of the same month, the Belgian Embassy in Berne deposited with the Department the instrument of ratification of Belgium in respect of the said Arrangement.

The Note from the Belgian Embassy contained the following explanations:

“ According to the provisions of Article 6 of this Arrangement, the instruments of ratification should have been deposited not later than 31<sup>st</sup> December, 1961. In view of the fact that the Belgian Parliament only voted the draft Law approving this International Act at the end of December 1961, the Belgian Authorities were unable to comply with the provisions of paragraph one of Article 6.

Paragraphe 3 of Article 6 provides for the possibility of adhesion to the Arrangement in accordance with Article 16 of the Convention of Paris for the Protection of Industrial Property. Article 16 provides that such adhesion shall be

notified through diplomatic channels to the Government of the Swiss Confederation.

The Belgian Embassy would be obliged if the Swiss Government would be good enough to consider the enclosed instrument as an instrument of adhesion.”

Under these circumstances, the Swiss Federal Authorities consider that Belgium has adhered to the Arrangement of Nice.

In application of Article 16 of the Convention of Paris for the Protection of Industrial Property to which Article 6 (3) of the Arrangement of Nice refers, this adhesion takes effect one month after the date of dispatch of the instructions issued by the Political Department, that is to say, the 6<sup>th</sup> June, 1962. »

### BELGIUM — MOROCCO — SPAIN

#### Additional Act

to the Arrangement of The Hague  
concerning the International Deposit of Industrial  
Designs or Models, as revised at London on 2<sup>nd</sup> June, 1934

We have been informed by the Service for Exterior Relations of the Principality of Monaco on 8<sup>th</sup> May, 1962, that the signatory countries of the Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models of 6<sup>th</sup> November, 1925, as revised at London on 2<sup>nd</sup> June, 1934, have been notified that the following States have signed the above-mentioned Additional Act:

Belgium: 9<sup>th</sup> March, 1962,  
Morocco: 30<sup>th</sup> March, 1962,  
Spain: 30<sup>th</sup> March, 1962.

## Agreement

### between the International Bureau for the Protection of Industrial Property and the International Olive Oil Council

The International Bureau for the Protection of Industrial Property (hereinafter referred to as the "International Bureau") and

the International Olive Oil Council,

Considering that, in the interests of the Member States, the International Union of universal scope set up under the Paris Convention of 20<sup>th</sup> March, 1883 for the Protection of Industrial Property, last revised at Lisbon on 31<sup>st</sup> October, 1958, constitutes the competent international authority in the sphere of industrial property; that according to the provisions of Article 1 of the above-mentioned Convention, the protection of industrial property is concerned, in particular, with indications of source or appellations of origin, and also the prevention of unfair competition and applies not only to industry and commerce properly so called, but also to agricultural industry and to all manufactured or natural products;

Considering that the International Olive Oil Council is an intergovernmental organisation set up in execution of Article 21 of the International Agreement on Olive Oil, signed at Geneva in 1956 and amended by the Protocol of 3<sup>rd</sup> April, 1958, and charged with the execution of this Agreement; that this Agreement, in paragraph 1 of Article One, fixes as its objective to ensure fair competition among countries producing and exporting olive oil and to guarantee to consumers delivery of a commodity that conforms to the specifications of the contracts concluded; that the rules relating to appellations of origin and the international labelling of olive oils are set forth in Chapter V of this Agreement, under Articles 8 to 12 inclusive; that Article 34 of this Agreement authorises the International Olive Oil Council to cooperate with the appropriate governmental and non-governmental agencies or institutions and to make any arrangements deemed advisable to enable the representatives of such organisations to attend its meetings;

Considering in these conditions that it is advisable to coordinate the activities of the International Olive Oil Council and the International Bureau for the pursuit of their work of common interest,

Have agreed as follows:

#### Article 1

##### *Exchange of information and documents*

(1) Subject to such arrangements as may be necessary in certain cases for the safeguarding of confidential material, the International Bureau and the International Olive Oil Council shall ensure prompt and full exchange of all information and documents concerning matters of common interest.

(2) The International Bureau and the International Olive Oil Council will concert their efforts to obtain the best use of statistical and legal information and to ensure the most effective utilisation of their resources in the assembling, anal-

ysis, publication and diffusion of such information, with a view to reducing the burden on the Governments and other organisations from which such information is collected.

#### Article 2

##### *Mutual consultation*

The International Bureau and the International Olive Oil Council will consult each other at all stages of the preparatory work and execution of projects of common interest, with a view to securing effective co-ordination between them; each organisation shall consider any observations on such projects which may be conveyed to it by the other.

#### Article 3

##### *Technical co-operation*

Insofar as their resources permit and within their terms of reference and programmes, the International Bureau and the International Olive Oil Council will co-operate in studying technical questions of a common interest and will assist each other in the implementation of the results of such studies. In the event of such co-operation entailing extraordinary expenditure, consultation will take place with a view to determining the most equitable manner of meeting such expenditure.

#### Article 4

##### *Reciprocal representation*

(1) Whenever questions of common interest are under discussion, the International Bureau will invite the International Olive Oil Council to be represented at conferences and meetings held under its auspices. The representatives of the International Olive Oil Council may participate, without vote, in discussions on matters of common interest.

(2) Whenever questions of common interest are under discussion, the International Olive Oil Council will invite the International Bureau to be represented at conferences and meetings held under its auspices, under the same above-mentioned conditions.

#### Article 5

##### *Proposal of items for inclusion in the Agenda*

(1) Subject to such preliminary consultation as may be necessary the Director of the International Olive Oil Council may propose to the Director of the International Bureau items for inclusion in the Agenda of the various conferences and meetings organised under the auspices of the International Bureau.

(2) Subject to such preliminary consultation as may be necessary, the Director of the International Bureau may propose to the Director of the International Olive Oil Council items for discussion by the International Olive Oil Council.

(3) Each organisation will have recourse to the provisions of this Article for the purpose of referring to the other organisation matters which it considers can be more appropriately dealt with by the latter.

## Article 6

*Administrative arrangements*

The Director of the International Bureau and the Director of the International Olive Oil Council shall make appropriate administrative arrangements to ensure effective co-operation and liaison between the Secretariats of the two organisations.

## Article 7

*Entry into force and duration*

(1) This Agreement shall enter into force as soon as it has been signed by both the Director of the International Bureau and the Director of the International Olive Oil Council.

(2) Either Party may denounce the Agreement by giving six months' notice to the other Party.

The Director  
of the International  
Olive Oil Council  
P. BONNET

The Director  
of the International Bureau for the  
Protection of Industrial Property  
J. SECRETAN

Madrid, 16<sup>th</sup> April, 1962.

Geneva, 24<sup>th</sup> April, 1962.

### Permanent Bureau of the Consultative Committee of the Paris Union for the Protection of Industrial Property

The Permanent Bureau met in Geneva on the 29<sup>th</sup> and 30<sup>th</sup> March, 1962, to consider the report of three experts appointed by the Swiss Government at the request of the Consultative Committee which met in Geneva in May 1961.

The Meeting took place under the Presidency of M. Guillaume Finnis, Director of the National Institute of Industrial Property, Inspector-general of Industry and Commerce, France, and was attended by representatives of all the fifteen States Members of the Permanent Bureau, that is to say, Czechoslovakia, Federal Republic of Germany, France, Great Britain, Hungary, Italy, Japan, Morocco, Netherlands, Portugal, Spain, Sweden, Switzerland, United States of America and Yugoslavia, together with M. W. Geiser and F. M. Brignoni representing the experts.

The Meeting considered the report of the experts and an analysis of that report prepared by the President. These reports were concerned exclusively with the organisation, both financial and administrative, of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property.

On the basis of these reports, the Permanent Bureau decided to appoint a working group consisting of M. Finnis (France), President, and Messrs. Nemecek (Czechoslovakia), Grant (Great Britain), Roscioni (Italy), de Haan (Netherlands) and Ladd (U. S. A.).

The functions of this working group were embodied in a Resolution and were to include the preparation of documents on a number of organisational matters such as the ceiling of contributions, expenses of the Organisation, the immediate

tasks of the International Bureau, the grading, functions and qualifications of the staff, etc. The work of this working group was considered to be in preparation for the next meeting of the full Consultative Committee of the Paris Union.

The Resolution also invites the Permanent Committee of the Berne Union to hold a joint meeting with the Permanent Bureau of the Paris Union to consider the suggestions put forward in the working documents to be prepared, the reason being that any decisions taken on the future organisation of the International Bureaux are likely to have an effect also on the Berne Union.

