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General Index

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GENERAL INDEX

1962

FIRST VOLUME

Index of Articles

Book Review Pages

New studies . . . 86. 107. 139, 160. 207, 232, 256, 276

Congresses and Meetings

International Vine and Wine Office (OIV) (41st Plenary Session of the Committee, Paris, 11th to 16th September, 1961) 31

International Association for the Protection of Industrial Property (IAPIP). Executive Committee (Ottawa, 25th to 29th September. 1961) 31

International Chamber of Commerce (ICC). Commission on the International Protection of Industrial Property (Paris, 23rd-24th November, 1961) . . . 38

Second meeting of the Committee of Experts on the International Protection of Type Faces (Geneva, 26th February to 2nd March, 1962) 80

International Typographic Association. Resolution adopted at Verona, 22nd May, 1962 160

Committee of Experts on Patents of the Council of Europe (Meeting of July, 1962) 183

Third Meeting of the Committee of Experts on the International Protection of Type Faces (Geneva, 19th to 23rd November, 1962) 297

Correspondence

Letter from Venezuela (Dr. Boris Bunimov Parra) . 54

Letter from South Africa (V. G. Chowles) 102

Letter from Belgium (Antoine Braun) 150

Letter from Argentina (B. Salomon) 179

Letter from Great Britain (Frederick Honig) . . . 194

Letter from the Federal Republic of Germany (Dr. F.-K. Beier) 215

Letter from France (Paul Mathély) 271

Official Documents Pages

INTERNATIONAL UNION

Union for the Protection of Industrial Property. State of the Union on 4th January, 1962 . . . 2

Convention of Paris. Arrangement of Madrid (Indications of Source). Lisbon Texts. Reservations by Czechoslovakia and Roumania to Ratification by the German Federal Republic 4

Arrangement of Nice (International Classification). Ratifications by Denmark and German Federal Republic 5

Official communication from the Spanish Administration regarding former colonies 66

Note from the Swiss Federal Council (Political Department) concerning the application of *(a)* the Arrangement of Madrid (Trade Marks), Nice text, and *(b)* the Arrangement of Nice (Classification) to all the Territories of the French Republic (29th March, 1962) 90

Note from the Swiss Federal Council (Political Department) relating to the adhesion of Iceland to the Convention of Paris for the Protection of Industrial Property (London text) (5th April, 1962) 90

Vacancy in the post of Director of the United International Bureaux 110

Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply of 15th June, 1957. Adhesion of Belgium (6th June, 1962) 110

Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models, as revised at London on 2nd June, 1934. Signature by Belgium, Morocco and Spain (Belgium, 9th March, 1962; Morocco, 30th March, 1962; Spain, 30th March, 1962) 110

Pages

Agreement between the International Bureau for the Protection of Industrial Property and the International Olive Oil Council 111

Permanent Bureau of the Consultative Committee of the Paris Union for the Protection of Industrial Property (Meeting in Geneva, 29th and 30th March, 1962) 112

Note from the Swiss Federal Council (Political Department) concerning the ratification by Belgium of the Arrangement of Madrid (Trade Marks) of 14th April, 1891, as last revised at Nice on 15th June, 1957 (of 7th June, 1962) 142

Note from the Swiss Federal Council (Political Department) concerning the adhesion of Hungary to the London texts of the Convention of Paris, the Arrangement of Madrid (False Indications of Source) and the Arrangement of Madrid (Trade Marks) (14th June, 1962) 142

First Meeting of the Committee of Experts of the Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply (Geneva, 7th to 11th May, 1962) 142

Meeting of the Working Group of the Permanent Bureau of the Paris Union (12th to 14th June, 1962) 143

Ratification by France of the Additional Act to the Arrangement of The Hague (of 25th May, 1962) 162

Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply, of 15th June, 1957. Adhesion of the Netherlands and Switzerland (20th July, 1962) 186

Arrangement of Madrid for the International Registration of Trade Marks (Nice Text of 1957). Ratification by the Netherlands and Switzerland (11th May and 2nd October, 1962) 210

Entry into force of the Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models on 1st December, 1962. Ratification by the Federal Republic of Germany (25th October, 1962) 234

Joint Meeting of the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union (Geneva, 15th to 19th October, 1962) 234

Additional Act, signed at Monaco on 18th November, 1961, to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models of 6th November, 1925, revised at London on 2nd June, 1934. Ratification by Switzerland (7th November, 1962) 258

United International Bureaux for the Protection of Industrial, Literary and Artistic Property. Change in the Post of Director 278

CONVENTIONS AND TREATIES

International Conference for the Protection of New Plant Products (Paris, 1961) 5

Ratification by France of the European Convention relating to the Formalities required for Patent Applications (18th January, 1962) 42

Pages

Accord between the Government of the French Republic and the Government of the Federal Republic of Germany for the Mutual Safeguarding of the Secrecy of Inventions and Technical Information relevant to Defence (of 28th September, 1961) 91

Convention of Paris for the Protection of New Varieties of Plants. Amendments suggested by the British Government to the English Text of the Convention of Paris for the Protection of New Varieties of Plants 258

Convention of Paris for the Protection of New Varieties of Plants. Signature by Denmark, Great Britain and Switzerland (Denmark and Great Britain, 26th November, 1962; Switzerland, 30th November, 1962) 278