The Permanent Bureau considered the Resolution adopted by the General Assembly of the United Nations with regard to the effects of the patent system on the economy of developing nations and instructed the International Bureau to keep in close touch and to cooperate with the Secretary-General of the United Nations<sup>1</sup>).

<sup>1</sup> This Resolution is set out in full in *Industrial Property*, January, 1962, at page 40.

## LEGISLATION

### AUSTRALIA

### Patents Act 1952-1960

(Part one)

Be it enacted by the Queen's Most Excellent Majesty, the Senate and the House of Representatives of the Commonwealth of Australia, as follows:

#### Part I. Preliminary

##### Short title

1. — This Act may be cited as the *Patents Act 1952-1960*<sup>1</sup>).

<sup>1</sup> The *Patents Act 1952-1960* comprises the *Patents Act 1952* as amended. Particulars of the Principal Act and of the amending Acts are set out in the following table:

Act	Number and Year	Date of Assent	Date of Commencement
<i>Patents Act 1952</i>	No. 42, 1952	27 <sup>th</sup> September, 1952	1 <sup>st</sup> May, 1954
<i>Patents Act 1954</i>	No. 14, 1954	20 <sup>th</sup> April, 1954	20 <sup>th</sup> April, 1954
<i>Patents Act 1955</i>	No. 3, 1955	23 <sup>rd</sup> May, 1955	23 <sup>rd</sup> May, 1955
<i>Patents Act 1960</i>	No. 107, 1960	16 <sup>th</sup> December, 1960	See Note below

Note. — Section 2 of the *Patents Act 1960* reads as follows:

"2. — (1) Sections one, two, eight, eleven, twenty, twenty-one and twenty-six of this Act shall come into operation on the day on which this Act receives the Royal Assent.

(2) The remaining sections of this Act shall come into operation on a date to be fixed by Proclamation."

The date fixed for the commencement of the sections referred to in s. 2 (2) of that Act was 27<sup>th</sup> February, 1961. See *Commonwealth Gazette* 1961, p. 753.

### Commencement

2. — This Act shall come into operation on a date to be fixed by Proclamation<sup>2</sup>).

### Parts

3. — This Act is divided into Parts, as follows:

Part I	Preliminary (Sections 1-9).
Part II	Administration (Sections 10-19).
Part III	The Register of Patents (Sections 20-33).
Part IV	Applications for Patents (Sections 34-58).
Part V	Opposition (Sections 59-61).
Part VI	Patents and their Sealing (Sections 62-71).
Part VII	Patents of Addition (Sections 72-76).
Part VIII	Amendment of Specifications (Sections 77-89).
Part IX	Extension of Patents (Sections 90-96).
Part X	Restoration of Patents (Sections 97-98).
Part XI	Revocation and Surrender of Patents (Sections 99-107).
Part XII	Working of Patents and Compulsory Licences (Sections 108-112).
Part XIII	Infringement of Patents (Sections 113-124).
Part XIV	The Crown (Sections 125-132).
Part XV	Patent Attorneys (Sections 133-139).
Part XVI	International Arrangements (Sections 140-145).
Part XVII	The Appeal Tribunal (Sections 146-151).
Part XVIII	Miscellaneous (Sections 152-177).

### Repeal

4. — (1) The Acts specified in the first column of the Schedule to this Act are repealed to the extent respectively specified in the second column of that Schedule.

(2) The provisions of sections ninety-seven to one hundred (inclusive) of the *Patents Act* 1903-1950 continue, notwithstanding the repeal effected by the last preceding subsection, to apply in relation to inventions in respect of which directions have been given under section ninety-six of that Act.

### Application of Act

5. — (1) This Act applies to and in relation to all applications for patents lodged after the commencement of this Act and to and in relation to all patents granted on those applications.

(2) This Act also applies to and in relation to patents granted under the repealed Acts.

(3) Subject to sections fifty and fifty A of this Act, the repealed Acts apply, notwithstanding their repeal, to and in relation to all applications for patents lodged before the commencement of this Act and to the sealing of patents on those applications, but this Act applies to and in relation to the patents so sealed.

(4) The priority date of each claim of the complete specification of a patent referred to in either of the last two preceding sub-sections is:

(a) the date of the patent; or

(b) in the case of a single patent granted on two or more

applications, the date of the application which was accompanied by the provisional specification to which the claim relates,

and any reference in this Act to a priority date indicated in a claim includes a reference to such a priority date.

### Definitions

6. — In this Act, unless the contrary intention appears:

“actual inventor” does not include a person merely importing an invention from abroad;

“Australia” includes the Territories of the Commonwealth to which this Act extends;

“Convention application” means an application in relation to which Part XVI applies;

“Convention country” means a country in respect of which there is in force for the time being a Proclamation<sup>3</sup>) declaring that country to be a Convention country for the purposes of this Act;

“date of application”, or “date of the application”, in relation to an application for a patent, means:

(a) in the case of an application which is post-dated under this Act, the date to which the application is so post-dated; and

(b) in any other case, the date on which the application is lodged in the Patent Office;

“Examiner” means a Supervising Examiner of Patents, or an examiner of Patents, holding office under this Act;

“exclusive licensee” means a licensee under a licence granted by the patentee which confers on the licensee, or on the licensee and persons authorized by him, the right to make, use, exercise and vend the patented invention, throughout Australia, to the exclusion of all other persons, including the patentee;

“invention” means any manner of new manufacture the subject of letters patent and grant of privilege within section six of the Statute of Monopolies, and includes an alleged invention;

“legal practitioner” means a barrister or solicitor of the High Court or of the Supreme Court of a State or Territory of the Commonwealth;

“legal representative”, in relation to a deceased person, means a person to whom Probate of the will of the deceased person, Letters of Administration of the estate of the deceased person or other like grant has been granted, whether in Australia or elsewhere, but does not include such a person who, by reason of the terms of the grant, is not entitled to do an act in relation to which the expression is used;

“licence” means a licence under a patent;

“patent” means letters patent for an invention granted under the repealed Acts or under this Act;

“patent of addition” means letters patent for an invention granted under Part VII of this Act or under Division 6 of Part IV of the repealed Acts;

“patented article” means an article in respect of which a patent has been granted and is still in force;

<sup>2</sup>) The date fixed was 1<sup>st</sup> May, 1954. See *Commonwealth Gazette* 1954, p. 529A.

<sup>3</sup>) See footnotes 1 and 2.

“patented process” means a process in respect of which a patent has been granted and is still in force;

“patentee” means the person for the time being entered on the Register as the grantee or proprietor of a patent;

“State Patent Act” means a State Act relating to patents and includes regulations made under any such Act;

“the Commissioner” means the Commissioner of Patents or the Deputy Commissioner of Patents holding office under this Act and includes an Assistant Commissioner of Patents, or a Supervising Examiner of Patents, exercising powers or functions delegated to him under this Act;

“the *Official Journal*” means the Official Journal referred to in section one hundred and seventy-five of this Act;

“the Patent Office” means the Patent Office established under this Act;

“the Register” means the Register of Patents referred to in sub-section (1) of section twenty of this Act;

“the repealed Acts” means the Acts repealed by this Act;

“the Statute of Monopolies” means the Imperial Act known as The Statute of Monopolies;

“this Act” includes the regulations.

#### *Crown to be bound*

7. — This Act binds the Crown in right of the Commonwealth and of the several States.

#### *Extension to Territories*

8. — This Act extends to the Territory of Norfolk Island, the Territory of Papua and the Territory of New Guinea as if each of those Territories were part of the Commonwealth, and no application for a patent is receivable under a law (other than this Act) in force in any of those Territories.

#### *No new application to be made under State Acts*

9. — An Application for a patent under a State Patent Act is not receivable.

### **Part II. Administration**

#### *Commissioner of Patents and other officers*

10. — (1) There shall be a Commissioner of Patents, who shall, under the Attorney-General, have the chief control of the Patent Office.

(2) There shall be a Deputy Commissioner of Patents, who shall, subject to the control of the Commissioner of Patents, have all the powers and functions of the Commissioner of Patents under this Act, other than the powers of the Commissioner under the next succeeding section.

(3) Where, under this Act, the exercise of a power or function by the Commissioner, or the operation of a provision of this Act, is dependent upon the opinion, belief or state of mind of the Commissioner in relation to a matter, that power or function may be exercised by the Deputy Commissioner of Patents, or that provision may operate, as the case may be, upon the opinion, belief or state of mind of the Deputy Commissioner of Patents in relation to that matter.

(4) There shall be one or more Assistant Commissioners of Patents.

(5) There shall be so many Supervising Examiners of Patents and Examiners of Patents as are necessary.

(6) The persons holding office as Commissioner of Patents and Examiners of Patents (including Supervising Examiners of Patents) at the commencement of this Act shall continue to hold those offices respectively.

#### *Delegation by Commissioner*

11. — (1) The Commissioner of Patents may, in relation to a particular matter or class of matters, by writing under his hand, delegate all or any of his powers or functions under this Act (except this power of delegation) to an Assistant Commissioner of Patents, or to a Supervising Examiner of Patents, so that the delegated powers and functions may be exercised by the delegate with respect to the matter or class of matters specified in the instrument of delegation.

(2) A delegation under this section is revocable at will and no delegation prevents the exercise of a power or function by the Commissioner of Patents or by the Deputy Commissioner of Patents.

#### *Patent Office*

12. — For the purposes of this Act, there shall be an office which shall be known as the Patent Office.

#### *Seal of Patent Office*

13. — There shall be a seal of the Patent Office<sup>4)</sup> and impressions of the seal shall be judicially noticed.

#### *Powers of Commissioner*

14. — The Commissioner may, for the purposes of this Act:

- (a) summon witnesses;
- (b) receive evidence on oath, whether orally or otherwise;
- (c) require the production of documents or articles; and
- (d) award costs against a party to proceedings before him.

#### *Recovery of costs awarded by Commissioner*

15. — Costs awarded by the Commissioner against a party may, in default of payment, be recovered in a court of competent jurisdiction as a debt due by the person against whom the costs were awarded to the person in whose favour they were awarded.

#### *Disobedience to summons an offence*

16. — (1) A person who has been summoned to appear as a witness before the Commissioner shall not, without lawful excuse, and after tender of reasonable expenses, fail to appear in obedience to the summons.

(2) A person who has been required by the Commissioner to produce a document or article shall not, without lawful

<sup>4)</sup> The following notice was published in the *Commonwealth Gazette* on 29th April, 1954, p. 1238:

#### *Seal of the Patent Office*

“It is notified that as from the 1st May, 1954, the Seal of the Patent Office will comprise a representation of the Coat of Arms of the Commonwealth of Australia enclosed by two concentric circles, with the words *Commonwealth of Australia Patent Office* within the circle.”

excuse, and after tender of reasonable expenses, fail to produce the document or article.

Penalty: Fifty pounds.

*Refusal to give evidence an offence*

17. — A person who appears before the Commissioner shall not, without lawful excuse, refuse to be sworn or to make an affirmation, or to produce documents or articles, or to answer questions, which he is lawfully required to produce or answer.

Penalty: Fifty pounds.

*Officers not to traffic in inventions*

18. — (1) An officer or person employed in the Patent Office shall not buy, sell, acquire or traffic in an invention or patent, whether granted in Australia or elsewhere, or in a right to, or licence under, a patent, whether granted in Australia or elsewhere.

Penalty: One hundred pounds.

(2) A purchase, sale, acquisition, assignment or transfer made or entered into in contravention of this section is void.

(3) This section does not apply to the actual inventor or to an acquisition by bequest or devolution in law.

*Officers not to furnish information, etc.*

19. — An officer or person employed in the Patent Office shall not, except when required or authorized by this Act, or under a direction in writing of the Commissioner or by order of a court:

- (a) furnish information on a matter which is being, or has been, dealt with under this Act or under the repealed Acts;
- (b) prepare, or assist in the preparation of, a document required or permitted by or under this Act or the repealed Acts to be lodged in the Patent Office; or
- (c) conduct a search in the records of the Patent Office.

Penalty: One hundred pounds.

**Part III. The Register of Patents**

*Register of Patents*

20. — (1) There shall be kept at the Patent Office a Register of Patents, in which shall be entered:

- (a) particulars of patents in force; and
- (b) such other matters as are prescribed.

(2) The Register of Patents kept under the repealed Acts shall be incorporated with and form part of the Register under this Act.

(3) A copy of the Register, or of such portion of the Register as the Commissioner directs, shall be kept at such places as the Commissioner directs.

*Registration of assignments, transmissions, etc.*

21. — Where a person becomes entitled to a patent by assignment, transmission or other operation of law, he shall apply to the Commissioner to register his title, and the Commissioner shall, on receipt of the application, and on proof to the satisfaction of the Commissioner of the title of the

applicant, cause the applicant to be entered in the Register as the proprietor of the patent.

*Probate or Letters of Administration need not be resealed*

22. — Where a patentee has died, the Commissioner shall, subject to the next succeeding section, and notwithstanding section twenty-five of this Act, on the application of the legal representative of the deceased patentee, if he is satisfied that the legal representative is entitled to be registered as the proprietor of the patent, register him accordingly.

*Registration mortgages, licences, etc.*

23. — Where a person becomes entitled as mortgagee, licensee or otherwise to an interest in a patent, he shall apply to the Commissioner to register his title, and the Commissioner shall, on receipt of the application, and on proof to the satisfaction of the Commissioner of the title of the applicant, cause notice of the interest to be entered in the Register, together with particulars of the instrument creating the interest.

*Copies of deeds and documents to be supplied*

24. — Attested copies of all deeds and documents affecting the proprietorship of a patent or licence shall be supplied to the Commissioner in the prescribed manner and shall be filed in the Patent Office.

*Trusts not recognized*

25. — Except in pursuance of section one hundred and twenty-nine of this Act, notice of a trust, expressed, implied or constructive, relating to a patent or licence shall not be entered on the Register or be receivable by the Commissioner.

*Power of registered proprietor to deal with patent*

26. — A patentee has, subject only to any rights appearing in the Register to be vested in some other person, power to deal with the patent as if he were the absolute owner of the patent and to give good discharges for any consideration for any such dealing.

*Exception in case of fraud*

27. — The last preceding section does not apply so as to protect a person dealing with a patentee otherwise than a *bona fide* purchaser for value and without notice of any fraud on the part of the patentee and equities in relation to a patent may be enforced against the patentee except to the prejudice of a *bona fide* purchaser for value.

*Register to be open for inspection*

28. — Subject to this Act, the Register, and all documents filed in the Patent Office under this Part, shall, at all convenient times, be open for inspection by any person.

*Register and certified copies to be evidence*

29. — (1) The Register is *prima facie* evidence of all matters required or authorized by this Act to be entered in the Register.

(2) The Commissioner may, subject to this Act, supply copies of or extracts from the Register, or of or from a document, abridgment, specification or publication in the Patent Office or the library of the Patent Office, certified by writing under his hand and the seal of the Patent Office, and any such copy or extract so certified and sealed is admissible in evidence in all courts and proceedings without further proof or production of the original.

(3) The Commissioner may, subject to this Act, certify, by writing under his hand and the seal of the Patent Office:

- (a) that an entry, matter or thing required or permitted by or under this Act or the repealed Acts to be made or done, or not to be made or done, has, or has not, as the case may be, been made or done; or
- (b) that a document, abridgment, specification or publication in the Patent Office, or in the library of the Patent Office, was made available for public inspection in the Patent Office, or in the library of the Patent Office, on the date specified in the certificate, and any such certificate is *prima facie* evidence of the statements contained in the certificate.

#### *Request for information as to patent or patent application*

30. — The Commissioner may, subject to this Act, furnish information as to a matter affecting or relating to:

- (a) a patent;
- (b) an application for a patent which is open to public inspection; or
- (c) any other document, abridgment, specification or publication in the Patent Office or the library of the Patent Office.

#### *Unregistered instruments not to be admitted in evidence*

31. — A document or instrument in respect of which no entry has been made in the Register in accordance with the provisions of this Act is not, unless the court otherwise directs, admissible in evidence in a court in proof of the title to a patent or to an interest in a patent, except:

- (a) in proceedings to enforce equities in relation to a patent or licence; or
- (b) in an application made under the next succeeding section.

#### *Rectification of Register*

32. — (1) The High Court may, on the application of a person aggrieved by:

- (a) the omission of an entry from the Register;
  - (b) an entry made in the Register without sufficient cause;
  - (c) an entry wrongly existing in the Register; or
  - (d) an error or defect in an entry in the Register,
- make such order as it thinks fit directing the rectification of the Register.

(2) The High Court may, in proceedings under this section, decide any question which it is necessary or expedient to decide in connexion with the rectification of the Register.

(3) Notice of an application under this section shall be given to the Commissioner, who may appear and be heard, and shall appear if so directed by the High Court.

(4) An office copy of the order shall be served on the Commissioner, and the Commissioner shall, upon receipt of the order, rectify the Register accordingly.