LEGISLATION

A. Countries of the Union

Australia 112, 144, 162, 186

France 119

Indonesia 210

Ireland 237

Israel 238

Italy 66, 96, 119, 169

Poland 278

Sweden 42, 48, 49

Syria 71

Yugoslavia 96, 120

B. Non-Unionist Countries

Kuwait 259

Libya 66

General Studies

The International Union for the Protection of Industrial Property in 1961 (Roland Walther) . . . 14

Committee of National Institutes of Patent Agents (CNIPA). First Report on the Institution of Federal Patents 18

Common Market Patent and Trade Mark Treaties. Open or closed? (Stephen P. Ladas) 23

Harmonization of Patent Legislations (A. Colas) . . 25

Some Comments on "International Immunities" by C. W. Jenks (G. R. Wipf) 50

The Concept of Competition in European Law (Dr. Alois Troller) 73

The EEC (Common Market) Patent and the National Treatment Principle (Gabriel Frayne) 126

Committee of National Institutes of Patent Agents (CNIPA). Sub-Committee on Patent Integration. Second Report on the Institution of Federal Patents 130

Structural Evolution of the International Unions for the Protection of Intellectual Property (Professor Jacques Secretan) 170

Pages

Antitrust Law in the Common Market with special reference to Industrial Property Agreements (Stephen P. Ladas) 238

Contemporary Problems of the Rights of the Authors of Scientific Discoveries (Stojan Pretnar) . . . 264, 286

Jurisprudence

Greece 49

Obituary

Pietro Barbieri 87

Eugen Blum 108

Herbert Kühnemann 297

Pages

News Items

Switzerland. Appointment of new Director of the Swiss Federal Bureau of Intellectual Property . . 63

Statistics

General statistics of industrial property for the year 1961 298

Corrigenda

Swedish Law amending Section 8 (3) of the Patents Act of 16th May, 1884 (No. 132, of 19th May, 1961) 88

Table of Jurisprudence

A. Plan

I. Patents

1. *Basis of rights.*

   (a) Persons entitled to apply for a patent. employees' inventions, moral rights.

   (b) Patentable and non-patentable inventions (novelty, technical progress, inventive step, chemical, pharmaceutical, horticultural products, etc.).

2. *Acquisition of rights.*

   (a) Formalities, examination, amendments in the course of the procedure of grant, communication of files, etc.

   (b) Fees for application: legal representatives.

   (c) Protection at exhibitions.

3. *Scope and maintenance of rights.*

   (a) Interpretation of patents.

   (b) Obligation to work.

   (c) Annual fees.

   (d) Extension.

   (e) Restoration.

   (f) Personal ownership rights.

4. *Change of ownership.*

   (a) Transfer.

   (b) Licences.

5. *Termination of rights.*

   Cancellation, expiry, etc.

6. *Civil and penal sanctions.*

   Infringement, procedure, power to sue, confiscation, seizure, etc.

7. *International law in patent matters.*

   (a) International common law. Independence of patents. etc.

   (b) International law under Conventions. Assimilation to nationals, right of priority, multiple priorities.

   (c) Bilateral treaties.

   (d) Special war measures.

8. *Commercial or industrial secrets.*

II. Utility Models

III. Industrial Designs and Models

IV. Trade Marks

1. *Acquisition of rights.*

   (a) Acquisition by use (unregistered marks).

   (b) Acquisition by deposit and registration (formalities, etc.):

   Individual marks.
   Collective marks.

   (c) Agents' marks; licences to use.

2. *Symbols which may or may not be used as marks.*

   (a) Constitutive elements (lay-out, packaging, bottles, shapes of containers, shapes of products, colours, letters, figures, etc.).

   (b) Generic or qualitative descriptions.

   (c) Family and geographical names.

   (d) Emblems.

   (e) Free marks (Freizeichen).

   (f) Translations (of marks registered or in use).

2 A. *Goods for which a mark may or may not be registered.*

2 B. *Well-known marks.*

3. *Scope and maintenance of rights.*

   Effects of registration. Obligation to exploit. Renewal.

4. *Change of ownership.*

5. *Termination of rights.*

   (a) Conflicting marks, other than those classified under 2 B above.

   (b) Non-use or usucaption.

   (c) Renunciation and sufferance.

6. *Civil and penal sanctions.*

   Infringement, procedure, power to sue, confiscation, seizure, etc.

7. *International law in trade mark matters.*

   (a) International common law. Independence of marks, etc.

   (b) International law under Conventions. Union Convention of Paris (assimilation to nationals, right of priority, "telle quelle" protection). Arrangement of Madrid for the International Registration of Trade Marks.

   (c) Bilateral treaties.

   (d) Special war measures.