#### *False entries in Register*

33. — A person shall not wilfully:

- (a) make or cause to be made a false entry in the Register; or
- (b) produce or tender in evidence a document falsely purporting to be a copy of or extract from an entry in the Register or of or from a document in the Patent Office.

Penalty: Imprisonment for three years.

### Part IV. Applications for Patents

#### *Who may apply for patent*

34. — (1) Any of the following persons, whether a British subject or not, may make an application for a patent:

- (a) the actual inventor;
- (b) the assignee of the actual inventor;
- (c) the legal representative of a deceased actual inventor;
- (d) the legal representative of a deceased assignee of the actual inventor;
- (e) a person to whom the invention has been communicated by the actual inventor, his legal representative or assignee (if the actual inventor, his legal representative or assignee is not resident in Australia);
- (f) the assignee of such a legal representative as is specified in paragraph (c) or (d) of this subsection;
- (fa) a person who would, if a patent were granted upon an application made by a person referred to in any of the preceding paragraphs, be entitled to have the patent assigned to him; or
- (g) the agent or attorney of a person referred to in any of the preceding paragraphs.

(2) Two or more persons may make a joint application for a patent and a patent may be granted to them jointly.

(3) An assignee of a part interest in an invention may make a joint application for a patent with any of the persons referred to in sub-section (1) of this section and a patent may be granted to them jointly.

#### *Form of application*

35. — (1) An application for a patent:

- (a) shall be for one invention only;
- (b) shall be made in the prescribed form;
- (c) shall be lodged by being left at or delivered by post to the Patent Office; and
- (d) shall be accompanied by either a provisional specification or a complete specification.

(2) The application shall be signed by the applicant.

(3) A declaration setting out the facts relied on to support the application shall be lodged before acceptance of the application.

(4) The declaration shall be made by the applicant, or, if the applicant is a body corporate, by a person authorized by the body corporate to make the declaration on its behalf.

*Date of application*

36. — Subject to this Act, an application dates from the date when the application is lodged in the Patent Office.

*Withdrawal of application*

37. — An application shall not be withdrawn except on a request signed by the applicant.

*Title of invention*

38. — A specification (whether a provisional specification or a complete specification) shall commence with a title indicating the subject matter to which the invention relates.

*Provisional specification*

39. — A provisional specification shall describe the invention.

*Complete specification*

40. — (1) A complete specification:

- (a) shall fully describe the invention, including the best method of performing the invention which is known to the applicant; and
- (b) shall end with a claim or claims defining the invention.

(2) The claim or claims shall be clear and succinct and shall be fairly based on the matter described in the specification.

*Time for leaving complete specification*

41. — (1) Subject to section fifty A of this Act, if the applicant does not lodge a complete specification with his application, he may lodge it at any time within twelve months after the date of the application.

(2) Unless a complete specification is lodged in accordance with this section the application shall lapse.

*Complete specification may be treated as provisional in certain circumstances*

42. — Where:

- (a) an application was accompanied by a specification purporting to be a complete specification; and
- (b) the applicant, within twelve months after the date of the application and before the application and the complete specification have been accepted, requests the Commissioner to treat the specification as a provisional specification,

the Commissioner may direct that the specification be treated as a provisional specification and, in that case, the specification shall, for the purposes of this Act, be deemed to be, and at all times to have been, a provisional specification.

*Each claim of complete specification to have priority date*

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

(2) A claim of a complete specification shall indicate the date which the applicant considers to be the priority date of that claim.

*Priority dates*

45. — (1) Subject to this Act, the priority date of a claim of a complete specification is the date of lodgment of that complete specification.

(2) Subject to the next succeeding sub-section, the priority date of a claim of a complete specification received after a provisional specification, being a claim fairly based on matter disclosed in the provisional specification, is the date of lodgment of that provisional specification.

(3) The priority date of a claim of a complete specification accepted by the Commissioner under section fifty of this Act in respect of two or more provisional specifications, being a claim fairly based on matter disclosed in one or more of those provisional specifications, is the date of lodgment of the provisional specification in which that matter was first disclosed.

(4) The priority date of a claim of a complete specification lodged in respect of a further application made by virtue of section fifty-one of this Act, being a claim fairly based on matter disclosed in the provisional specification or complete specification lodged in respect of the original application, is the date which would have been the priority date of that claim if that claim were a claim of the complete specification lodged in respect of the original application.

(5) Where, in respect of an application for a patent lodged under the repealed Acts, the Commissioner has required or allowed the applicant to amend the application and specification and drawings or any of them so as to apply to one invention only and the applicant has made an application under this Act for an invention excluded by the amendment, the priority date of a claim of the complete specification lodged under this Act, being a claim fairly based on matter disclosed in the provisional specification or complete specification lodged under the repealed Acts, is the date which would have been the priority date of that claim if that claim were a claim of the complete specification lodged in respect of the application under the repealed Acts.

*Validity of patent not affected by publication, etc. after priority date*

46. — A patent is not invalid, so far as it relates to a claim of the complete specification, by reason only of:

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

*Examination of applications and complete specifications*

47. — (1) An Examiner shall, in respect of each application, report whether the application and complete specification comply with the requirements of this Act.

(2) The report made under the last preceding sub-section shall include a report whether the priority date of each claim of the complete specification, as indicated by the applicant, is the priority date of that claim as determined by this Act.

*Report by Examiner as to novelty*

48. — (1) In respect of a complete specification the Examiner shall:

- (a) ascertain and report whether the invention, so far as claimed in any claim, is the subject of a claim of the complete specification of another application for a patent lodged in Australia, being a claim having a priority date earlier than the priority date of the first-mentioned claim;
- (b) ascertain and report whether the invention, so far as claimed in any claim, has been published before the priority date of that claim in a specification lodged in respect of an application for a patent made in Australia within fifty years before that date;
- (c) ascertain and report whether the invention, so far as claimed in any claim, is the subject of a claim of earlier priority date contained in the complete specification of a patent;
- (d) ascertain, as directed by the Commissioner, and report whether the invention, so far as claimed in any claim, has been published in Australia before the priority date of that claim in a document, not being a document referred to in paragraph (a) of sub-section (1) of section one hundred and fifty-eight of this Act; and
- (e) report whether, to the best of his knowledge, the invention, so far as claimed in any claim, was, or was not, novel on the priority date of that claim.

(2) The reference in paragraph (a) of the last preceding sub-section to an application does not include a reference to an application which has lapsed or has been refused or withdrawn or to an application upon which a patent has been granted and the reference in paragraph (c) of that sub-section to a patent does not include a reference to a patent which is not in force.

(3) Omitted<sup>5)</sup>.

*Action on Examiner's report*

49. — (1) If the Examiner reports adversely to an application or specification under either of the last two preceding sections, the applicant may amend the application or specification so as to remove the grounds of objection and the amended application or specification shall be again reported on in like manner as the original application or specification.

(2) If the applicant does not amend the application or specification to the satisfaction of the Commissioner, the Commissioner may direct that the application or specification be amended to his satisfaction within such time as the Commissioner allows.

<sup>5)</sup> Section 30 (3) of the *Patents Act* 1960 reads as follows:

"(3) Where, before the date of commencement of this section, the Commissioner had, under sub-section (3) of section forty-eight of the *Patents Act* 1952, or of that Act as amended, deferred acceptance of an application and complete specification and the application had not lapsed before that date, the Commissioner may further defer acceptance until the expiration of three months after:

- (a) the date on which a patent is sealed on the other application referred to in that sub-section; or
- (b) the date on which that other application lapses or is refused or withdrawn,

as the case may be."

(3) The applicant may make a separate application for a patent for an invention excluded by an amendment made, or to be made, under this section and the Commissioner may direct that the priority date of any claim of the complete specification accompanying that application shall be such date as the Commissioner determines, being a date not later than the date of the separate application and not earlier than the priority date of the claim excluded by the amendment, or, if two or more claims were so excluded, not earlier than the priority date of whichever of those claims had the earlier or earliest priority date.

(4) An appeal lies to the Appeal Tribunal from a direction of the Commissioner under this section.

*Single patent for cognate inventions*

50. — (1) Where two or more applications for patents accompanied by provisional specifications have been lodged, the applicant or applicants may, if the inventions described in those provisional specifications are so related as to constitute one invention, lodge one complete specification in respect of those applications.

(2) The Examiner shall report whether the inventions described in those provisional specifications are so related as to constitute one invention.

(3) If the Commissioner is of opinion that the inventions described in the provisional specifications, in so far as those inventions are included in the claims of the complete specification, are so related as to constitute one invention, he may accept the complete specification lodged in respect of the applications and grant one patent on the applications.