8. *Protection of presentation (Ausstattungsschutz).*

V. Commercial or Trade Name

VI. Indications of Source

VII. Unfair Competition

VIII. Legislation against monopolies

B. Decisions published in *Industrial Property* (1962) and classified according to the above plan

I. PATENTS

Pages

1. Basis of rights

(a) **Persons entitled to apply for a patent, employees' inventions, moral rights.**

Belgium. Employees' invention. An employee who has taken out a patent in his own name although acting on behalf of his employer, and who subsequently becomes the subject of reclamatory and subrogation proceedings, cannot, in the process of defence, raise the question of nullity of the patent which he has taken out, since action for reclamation and subrogation is completely independent of the validity of the patent (Brussels, Tribunal of First Instance, 1960) 158

France. Employees' inventions. In the absence of contract providing otherwise, inventions made by a paid worker, in the course of his work, and with the resources of the business, are the property of the employer (Paris, Paris Court, 1959) 272

Employees' inventions. The fact that an employer has included, in a patent taken out by him, the name of the inventor, who is a paid employee, does not confer upon the latter a property right in the invention. Nevertheless, such mention is not without legal consequences: certain collective conventions on labour matters require the employer to make payment in respect of inventions made during employment (Paris, Paris Court, 1960) 272

The treatment of inventions produced by paid employees during the course of their employment is not governed by law, but by jurisprudence. The clause in an employment contract granting the employer the ownership of inventions made by a paid employee is lawful, provided it is limited to the nature of the research envisaged and as to duration (Paris, Paris Court, 1960) 272

The fact of having produced the patented object prior to the application for the patent, but only in the form of a prototype not made available to the public, does not constitute anticipation, but confers on the manufacturer a right of personal possession in respect of the invention, invocable in an action for infringement (Lyon, Lyon Court, 1960) 273

(b) **Patentable and non-patentable inventions (novelty, technical progress, inventive step, chemical, pharmaceutical, horticultural products, etc.).**

Belgium. Natural phenomena are not patentable in themselves. It is otherwise in the case of their application, as also in the case of the utilisation of the qualities of certain products (translucent material to produce illumination) (Brussels, Tribunal of First Instance, 1960) 157

The carrying of means known in one industry into another cannot give rise to a new patent unless such means do not fulfil the same functions and do not produce the same effects as in the first industry (Brussels, Court of Appeal, 1960) . . 157

Patentability of the technical characteristics of brushes made of plastic material, of which the Court had recognised the originality of the ornamental aspect and the protection under the law relating to industrial designs or models (Brussels, Court of Appeal, 1960) 157

The substitution of a plastic material for glass cannot form the subject of a patent unless it has the effect of producing a new industrial result which, in this instance, was not the case (Brussels, Court of Appeal, 1959) 158

France. Validity of a patent which described a process for obtaining a pharmaceutical compound, Phenylbutazone. Within the terms of the law, the special patents for medicaments not having been instituted at that date, the product, although new, was not patentable as a pharmaceutical compound, but the process for producing it was capable of being patented (Paris, Paris Court, 1960) 271

The Court declared patentable a filing-cabinet composed of a framework of sloping shelves, and folders made from cardboard sheets, folded double (Paris, Paris Court, 1960) 271

The changing of matter is considered patentable when utilisation of the new matter produces unexpected results, which are not those which result solely from the actual nature of the matter, or when the new matter combines with other elements to produce an industrial result. On the other hand, when the use of the new matter does not produce results other than those inherent in the actual nature of the matter, there is no new patentable application (Paris, Paris Court, 1961) 271

Nullity of a patent through lack of novelty, in the face of multiple anticipations. Simplification of an apparatus which is in the public domain can constitute a patentable invention, when such simplification leads either to a new product or to a different industrial result (Paris, Paris Court, 1960) 272

Germany (Fed. Rep.). In order to determine whether printed matter is of a public character, it is not necessary to establish whether the document has been communicated to the public in general, but simply whether a given circle of persons was in a position to take account of it. The circle in question may have its natural limit in the number of establishments interested in the invention at issue. Thus it would suffice if the document were accessible to this circle (Karlsruhe, Federal Tribunal, 1960) 221

Patentability of a process for injecting an enzyme solution into the vascular system of living animals. Constitutes a "manner of manufacture" (London, Queens Bench Division, Divisional Court, 1962) 195

2. Acquisition of rights

(a) **Formalities, examination, amendments in the course of the procedure of grant, communication of files, etc.**

France. An invention cannot be considered as disclosed when there is nothing to establish with certainty that apparatus corresponding to that

Pages

covered by the patent could have been the subject of a communication by way of catalogue or of a public placing on sale, and when only two letters were produced, addressed to a third party, and which could only be regarded as confidential communications (Paris, Paris Court, 1959) . . 272

Germany (Fed. Rep.). Unionist priority. The British applicant cannot claim unionist priority protecting him against intervening publications subsequent to the prior application, except in respect of the features of the invention disclosed in the provisional specification (Karlsruhe. Federal Court. 1959) 222

Great Britain. Opposition on the ground that the application submitted by virtue of the Paris Convention was not made within the prescribed period calculated from the date of the first foreign application. Meaning of term " first application " when such an application is post-dated. The relevant date is the date accorded to the application in the Convention country (London. Assistant Comptroller. 1960) 196

Practice of Appeal Tribunal. in the matter of opposition procedure. The examiner must evaluate the inventive ingenuity realised in the process or method (and claimed by the applicant) in relation to what, according to relevant evidence, has been published or utilised before the date of the application and, further, he must himself evaluate the inventive ingenuity of the applicant (London, Patents Appeal Tribunal, 1961) 196

Practice. New proofs of prior use furnished on the occasion of appeal before the Patents Appeal Tribunal. The Appeal Tribunal may, in certain circumstances, authorise an opponent to invoke, on appeal, a different kind of prior use (London. Patents Appeal Tribunal, 1961) 196

Opposition to the grant of a patent. Opposition on the ground of prior use. Opposition based on the ground of prior use cannot be successfully founded on the fact that the goods have been manufactured in the United Kingdom and sold " F. O. B. London Airport " with a view to export to a foreign country (London. Superintending Examiner. 1961) 196

3. Scope and maintenance of rights

(a) **Interpretation of patents.**

France. In French law, the patented invention is defined by the full description, completed by the drawings, the summary only having an indicative value (Paris. Paris Court, 1959) 272

Germany (Fed. Rep.). Indirect infringement of a patent. The exclusive right conferred by the patent and recognised by the law protects the owner, even against indirect infringement (Karlsruhe, Federal Court. 1960) 222

(d) **Extension.**

Great Britain. Extension of the term of patent. Extension on the ground of insufficient remuneration. Relevance of remuneration acquired abroad (London. Chancery Division, 1961) 196

4. Change of ownership

Pages

(b) **Licences.**

France. Licence contract. When a term is not stipulated, the patentee is within his rights in terminating the licence contract at any time. However, it is often admitted that a licence contract is concluded, without any stipulation on this point, for the duration of the patent (Paris, Paris Court, 1959) 272

Licence contract. In the absence of a stipulation to the contrary in the licence contract, the licensee is not required to pay the renewal fees on the patent (Paris, Supreme Court of Appeal, 1960) 272

Great Britain. Grant of a compulsory licence when the earlier demand for the products is only met by importation (London. Assistant Comptroller, 1960) 197

Continuation of the obligation to pay royalties after the expiration of certain patents which were the subject of licences (London. Chancery Division, 1961) 197

Compulsory licence. Meaning of the expression " refusal to grant licences under reasonable conditions " (London. Assistant Comptroller, 1961) . 197

5. Termination of rights

Cancellation, expiry, etc.

Belgium. Cancellation of a patent. A patent is null when the process it describes is so broad in character that it covers what was already known, and only specifies by way of example certain products and certain quantities, themselves equally known elsewhere (Brussels, Court of Appeal, 1960) . . 157

Cancellation of a patent. The patent was cancelled because the application was drafted in an obscure manner to the extent that it was not clear, after careful reading, whether the patent was in respect of a product, as suggested by the title and confirmed by the summary, or whether it was in respect of a process, as suggested as from the opening part of the description (Brussels, Court of Appeal, 1960) 157

Great Britain. Form of order after the expiration of patents forming the subject of dispute (London, Chancery Division, 1961) 197

6. Civil and penal sanctions

Infringement, procedure, power to sue, confiscation, seizure, etc.

Belgium. Contracts of exclusive character. Third parties are required to abstain from importing and selling products when they know that a person trading in them has obtained from a co-contractor the monopoly of importation and sale. Agreement not invocable against third parties, but it has the effect of binding them in all circumstances and, in effect, of limiting their freedom of trade with any other person (Brussels, Supreme Court of Appeal, 1960) 159

France. The furnishing of supplies for means which are in the public domain, with a view to a new application of such means, which is covered by a

Pages

patent, does not constitute infringement of the patent (decision contested by scientific interests) (Paris, Paris Court, 1961) 272

Germany (Fed. Rep.). Infringement of a patent by offer of supply abroad. By virtue of the principle of territoriality, a German patent can only be infringed by acts committed on German territory; now, in the event, the laying down and fitting out of the patented apparatus took place abroad, in countries where the apparatus was not patented; the defendant could thus not be convicted of infringement of the patent unless it was agreed that his offer, made in Germany, to deliver the machine constituted injury to the patent of the other party. This was admitted by the Court. In these proceedings, the Court saw a placing on sale within the meaning of Section 6 of the law of patents, this provision not necessarily requiring that the object placed on sale should be entirely completed within the territory to which the law applies. The offer of delivery abroad of a machine lawfully constructed within a country can equally constitute placing on sale within the scope of the law if, at the same time, it is proposed to transfer the machine abroad in order to make it comparable with a patented machine (Karlsruhe, Federal Court, 1960) 222

7. International law in patent matters

(b) **International law under Conventions. Assimilation to nationals, right of priority, multiple priorities.**

Belgium. Problem raised by importation upon national territory of products manufactured abroad, following a process similar to that forming the subject of a Belgian patent (question raised by new Article 5quater of the Union Convention, Lisbon text) "Phenylbutazone" case (Brussels, Tribunal of First Instance, 1959) 157

Germany (Fed. Rep.). Unionist priority. The British applicant cannot claim unionist priority protecting him against intervening publications subsequent to the prior application, except in respect of the features of the invention disclosed in the provisional specification (Karlsruhe, Federal Court, 1959) 222

(d) **Special war measures.**

Great Britain. Inventions made in Germany between 1938 and 1945 and inventions similar to such inventions, but made elsewhere. The Court emphasised that if, in actual fact, the invention had been identical with the German invention, it would have been necessary to revoke the patent, notwithstanding the fact that this invention had been produced in a completely independent manner and without any earlier knowledge of the German invention (London, Court of Appeal, 1961) 195

III. INDUSTRIAL DESIGNS AND MODELS

Belgium. The accumulation of the protection assured to a technical invention and the protection of an object as regards its ornamental characteristics is provided for. Hence, even if a model of a brush has technical features, the form given it by its creator can be the subject of protection by virtue of the law of copyright (Brussels, Court of Appeal, 1960) 156

France. The characteristics of the model in question bear no response to any seeking of aesthetic or ornamental order, but to concern to adapt the object very exactly to the industrial result desired (Paris, Paris Court, 1960) 273