(4) Where the applications were lodged by different applicants, the patent shall be granted to them jointly.

(5) For the purpose of this section, the reference to an applicant includes a reference to the legal representative or assignee of an applicant.

(5A) This section extends to the case where one of the applications was, or more than one of the applications were, made under this Act and the other application was, or the other applications were, made under the repealed Acts.

(5B) If, in such a case, the Commissioner accepts one complete specification lodged in respect of all those applications, the application or applications made under the repealed Acts shall proceed as if it or they had been lodged under this Act.

(6) An appeal lies to the Appeal Tribunal from a decision of the Commissioner under this section.

*Procedure where single patent not granted*

50A. — (1) If the Commissioner is not of the opinion referred to in sub-section (3) of the last preceding section:

- (a) the complete specification shall be cancelled;
- (b) each application shall proceed, under the repealed Acts or under this Act, as the case may be, as though the cancelled complete specification had not been lodged;
- (c) the Commissioner may determine the time within which a complete specification in respect of each application

may be lodged and, in the case of an application which proceeds under the repealed Acts, may also determine the time within which the application may be accepted; and

(d) the patent granted on any of the applications shall be dated as from the day on which the cancelled complete specification was lodged.

(2) Unless a complete specification is lodged in respect of an application within the time determined under paragraph (c) of the last preceding sub-section, the application shall lapse.

#### *Division of application*

51. — (1) A person who has made an application for a patent may, at any time before publication of the complete specification, make one or more further applications in respect of an invention disclosed in the provisional specification or complete specification lodged in respect of the first-mentioned application.

(2) An application under the last preceding sub-section shall be accompanied by a complete specification.

(to be continued)

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### FRANCE

#### Decree

concerning the statement of the characteristics of the invention referred to in Article 14 of Decree No. 60-507 of 30<sup>th</sup> May, 1960, providing for special patents for medicines (6<sup>th</sup> March, 1962)

#### Article One

The short statement of the characteristics of the invention, the object of a special patent for medicine or of a connected additional certificate, must indicate the name of the depositor, the title under which the patent has been applied for and the registration number of the application.

The statement shall include a definition of the object of the invention based on the characteristics indicated in the summary required by Article 9 (2) of Decree No. 60-507 of 30<sup>th</sup> May, 1960, and, where necessary, shall refer to the numbered paragraphs of the summary, due consideration being given to the draft descriptive notice on the novelty of the medicament as notified in compliance with Articles 14 and 15 of the said Decree.

In the absence of a special authorisation by the National Institute of Industrial Property, the statement shall not exceed 20 lines of 50 letters or signs each.

#### Article 2

The short statement is published in the *Bulletin officiel de la propriété industrielle* in conformity with Article 16 of Decree No. 60-507 of 30<sup>th</sup> May, 1960, immediately after the summary and references to the documents of the draft notice.

If the short statement has not been filed within the periods fixed by Article 14 and 15 of the above mentioned Decree, this fact shall be recorded in the *Bulletin officiel de la propriété industrielle*.

#### Article 3

The Inspector General of Industry and Commerce, Director of the National Institute of Industrial Property, is charged with the execution of the present Decree which will be published in the *Journal officiel* of the French Republic.

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### ITALY

#### Decrees

concerning the temporary protection of industrial property rights at eight exhibitions

(13<sup>th</sup>, 16<sup>th</sup>, 17<sup>th</sup>, 20<sup>th</sup>, 22<sup>nd</sup>, 24<sup>th</sup>, 25<sup>th</sup> and 29<sup>th</sup> March, 1962)<sup>1)</sup>

#### Single Article

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

*Biennale internazionale dell'imballaggio e del confezionamento* — *Mostra macchine per l'industria dolciaria ed alimentare* — *Mostra trasporti interni - IPACK* (Milan, 1<sup>st</sup>-18<sup>th</sup> June, 1962);

*IX<sup>a</sup> Mostra internazionale avicola* (Varèsc. 16<sup>th</sup>-21<sup>st</sup> June, 1962);

*XIV<sup>a</sup> Fiera di Trieste — campionaria internazionale* (Trieste, 21<sup>st</sup> June to 5<sup>th</sup> July, 1962);

*IX<sup>a</sup> Rassegna internazionale elettronica, nucleare e teleradiocinematografica* (Rome, 11<sup>th</sup>-24<sup>th</sup> June, 1962);

*Mercato internazionale del tessile per l'abbigliamento* (Milan, 4<sup>th</sup>-10<sup>th</sup> June, 1962);

*XXIII<sup>a</sup> Fiera di Messina — campionaria internazionale* (Messina, 5<sup>th</sup>-20<sup>th</sup> August, 1962);

*XXVI<sup>a</sup> Fiera di Bologna — campionaria con settori internazionali specializzati* (Bologna, 18<sup>th</sup>-22<sup>nd</sup> March, 1962);

*XVII<sup>a</sup> Fiera del Mediterraneo — campionaria internazionale* (Palermo, 26<sup>th</sup> March to 10<sup>th</sup> June, 1962)

shall enjoy the temporary protection provided by laws No. 1127 of 29<sup>th</sup> June, 1939<sup>2)</sup>, No. 1411 of 25<sup>th</sup> August, 1940<sup>3)</sup>, No. 929 of 21<sup>st</sup> June, 1942<sup>4)</sup>, and No. 514 of 1<sup>st</sup> July, 1959<sup>5)</sup>.

<sup>1)</sup> Official communication from the Italian Administration.

<sup>2)</sup> See *Prop. ind.*, 1939, p. 124; 1940, p. 84.

<sup>3)</sup> *Ibid.*, 1940, p. 196.

<sup>4)</sup> *Ibid.*, 1942, p. 168.

<sup>5)</sup> *Ibid.*, 1960, p. 23.

## YUGOSLAVIA

(Translation)

**Law on Designs and Models**(4<sup>th</sup> November, 1961)<sup>1)</sup>

## CHAPTER I

## Basic Provisions

## 1. General

## Article 1

An industrial design is a graphic reproduction or drawing which may serve as a model for application to industrial or handicraft production, and is protected under the provisions of this Law.

An industrial model is a body which represents an industrial or handicraft production or may be applied to it, and is protected under the provisions of this Law.

The graphic reproduction, design or body may be protected under the provisions of this Law only if they are new.

The provisions of this Law which apply to graphic reproductions and designs shall also apply to a combination of a graphic reproduction and a design.

## Article 2

A graphic reproduction, a design and a body are new, within the meaning of this Law, if by their external appearances they essentially differ from those which are known and from those which are protected as models or designs and pertain to the same or a similar kind of article.

A graphic reproduction, a design and a body shall be considered as being known if in the country or abroad, before the filing of an application for recognition of the right to the design or model, they had been announced and described through the press or in such other way that they could have been used, or had been publicly used, exhibited or shown.

## Article 3

A graphic reproduction, a design or body may not be protected as a design or as a model, within the meaning of this Law, if:

- (1) they conflict with law or morals;
- (2) they represent the sign of the Red Cross Organisation.

The portrait of a person, the State coat-of-arms or some other public coat-of-arms, a flag or an emblem, or their imitation, may be protected as a design or model only with the agreement of that person or the responsible organ of that country, and if it is a question of a portrait of a deceased person, then with the agreement of his spouse, child or parent.

## Article 4

A Yugoslav national may seek in a foreign country recognition of the right to a design or model only after having filed in the country a petition for recognition of that right.

<sup>1)</sup> Official communication from the Yugoslav Administration.

## Article 5

Foreign nationals shall have with respect to recognition of the right to a model or design and their protection the same rights which Yugoslav citizens and corporate bodies have under this Law, if that derives from international treaties or conventions or from the principle of reciprocity.

In case of doubt, the person who refers to reciprocity shall have to prove the existence of reciprocity.

## 2. Substance of the Right to a Design or Model

## Article 6

The holder of the right to a design or model shall possess the exclusive right to exploit that design or model.

Other persons may exploit a design or model only on the basis of a license.

A design or a model may be exploited under the conditions laid down by this Law and in accordance with regulations which determine the conditions of production of articles and their marketing.

As exploitation of designs or models, within the meaning of this Law, shall be considered their application in production or marketing of articles made according to the design or model.

## Article 7

The right to a design or model shall belong to the author of the design or model, or to the heir or other legal successors of the author, unless otherwise determined by this Law.

The first applicant for recognition of the right to a design or model, shall be considered the author, or his legal successors, unless the contrary is proved.