It was right to dismiss the action for the infringement of a model, deposited in France, but created by a third party abroad, since the plaintiff could not establish himself as having derived title from the creator and thus had not qualified to make the deposit in his own name (Paris, Supreme Court of Appeal, 1959) 273

Date of publicity. It would appear in accordance with the letter and the spirit of the law to consider a model as having been made public, not from the opening of the deposit, but from the making available to the public of reproductions of the object deposited (see divergent opinion of the Paris Court and of the Tribunal of Perpignan) (Perpignan, Tribunal of Perpignan, 1960) . . . 273

Great Britain. Infringements. Evaluation of damages sustained (London, Chancery Division, 1961) . . 198

Pertinent date of an earlier design when absence of novelty of a later design is alleged (London, Patents Appeal Tribunal, 1961) 198

IV. TRADE MARKS

1. Acquisition of rights

(a) **Acquisition by use (unregistered marks).**

France. Ownership of a mark is acquired either by deposit, or by use. Use can be effected on behalf of a third party. The use which gives rise to the right only consists in the utilisation of the mark in relation to the public (Paris, Paris Court, 1959) 274

(b) **Acquisition by deposit and registration (formalities, etc.).**

Individual marks

Argentina. The acquisition as well as the maintenance of the right to the mark depend, in principle, solely on the registration and not upon the use of the mark. In principle, there is no objection to defensive marks (Buenos Aires, Court of Appeal, 1960) 179

Procedure taken before the Patent Office and before the judicial authority constitutes a sole procedure, of which the extent is fixed, on the one part, by the application for registration, and on the other part, by the act of opposition. The opponent who has failed to establish a right has other opportunities to make good this omission. He can institute an action for cancellation, once the mark in dispute has been registered (Buenos Aires, Court of Appeal, 1960) 180

The right to registration belongs to the first applicant (Art. 22) and, in principle, the employment of the mark is without importance (Art. 7). Advantage is often taken of these legal provisions

to register, in Argentina, marks which are known abroad, and to forbid their use to the true owner when he wishes to release his products on the Argentine market (Case of "La Vache qui rit") (Buenos Aires, Court of Appeal, 1961) 180

Belgium. Notice of establishment, as contained in Article 6 of the Belgian trade mark law and Article 6 of the Convention of Paris. It is no longer necessary to have a genuine industrial establishment, as authors have hitherto contended, but it is sufficient to ensure manufacture by a third party of products bearing your mark and subsequently causing them to be sold under this distinctive sign (Brussels, Court of Appeal, 1959) 153

The Unionist may claim either national treatment, which is guaranteed to him by Article 2 of the Convention of the Paris Union without him being obliged to establish the existence of protection of his mark in the country of origin, or, if the mark is registered in the country of origin, the international treatment provided for by Article 6 (Liege, Tribunal of Commerce, 1959) 154

Germany (Fed. Rep.). The Court has declared the making of modifications to the form of the mark after its deposit to be inadmissible, even if the said modifications were requested before the publication of the mark (Munich, Chamber of Appeal, 1958) 223

Great Britain. Entries which can be authorised in the Register. The applicants were not entitled to an entry stipulating that "this registration is subject to the terms of an agreement dated the ... made between ... and ..." (London, Chancery Division, 1961) 199

2. Symbols which may or may not be used as marks

(a) **Constitutive elements (lay-out, packaging, bottles, shapes of containers, shapes of products, colours, letters, figures, etc.).**

Argentina. The protection of a slogan as a mark is now possible (Buenos Aires, Court of Appeal, 1961) 182

Belgium. An original shape of a bottle can constitute a mark but it is, however, necessary, in order to establish infringement, to be confronted by a slavish imitation, by reason of the abundance of different flasks which already exist, especially in the field of perfumes and liqueurs (Liege, Court of Appeal, 1959) 155

France. Mark? The flask was of standard shape, but a flask of such a shape had never been utilised to contain a product of this kind. The Court decided that the nullity of the mark had rightly been pronounced, on the ground that the flask was of a shape which was entirely common and usual as a "standard model" and that this shape could not fix the attention of the purchaser (Paris, Supreme Court of Appeal, 1960) . . . 273

The following marks have been declared deprived of validity:

— "Couque Royale" to designate gingerbread (Paris, Supreme Court of Appeal, 1958) 274

— A mark consisting of a package made of synthetic resin, having the form and aspect of a lemon, to designate lemon-juice (Paris, Paris Court, 1958) 274

— "Microminiature" to designate toy motor cars of much reduced size (Lyon, Lyon Court, 1960) 274

— "Mousse" to describe articles of rubber (Paris, Paris Court, 1961) 274

The following marks have been declared valid:

— "Club" to designate port wine (Paris, Paris Court, 1959) 274

— "Reblochonette" to designate cheese (Paris, Tribunal of the Seine, 1960) 274

— "Miel-Epil" to designate depilatory products (Paris, Paris Court, 1957) 274

— "Baby-Soupe" to designate soups (Paris, Tribunal of the Seine, 1960) 274

Germany (Fed. Rep.) Notion of mark. The mark deposited consisted in the representation of grains of seed dyed blue. The description specified that a small quantity of these coloured grains should be added to each lot sold. The *Patentamt* has ruled that, if a sign has a possible distinguishing function, that does not necessarily mean that it is qualified as a mark within the legal meaning of the term (Munich, Chamber of Appeal, 1958) 223