Citizens and corporate bodies may be holders of the right to a design or model.

## Article 8

An application for recognition of the right to a design or model may be filed jointly by several persons, but the rights of individual applicants shall not be specified in the decision of recognition of the right to the design or model.

Mutual relations between the holders of the right to a design or model shall be settled, in case of a dispute, in accordance with legal provisions on property rights.

## Article 9

The author of a design or model who is not indicated as the author in the application may, during the course of the administrative proceedings for recognition of the right to the design or model, demand that his name as that of the author be indicated in the register of protected designs or models, in the document pertaining to the design or model, and in the publication of the design or model.

If the administrative proceedings for recognition of the right to the design or model have been terminated, the author of the design or model may demand that his name as that of author be indicated in the register of protected designs or models and that an announcement be published in the official bulletin of the Patent Office (*Uprava za patente*) that he is the author of the design or model.

In case of a dispute on indication of authorship of a design or model, the court shall decide.

#### Article 10

The right to a design or model is acquired on the date of registration, that is, on the date of entry in the register of protected designs or models, and shall be valid as of the date of filing of the application for recognition of that right.

The right to a design or model lasts 10 years, counting from the date on which that right is entered in the register of protected designs or models.

Upon expiry of the period referred to in Paragraph 2, the right to a design or model may not be renewed, nor may the duration of that right be extended.

#### Article 11

Mortgage, license and other rights are acquired to a right to a design or model on the date of their entry in the register of protected designs or models.

The priority of these rights is determined by the order in which written requests for their entry are received, and if the applications are filed at the same time, they shall have the same priority.

#### Article 12

If a design or model is the product of the work of a person who is in labour relations and is directly connected with his work, or the design or model is made on the basis of an order outside labour relations, the right to the design or model shall be vested in the organisation with which that person is in labour relations or to the organisation which gave the order, unless otherwise agreed between them in writing.

The court shall have jurisdiction to settle a dispute arising from the relations referred to in Paragraph 1.

### 3. *Transfer of Right to a Design or Model*

#### Article 13

The rights vested in the applicant for recognition of the right to a design or model, as well as the rights which had been vested in the holder of the right to the design or model, shall pass on to their heirs in accordance with the provisions of the Law on Inheritance.

#### Article 14

The applicant for recognition of the right to a design or model and the holder of the right to the design or model may by contract transfer their rights to others, either fully or partially.

The contract of transfer of these rights shall be fully valid only if it is made in a written form.

### 4. *Contractual License*

#### Article 15

The applicant for recognition of the right to a design or model and the holder of the right to a design or model may by contract transfer their rights, fully or partially, of exploitation of the design or model to another person (Contractual License).

A license contract shall be fully valid only if it is made in a written form.

A license contract should contain, in particular: provisions on compensation for exploitation of the design or model, the duration of the license, the scope of the license, an indication as to whether or not the license is exclusive.

### 5. *Compulsory License*

#### Article 16

Under a compulsory license the right of exploitation of a certain design or model is given to another person for a fixed period and to a fixed extent, with a proper compensation to the holder of the right to the design or model.

A compulsory license may not be exclusive.

A compulsory license may be given only to a person who proves that general economic interests require it, as well as his suitability for exploitation of the specific design or model.

The court shall decide on the giving of a compulsory license and on the amount of the compensation.

### 6. *Expropriation*

#### Article 17

A design or a model may be expropriated if public interest so demands.

The Federal People's Assembly, Council of Producers, shall decide on the existence of a public interest for expropriation of a design or model.

The federal agency or administration in charge of the respective branch of economy, must submit a request for expropriation of a design or model.

The Supreme Economic Court, in council of two Judges and three assessors, shall decide on a request for expropriation of a design or model.

The proper compensation which the federation has to pay to the holder of the right to the design or model for the expropriated design or model, shall also be stated in the decision of expropriation of the design or model.

The agency whose request for expropriation is accepted may on the basis of a contract or in another way give the design or model for exploitation to an organisation.

If an organisation is indicated in the request for expropriation as the beneficiary of the expropriation and if the request is accompanied with a written proof that the organisation is in agreement, then the proper compensation which that organisation has to pay to the previous holder of the right to the design or model shall be indicated in the decision of expropriation.

A design or a model may be expropriated as of the date of its entry in the register of protected designs or models.

### 7. *Termination of Right to a Design or Model*

#### Article 18

The right to a design or model shall terminate even before expiry of 10 years:

- (1) if the holder of the right to the design or model renounces that right in writing — on the day following the date of submission of the written renouncement;

(2) if the prescribed tax is not paid within the prescribed time — on the day following the date of expiry of the time-limit for payment of the tax.

If the right to a design or model is cancelled (Art. 40), it shall be considered that it had not existed.

#### Article 19

If a certain right (license, mortgage, etc.), is entered in the register of protected designs or models in favour of a third person, then the holder of the right to the design or model cannot renounce his right without a written agreement of that third person.

The court shall have jurisdiction for settlement of a dispute arising from relations referred to in Paragraph 1.

### CHAPTER II

#### Procedure

##### 1. Jurisdiction

#### Article 20

The Patent Office (*Uprava za patente*) shall have jurisdiction for deciding on applications for recognition of the right to a design or model and for deciding on other questions in connection with the protection of designs and models.

In the proceedings referred to in Paragraph 1, the provisions of the Law on General Administrative Procedure shall apply, unless otherwise determined by this Law.

A complaint against a decision of the Patent Office (*Uprava za patente*) may not be filed, but an administrative suit may be conducted.

The Supreme Economic Court shall have jurisdiction to deal with an administrative suit started in accordance with Paragraph 3, and it shall deliberate in a council composed of two Judges and three assessors in accordance with the provisions of the Law on Administrative Procedure.

By a decision of the Supreme Economic Court rendered in accordance with Paragraph 4, a decision of the Patent Office (*Uprava za patente*) may also be reversed.

A decision of the Supreme Economic Court by which a decision of the Patent Office (*Uprava za patente*) is reversed, shall in every way replace that decision.

#### Article 21

Disputes and other questions which by this Law are brought within the jurisdiction of courts of law, shall be dealt with in the first instance by the Higher Economic Court, unless otherwise determined by this Law.

##### 2. Application for Recognition of the Right to a Design or Model

#### Article 22

Action for recognition of the right to a design or model is started on the basis of a written application submitted to the Patent Office (*Uprava za patente*).

For every graphic reproduction, design or body a separate application has to be submitted for recognition of the right, to the design or model.

#### Article 23

An application for recognition of the right to a design or model must, among other things, contain: the name, the firm name or title of the applicant, his headquarters or residence and address; indication of the product to which the graphic reproduction, design or body will be applied; and request for recognition of the right to the design or model.

#### Article 24

Together with the application for recognition of the right to a design or model has to be submitted a graphic reproduction, a design or body which clearly indicate the article made according to them.

The graphic reproduction, design or body must be clearly and fully outlined in the description, so that it can be seen where their essence and novelty lie.

What is new in the case of a graphic reproduction, design or body and what the applicant wishes to be embraced by the right to the model or design (protection demand), must be especially pointed out at the end of the description.

Several protection demands may be made in a description.

#### Article 25

The date and hour of receipt of an application must be noted on it.

At the request of an applicant, a notice must be issued to him to the effect that his application has been received on a specific day and at a specific hour.

##### 3. Priority Right

#### Article 26

As of the day and hour of receipt of a proper application for recognition of the right to a design or model, the applicant in whom the right to the design or model is recognised on the basis of that application, shall have priority right to the registered graphic reproduction, design or body over every person who files later an application for recognition of the right to the design or model for the same graphic reproduction, design or body.

If an application is not accompanied with a description of the graphic reproduction, design or body, the priority right shall be counted as of the day and hour of receipt of the description.

If a graphic reproduction, design or body subsequently undergo an important change, the priority right shall be counted as of the day and hour of receipt of the description of that change.

#### Article 27

The person who, at an official or officially-recognised exhibition (fair) of an international character held in Yugoslavia or in some other country which is a member of the International Union for the Protection of Industrial Property, exhibits certain objects which fulfil the conditions for recognition of the right to the design or model, may, within three months following the date of the closing of the exhibition, seek for that object recognition of the right to the

design or model with priority as of the first day of its showing at that exhibition.

The application referred to in Paragraph 1, has also to be accompanied by a written confirmation issued by the authorities of the exhibition regarding the kind of exhibition, the place at which it was held, the date of the opening, the date of closing, and the first day of exhibiting of the object made according to that design or model.