Signs formed by letters. If a letter departs so far from its standard form that it can no longer serve as a letter for printing purposes, it does not necessarily fall into the public domain (Munich, Chamber of Appeal, 1958) 223

Great Britain. Mark with white spaces. Conditions governing registration (London, Board of Trade, 1961) 199

(b) **Generic or qualitative descriptions.**

Belgium. "Bébé-slip" and "Baby-slip" are not protectable as marks. Generic denominations (Brussels, Tribunal of Commerce, 1960) 155

Germany (Fed. Rep.). It is not proper, when dealing with goods in which there is extensive export, for a word which, in one country, serves exclusively to describe such goods ("Instant" for powdered extracts used for the preparation of drinks such as coffee, coffee substitutes, tea) to be monopolised by a single manufacturer or trader in a country to which the goods are exported or intended to be exported (Munich, Chamber of Appeal, 1957) 224

Great Britain. Registration of the word "Tubegauz" for bandages, materials to be utilised for this purpose and devices for applying bandages has been refused on the ground that this word was, in itself, descriptive of the goods (London, Board of Trade, 1961) 198

(c) **Family and geographical names.**

Belgium. The trading name of a company, like the family name of an individual person, can only serve as a trade mark if it is claimed in a fancy form, so that it can be clearly distinguished from homonyms which may come to light in the market (Brussels, Tribunal of Commerce, 1961) . . . 155

France. Protection of a family name. A company cannot include in its trading style the family name of one of its partners, in the presence of a pre-established homonym, unless it has proper reasons for doing so (Douai, Douai Court, 1960) 275

Pages

Germany (Fed. Rep.). If the mark contains a geographical designation unassociated with the depositor or his goods, it risks being a source of confusion not only when, in general opinion, the place designated enjoys special reputation, but even when mention of the locality or the region in question risks giving rise in the mind of interested parties to incorrect ideas as to the origin of the goods. Such designations should not be admitted to registration ("Schwarzwald" judgment) (Munich, Chamber of Appeal, 1956) . . 224

The word "Ascot" appearing in a mark for overcoats could be interpreted by purchasers as indicating articles made with English cloth. If, in fact, this is not the case, the purchaser could be misled as to the true origin, the more so since English cloth is actually much esteemed by the German public (Munich, Chamber of Appeal, 1957) 224

"Tosca" as a mark for perfume and as a designation of womens' clothing in a prospectus. If the mark of another person is utilised in similar publications, such use should, in case of doubt, be taken for use by way of trade mark (Karlsruhe, Federal Court, 1960) 225

Great Britain. Use in good faith of one's own family name ("Knoll International" and "Parker-Knoll Ltd.") manufacturers of chairs (London, Court of Appeal, 1961) 200

(d) **Emblems.**

Belgium. A trader or a manufacturer has no claim to appropriate to himself the national symbols of his country. If, however, each Scotsman has the right to assemble in his mark the symbols of his country, he could not prohibit other producers of the same origin from using this psychological means of publicity, provided the presentation of these symbols was such that it excluded all risk of confusion (Brussels, Court of Appeal, 1960) . . 155

France. It has been held that a mark consisting of a Maltese Cross to designate bleaching water, was imitated by another mark consisting of a Cross of Savoy (Paris, Supreme Court of Appeal, 1959) 274

(e) **Free marks (Freizeichen).**

Germany (Fed. Rep.). Protection cannot be refused to a mark which is well presented (the picture of a tea-pot serving as a mark [protection of the subject]) particularly well-known to the public, and thus possessing an unusual distinctive character (Karlsruhe, Federal Court, 1959) . . . 225

2 A. Goods for which a mark may or may not be registered

France. The mark is special; that is to say that it only forms the object of approval as regards goods specified in the act of deposit or as regards similar goods. It has been decided that almond wafers and chocolate should be considered to be similar products (Paris, Paris Court, 1960) . . 275

A mark used to designate knitting machines has not been considered as an infringement of an identical mark deposited in respect of articles of lingerie (Paris, Paris Court, 1959) 275

2 B. Well-known marks

Pages

Germany (Fed. Rep.). Well-known mark. Well-known review "Quick" and weekly publication "Glück". No danger of confusion. On the other hand, the mark "Qnick" is a well-known mark. By reason of its unique and celebrated character, the well-known mark constitutes a valuable element in the exploitation of a business; it should, therefore, benefit from protection against any objectively illegal injury. Similar injury exists as from the time when the power of attraction of the mark becomes diminished by the use of identical or similar symbols. In case of unlawful injury, the injured party may avail himself of action for the discontinuance of the act and, if the usurper is at fault, for an action for damages (Karlsruhe, Federal Court, 1958) 226

Well-known mark. The mark "Jumeaux" *(Zwillingsmarke)* of the Heinkel organisation of Solingen, registered in respect of steel, cannot be used for toys (Karlsruhe, Federal Court. 1957) 227

Well-known mark? The mark "Technica" registered in respect of photographic apparatus is very well-known. Mark "Technica" in respect of machines intended for heavy constructional work? It is possible. When what is involved is a sign, originally somewhat weak and bordering upon a descriptive sign, such as "Technica", one must be particularly exacting before admitting that it has established itself in trade as a mark of high repute (Karlsruhe, Federal Court, 1957) . . . 227

Problem of the protection of the mark which is supplanted by a well-known mark. "Dr. Nadlers Erzeugnis mit dem feinen Whipp" in respect of food-stuffs, and the mark "Whipp" in respect of washing products, for which a large-scale publicity campaign had been organised, and which was registered before the mark of Dr. Nadler (Karlsruhe, Federal Court. 1957) 227

Well-known mark? Figurative mark, representing an anchor (for carpets). Other businesses often employ the same device for other categories of articles (Karlsruhe. Federal Court, 1958) . . . 227

3. Scope and maintenance of rights

Effects of registration. Obligation to exploit. Renewal.