A decision of recognition of an exhibition held in Yugoslavia is rendered and published by the Patent Office (*Uprava za patente*) on the proposal of the exhibition authorities.

#### Article 28

The national of a country adhering to the International Union for the Protection of Industrial Property who has submitted in some country adhering to the Union the original application for recognition of the right to the design or model, shall be recognised in Yugoslavia as having a priority right to that design or model as of the date of the filing of that application, if he demands that in the application filed in Yugoslavia for recognition of the right to the same design or model within six months following the date of the filing of the original application.

For recognition of priority right under Paragraph 1, the applicant must submit a copy of the original application, indicating the date of its filing with the responsible authority of the country adhering to the Union, authenticated by that authority.

An authenticated copy of an original application need not be legalized.

If an application filed in Yugoslavia pursuant to Paragraph 1 by an applicant is not accompanied by an authenticated copy of the original application, the Patent Office (*Uprava za patente*) shall invite him to submit such a copy within a specified time, which may not be shorter than three months counting from the date of delivery of the invitation.

#### 4. Examination of Applications

##### Article 29

On receipt of an application, first of all it must be seen whether it and its annexes are in proper order.

If it is ascertained that the application or its annexes are not in proper order, the applicant shall be invited to make the necessary corrections or supplements within a specified time.

It shall be considered that an application or its annexes are not in proper order also when the revenue tax prescribed for applications or annexes is not paid.

##### Article 30

If, after examination of a proper application, it finds that the right to the design or model cannot be recognised, the Patent Office (*Uprava za patente*) shall invite the applicant to declare himself within a specified time on the facts because of which it considers that the right sought cannot be recognised.

##### Article 31

If an applicant does not correct or supplement the application within the specified time or does not pay the prescribed tax (Art. 29), or if he does not declare himself within the specified time on the facts because of which the Patent Office (*Uprava za patente*) considers that the right to the design or model cannot be recognised (Art. 30), it shall be considered that he has withdrawn his application.

##### Article 32

During the course of the procedure for recognition of the right to a design or model, the novelty of the graphic reproduction, design or body shall be judged *ex officio* only with respect to the designs or models which are registered in the country.

##### Article 33

During the time up to the rendering of the decision on an application for recognition of the right to the design or model, the applicant may change the description of the graphic reproduction, drawing or body, as well as his protection demands.

##### Article 34

After examination of a proper application, a decision shall be rendered by which the application for recognition of the right to the design or model is accepted or rejected, fully or partially.

##### Article 35

A decision of recognition of the right to a design or model shall be rendered within the limits of the demands for protection which have been made.

The extent of recognition of protection shall be determined according to the accepted demands for protection.

#### 5. Entry in the Register of Protected Designs or Models

##### Article 36

On the basis of the decision by which the right to a design or model is recognised, that right shall be entered in the register of protected designs or models.

After entry of the right to a design or model in the register, a certificate on the design or model shall be issued to the applicant.

If there are several holders of the right to the design or model, a separate certificate shall be issued to every one of them, but all the holders of the right to the design or model shall be named in every certificate.

##### Article 37

The register of protected designs and models shall be kept by the Patent Office (*Uprava za patente*).

In the register shall be entered the necessary data, and especially: the number of the design or model; description of the design or model, the name, the firm name or the title of the holder of the right and his headquarters or residence; the name of the author; the date of submission of the application and the date from which priority right is counted.

In the register shall also be entered all the subsequent changes with respect to the rights to the design or model or the holder of those rights and with respect to individual rights in connection with the design or model, such as: cancellation, revocation, assignment, international registration, record of starting of a suit, etc.

#### Article 38

The register of protected designs or models shall be public.

Any person shall be permitted to search the register and the documents on the basis of which the entries in the register have been made.

#### Article 39

Registered designs or models and other data stated in Article 37, of this Law, shall be announced in the official bulletin of the Patent Office (*Uprava za patente*).

### CHAPTER III

#### Cancellation and Revocation of the Right to a Design or Model

#### Article 40

The right to a design or model shall be cancelled:

- (1) if the subject of the right to the design or model had not been suitable for protection in the sense of Article 1, of this Law;
- (2) if at the time of the filing of the application for recognition of the right to the design or model, the design or model had not been new (Art. 2, Para. 1);
- (3) if the design or model conflicts with law or morals (Art. 3, Para. 1, Item 1);
- (4) if the design or model represents a sign of the Red Cross organisation (Art. 3, Para. 1, Item 2); and
- (5) if the design or model represents public coats-of-arms, flags or other emblems or their imitation (Art. 3, Para. 2).

A petition for cancellation of the right to a design or model for reasons stated in Paragraph 1, may be filed by any person.

If a design or a model represents the image of a certain person and agreement has not been given pursuant to Article 3, Paragraph 2, of this Law, the right to that design or model shall be cancelled on the filing of a petition by the person whose agreement had been necessary.

The petition for cancellation of the right to a design or model which any person may file (Para. 2), and the petition for cancellation of the right to a design or model which represents the image of a prominent living public servant or a historical figure, may also be filed by the Federal Public Prosecutor.

A petition for cancellation of the right to a design or model which is filed against a person who does not have his fixed place of residence or his headquarters on the territory of Yugoslavia, shall be acted on by the Higher Economic Court on whose territory the entry of that right in the register of protected designs or models had been effected.

The Court must transmit to the Patent Office (*Uprava za patente*) its final decision rendered in connection with the petition for cancellation of the right to a design or model.

#### Article 41

The author of a design or model, his heir or other legal successor may by filing a petition with the Court, demand revocation of the right to the design or model and that he be proclaimed as the holder of that right, if the right had been recognised to a person who is not the author, an heir to the author or his other legal successor.

The petition referred to in Paragraph 1 may be filed against a *bona fide* holder of the right to a design or model within one year following the date of entry of that right in the register of protected designs and models.

On the basis of a legally valid verdict by which his demand has been accepted, the filer of the petition referred to in Paragraph 1, may, within three months following the date of communication of that verdict, demand that he be entered in the register of protected designs or models as the holder of the right to the design or model and that a certificate on the design or model be issued to him.

A petition for revocation of the right to a design or model which is filed against a person who does not have his fixed place of residence or his headquarters on the territory of Yugoslavia, shall be acted on by the Higher Economic Court on whose territory the entry of that right in the register of protected designs or models had been effected.

A license which a third person acquires in a *bona fide* way from the previous holder of the right to a design or model, shall remain valid vis-a-vis the new holder as well, if it had been registered or properly reported for registration before the record of a suit had been made.

The compensation for a license (fee) after a final verdict shall be paid by the holder of the license to the new holder of the right to the design or model.

The compensation (fee) referred to in Paragraph 6, shall be fixed by a contract, and in case of a dispute over the fee the Court shall decide.

### CHAPTER IV

#### Restoration to status quo ante

#### Article 42

A petition for restoration to *status quo ante* in administrative procedure may be filed within two months following the date of removal of the obstacle, and at the latest within one year following the date of expiry of the period with which the loss of right is connected.

If the petition for restoration to *status quo ante* is accepted, then the period within which the filer of the petition must perform the operation which had been left unperformed or pay the unpaid tax, shall also be fixed in the decision.

Restoration to *status quo ante* may not be sought for after the expiry of the time-limit set in Article 27, Paragraph 1, and Article 28, Paragraph 1, of this Law.

A petition for restoration to *status quo ante* has to be filed with the Patent Office (*Uprava za patente*).

CHAPTER V  
Representation

Article 43

Lawyers and patent agents may practice as a profession representation in matters of obtaining and maintaining of the right to a design or model.

For representation in matters referred to in Paragraph 1, special bureaux may be opened as independent establishments.

These bureaux may represent parties in disputes before Courts of competent jurisdiction and before organs of administration if they have the necessary professional personnel.

Article 44

Nationals of foreign countries who seek a certain right in accordance with the provisions of this Law in Yugoslavia, or who appear as parties involved in a dispute before a court of law or before an organ of administration in Yugoslavia, must have an attorney who is a Yugoslav citizen and who practices law as a profession.

Article 45

The Federal Executive Council will issue more detailed regulations on the bureaux referred to in Article 43 of this Law and on patent agents.

CHAPTER VI

Common Law Protection of the Right to a Design or Model

Article 46

As a violation of the right to a design or model, shall be considered any illegal exploitation of a registered or protected design or model or imitation of a registered or protected design or model, in economic transactions.

Article 47

In case of violation of the right to a design or model, the holder of that right may seek that the perpetrator be forbidden to commit further violations, that the verdict by which the violation was confirmed be published at the expense of the perpetrator; and he may also seek, under the general rules of property right, damages.