Argentina. Renewal of a mark. The proprietor of a known mark cannot be punished by the loss of his rights if he fails to renew the registration within the prescribed period, being free to deposit the same mark afresh within a short period thereafter. The law in respect of marks has for its first object the prevention of unfair competition (Buenos Aires, Court of Appeal, 1961) . . 183

France. It is invariable that a compound mark should be protected, not only in its totality, but also in its separate elements, if they are capable of protection in themselves and separately distinctive. Thus a deposit, based upon a vignette and a name, protects both, and the proprietor is entitled to invoke the vignette only (Paris, Paris Court, 1959) 274

Substitution of a product. A trader had sold to a client, following oral request for a branded pro-

Pages

duct, a product which was not an article manufactured by the proprietor of the mark. The Court considered that such an action did not constitute the offence of fraudulent apposition of the mark, material application of the mark to the product or its packing not having been effected; but it decided that this act, nevertheless, constituted injury to the ownership of the mark protected by law. Confirmation of the theory that the proprietor of a mark benefits from general civil action as regards any usurpation, even if such usurpation does not assume the form of one of the offences of infringement defined by the law (Paris, Paris Court, 1960) 275

4. Change of ownership

Belgium. Assignment of a mark. When the law only authorises assignment of a mark together with the business, this latter term must not be understood in the sense of industrial equipment or premises; it must be understood in the sense that the mark cannot be assigned independently of the product which it characterises (Brussels, Court of Appeal, 1959) 154

Assignment of a mark. The extract from the act which constitutes the assignment, and which is to be the subject of an entry by the Registrar of the Tribunal of Commerce, does not need to be a literal extract: an analytical extract will serve equally well, provided it clearly informs third parties as to the original owner of the mark, his assignee, and the conditions of the assignment (Brussels, Court of Appeal, 1957) 155

5. Termination of rights

(a) **Conflicting marks, other than those classified under 2 B above.**

Argentina. Lorries had been openly sold under the mark "Skoda" and it was not clear how, without overstepping, they could be prevented from being distributed commercially for the simple reason that the mark "Tatra" (belonging to a Swiss national living in Argentina) still appeared on certain isolated parts which did not particularly strike the eye (Buenos Aires, Court of Appeal, 1961) 181

Belgium. The mark "Kori" used in respect of soluble chicory, is an infringement of the marks "Ricoré" and "Ricori" relating to a soluble mixture of coffee and chicory (Liege, Tribunal of Commerce, 1959) 154

The mark "Apis" is an infringement of the mark "Apiserum" deposited in respect of royal jelly. The tribunal rejected the argument of the defendant according to which he would have had the right to make use of the radical term "Apis" which was common in respect of the products of the bee since, in Latin, it is the name of the bee (Brussels, Tribunal of Commerce, 1961) . . . 156

The mark "Noradine" in respect of pharmaceutical products is not an infringement of "Noradec". The risk of confusion should be appreciated in view of the function of the public which the parties serve, namely, doctors and chemists (Brussels, Tribunal of Commerce, 1960) . . . 156

France. Danger of confusion between: Pages

— "Dictaphone" and "Dictone" (Paris, Paris Court, 1960) 275

— "Suralo" and "Sura" (Paris, Paris Court, 1959) 275

— "Baroclem" and "Clemro" (Paris, Paris Court, 1960) 275

— "Sulfoidol" and "Sulfiode" (Paris, Paris Court, 1959) 275

— "La Vache qui rit" and "La Vache sérieuse" (Paris, Paris Court, 1959) 275

The right of ownership is imprescriptible. For this reason the company who, since 1808, were owners of the mark "An Bon Marché" were able to prohibit use of this term by a person exploiting it in the Var and who, however, had made use of it since 1880 (Aix-en-Provence, Aix-en-Provence Court, 1960) 275

Germany (Fed. Rep.). Mark, accompanied by the inscriptions "Vorrasur" and "Nachrasur". The defendant used "Vorrasur" and "Feinrasur" on his razor blades. Risk of confusion (Karlsruhe, Federal Court, 1958) 225

Well-known mark. Well-known review "Quick" and weekly publication "Glück". No danger of confusion. On the other hand, the mark "Quick" is a well-known mark. By reason of its unique and celebrated character, the well-known mark constitutes a valuable element in the exploitation of a business; it should, therefore, benefit from protection against any objectively illegal injury. Similar injury exists as from the time when the power of attraction of the mark becomes diminished by the use of identical, or similar symbols. In case of unlawful injury, the injured party may avail himself of action for the discontinuance of the act and, if the usurper is at fault, for an action for damages (Karlsruhe, Federal Court, 1958) 226

By the simple act of transit of his merchandise bearing the mark "Pertussin" (protected in the Federal Republic and in the German Democratic Republic) across the territory of the Federal Republic by sending it from Potsdam to Hamburg, to the address of a forwarding agency with a view to its despatch to Ceylon, the defendant has not caused any injury to the German mark of the plaintiff, since he has not been guilty of "putting into circulation" on the territory of the Federal German Republic (Karlsruhe, Federal Court, 1957) 230