CHAPTER VII

Penal Provisions

Article 48

An organisation which illegally exploits a registered or protected design or model, or illegally imitates a registered or protected design or model, shall be fined for economic violation up to 1,000,000 dinars.

For the act referred to in Paragraph 1, there shall also be a fine of up to 100,000 dinars against the responsible person in the organisation.

A Higher Economic Court shall have jurisdiction over such a case.

Article 49

A citizen who in economic transactions illegally exploits a protected design or model of another person or illegally imitates such a design or model, shall be fined for a criminal act or may receive a prison sentence of up to six months.

A citizen who commits the act referred to in Paragraph 1, with an intention to deceive buyers, may receive a prison sentence of up to one year for a criminal act.

Prosecution for acts referred to in Paragraph 1, shall be undertaken on the demand of a private person.

CHAPTER VIII

Transitional and Concluding Provisions

Article 50

A right to a design or model acquired up to the date of the entry into force of this Law, shall continue to be valid and the basic provisions of this Law shall apply to that right.

If an application for recognition of the right to a design or model has been filed, and up to the date of the entry into force of this Law a decision has not been rendered or a decision had been rendered but has been cancelled, action shall be continued in accordance with the provisions of this Law.

Disputes in connection with cancellation or revocation of the right to a design or model which are in course on the date of the entry into force of this Law, but the Patent Office (*Uprava za patente*) has not rendered a final decision on them by that date, shall be settled by the Court of competent jurisdiction in accordance with the provisions of this Law.

Action on administrative disputes against decisions of the Patent Office (*Uprava za patente*) which are in course on the date of the entry into force of this Law, shall be continued by the Federal Supreme Court.

Article 51

This Law enters into force on the thirtieth day following the date of its publication in the *Official Gazette of the FPRY* <sup>1)</sup>.

<sup>1)</sup> This Law came into force in 15<sup>th</sup> December, 1961.

## **GENERAL STUDIES**

### **The EEC (Common Market) Patent and the National Treatment Principle**

By Gabriel FRAYNE, New York







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**Committee of National Institutes  
of Patent Agents  
CNIPA**

**Sub-Committee on Patent Integration**

(D. A. Was, E. Wiegand, W. P. Williams)

*Second Report on the Institution of Federal Patents*















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## BOOK REVIEW

**L'invention faite par l'employé dans l'entreprise privée**, by M. Christian Englert. 239 pages, 23 × 19 cm., published by Verlag für Recht und Gesellschaft AG., Basel, 1960.

In his introduction, M. Englert recalls that from 1939 to 1955, 40 % of patents granted in the United States of America were delivered to private persons and 59 % to companies; in Europe at present, it may be said that approximately 80 % of patentable inventions, or those susceptible of being protected as utility models in Germany, are the work of employees.

Therefore the problem of employees' inventions is a question of primary importance now and is increasing every day.

The work of M. Englert contains a detailed study of the protection of employees' inventions in the principle industrial countries of the world (as for example the United States of America, USSR, Great Britain, France or Germany) and enumerates all the rights granted to employees in these different countries, whether they be moral rights, inheritance rights, fiscal advantages, or the means for enabling employers and employees to solve their disputes.

Because of its scope, conciseness and its exhaustive character, this work of comparative law will find its natural place among the reference books of technicians dealing with the international regulation of employees' inventions.

G. R. W.

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**L'originalité des communautés européennes et la répartition de leurs pouvoirs**, by Dusan Sidjanski, privat-docent at Geneva University. Published in the January-March, 1961 issues of *Revue générale du droit international public*.

In an age when, following the breaking up of the large political entities at the beginning of the XX<sup>th</sup> Century, the "federal phenomenon" is expanding, that is to say, when States are regrouping on a new basis and on a regional level, the Intellectual Property Unions and their common Bureau should devote their attention to the new world which is taking shape.

There is no doubt that, from this point of view, the evolution of Europe and the increasing number of efforts which, as M. Sidjanski points out, "are converging towards the same goal, the creation of a unified Europe" should retain all our attention.

It goes without saying, as was pointed out by M. Guillaume Finnis<sup>1)</sup>, that "... if we lived in a United Europe, we must not imagine for an instant that developments would be any different from what they were in the Zollverein; all national titles (to industrial property) would disappear and very rapidly; moreover they would probably be the first to vanish, because it is the fate of industrial property legislation always to be in the vanguard of legal unification".

The consequences of such an evolution on the national level are obvious, points out M. Finnis: "... 80 % of applications made in the Netherlands are deposited by persons seeking protection in Germany, Italy and France; once federal titles exist, 80 % of those in the Netherlands... will disappear. ... We can therefore assume that whilst the creation of a federal title in co-existence with a national one will not remove the national basis of industrial property legislation, since there will be national titles, the relative importance of the latter will nevertheless considerably decrease. Supposing, for example, that 60,000 applications are filed in France at the moment, then the new measure would result in this figure dropping, if not from one day to the next at least very rapidly, from 60,000 to 10,000."

<sup>1)</sup> "Will National Industrial Property Rights Disappear?" An address given in French to the Faculty of Law (Paris), by M. Guillaume Finnis, Inspector-General of Industry and Commerce, President of the International Patent Institute of The Hague. See *Prop. Ind.*, June, 1961, p. 133 et seq. and *Industrial Property Quarterly*, No. 3, July, 1961, p. 148 et seq.

We cannot for a moment imagine that such a situation will not have repercussions on the activities of the Intellectual Property Unions and their Bureau. It is sufficient to imagine, in order to be convinced of this fact, all the trade marks (whose owners desire protection in only a few countries in Europe) which would doubtless no longer be registered internationally if there were "a Unified Europe".

This is only one of the problems which the responsible bodies of the United International Bureaux for the Protection of Intellectual Property should examine. Above all, it is necessary to study the new European Communities, i. e. the European Coal and Steel Community (CECA), the European Atomic Energy Community (CEEA) and the European Economic Community (ECE) which is on the verge of covering all of Western Europe.

From this point of view, M. Sidjanski's study is most certainly worthy of interest. It contains an extremely detailed analysis of the foundations of the three communities, their respective competence, their powers, their constitutional, institutional and functional autonomy, including their respective organisations and structures.

If it is impossible here to summarise M. Sidjanski's work without some risk of omission, one should, however, note the following conclusions:

(1) By virtue of a transfer of competence, both legislative, jurisdictional and executive, the three Communities exercise powers which, so far, have never been conceded to international organisations.

The exercise of these common powers is entrusted to institutions which enjoy unusual autonomy in the field of international relations.

The effects of common powers is characterised on the one hand, by the compulsory and executive force of the Communities' acts and by the degree of pressure which the Communities are in a position to exercise on the States and their nationals and, on the other hand, by the immediate common action directly affecting individuals without the intermediary of state or parliamentary procedures.

(2) With respect to the organs of the Communities, we are now witnessing a gradual trend towards intergovernmental forms since the High Authority of the CECA has had to seek the support of Member States and the Councils of the two other Communities have taken the central place occupied by the High Authority in the CECA. Nevertheless, with regard both to exterior functions and to the duration and right of secession, the Rome Treaties have gone further than the solutions outlined by the CECA; the exterior function is centralised, the right of secession is abolished and, formerly limited to 50 years, the duration becomes unlimited voluntarily.

(3) Finally, in practice, the three Communities and, in particular the Common Market, are expanding the process of integration. First started within the framework of the CECA, this process has been developed in the Common Market to a quite unsuspected degree. The latter has, in effect, released a vast chain of actions and reactions; following the economic circles, the trade unions and even the political parties have had to adapt themselves to the degree of integration provided for in the treaties, and to regroup themselves regardless of geographical frontiers with an aim to setting themselves up as some kind of European organic body. Even more, the Communities have a direct impact on daily life and on the immediate interests of the great majority of the 165 million inhabitants of the six promoting States and even on the inhabitants of other West European countries. But it is precisely when the real interests of the people are at stake that individuals are inclined to want to control the common management and to participate in such management. To sum up, the very existence of the Communities and their operation will finally overflow onto the political level.

Thus, in other words, the Communities are only a phase in the acceleration of the federative movement in Europe. To quote again the example of the Zollverein given by M. Finnis, the acceleration of economic integration in Europe will inevitably end in the political integration of the latter. This is a conclusion to which the Intellectual Property Unions should finally become accustomed if only in order to define their position with regard to the future European Federation and the forms of cooperation which will necessarily have to be determined between the responsible bodies of the Unions and the intellectual property services of that Federation.

G. R. W.