Great Britain. Marks "Velva-Glo" and "Vel-Glo". Danger of confusion (London, Chancery Division, 1961) 198

Marks "Mary Jane" and "Merry Jane"; "Plix" and "Palexa". Danger of confusion (London, Chancery Division, 1961) 199, 200

(b) **Non-use or usucaption.**

Germany (Fed. Rep.). The Court has confirmed that reserve marks *(Vorratszeichen)* deserve protection, in principle. However, when the owner of

Pages

a reserve mark allows many years to elapse without using his mark (in this instance, some 30 years) it is incumbent upon him to prove that he has a legitimate interest in its maintenance. The fact that the proprietor of the reserve mark has defended it before the *Patentamt* on each occasion when similar marks were deposited or registered does not continue to constitute proof of a legitimate interest (Karlsruhe, Federal Court, 1956) 227

Defensive marks. These marks should only be admitted to assure a supplementary protection to principal marks when the latter are young and in the course of development; and when they have not been normally launched in trade. The defensive mark should only be there to "assist in development". Once the principal mark has been normally introduced upon the market, the purpose of the defensive mark disappears (Karlsruhe, Federal Court, 1960) 228

Great Britain. Rectification of Register on ground of non-use. Onus of proof. The onus of proof of non-use devolves initially upon the applicant, but once the applicant for rectification has established that a *prima facie* case of non-use exists, the burden of proof passes to the defendant (London, Chancery Division, 1961) 199

6. Civil and penal sanctions

Infringement, procedure, power to sue, confiscation, seizure, etc.

Argentina. Provisional measures. Persons who claim to be victims of violation of their marks may ask the judge, as a provisional measure, to seize, "signs, capsules, containers and all other like objects whatever bearing their marks or forming an integral part of them". The provisional measure will then be ordered "on the responsibility of the person requesting it and subject to the furnishing of security in case the application should have been wrongly made" (Buenos Aires, Court of Appeal, 1960) 180

Belgium. Problem East-West. Nationalisation of a mark. It is a typical measure of the exercise of the sovereign power of the State, a power which it can only exercise on its own territory, under penalty of effecting an intolerable injury to the sovereignty of other States upon the territories of which there is property to which the legislating State would be claiming to extend its action (Brussels, Supreme Court of Appeal, 1960) . . 153

France. Evalnation of the indemnity due by the person usurping a mark (Paris, Tribunal of the Seine, 1958) 275

Greece. Mark deposited in bad faith. Cancellation. Notion of bad faith. Use as a mark of the name of another person. Interdiction. Assimilation of the trade name of legal entities to the name of physical persons. Applicability of this rule for the benefit of foreign companies not established in Greece ("Tricosa" case) (Athens, Trade Mark Tribunal of the Second Degree, 1961) 49

7. International law in trade mark matters

(b) **International Law under Conventions. Union Convention of Paris (assimilation to nationals, right of priority, "telle quelle" protection). Arrangement of Madrid for the International Registration of Trade Marks.**

Pages

Belgium. The Unionist may claim either national treatment, which is guaranteed him by Article 2 of the Convention of the Paris Union, without which he will be obliged to establish the existence of protection of his mark in the country of origin, or else, if the mark is registered in the country of origin, the international treatment provided by Article 6 (Liege, Tribunal of Commerce, 1959) 154

Notion of establishment, as contained in Article 6 of the Belgian trade mark law and Article 6 of the Convention of Paris. It is no longer necessary to have a genuine industrial establishment, as authors have hitherto contended, but it is sufficient to ensure manufacture by a third party of products bearing your mark and subsequently causing them to be sold under this distinctive sign (Brussels, Court of Appeal, 1959) 154

Germany (Fed. Rep.). When there is a question affecting international marks used abroad, it is necessary to observe the principle that they should enjoy in Germany a full and complete protection, unless, on the German market, extensive use has been made of similar marks, with which they conflict (Rossi/Rosso) (Karlsruhe, Federal Court, 1961) 228

The German mark "Haller Schokolade" deposited in 1921, and the Austrian mark "Heller" in respect of chocolate, deposited internationally in 1912. Adhesion of Germany to the Madrid Arrangement in 1922. Effect of the international deposit of the Austrian mark in the Federal Republic of Germany. Interpretation of the Madrid Arrangement on marks (Berlin, *Landgericht*, 1956) 231

Controversial question as to whether marks deposited with the International Bureau through the intermediary of the Patent and Trade Mark Office of the German Democratic Republic should be recognised in the Federal Republic. The Court has refused to recognise these marks (Karlsruhe, Federal Court, 1959) 231

(d) **Special war measures.**

Belgium. Sequestration of the German mark "Bayer". The Sequestration Office was alleged to have put on sale "Bayer Cross" powders, although the German firm had never manufactured such products under this mark. The Tribunal admitted the complaint and decided that the Sequestration Office had done wrong in making use of the mark "Bayer" for a product which did not come within the field characterised by the mark "Bayer" at the time when the patrimony of the establishment was placed under sequestration (Brussels, Tribunal of First Instance, 1961) 153

Sequestration of German marks. The Sequestration Office was further condemned, under the heading of unlawful competition, for having utilised

Pages

publicity procedure and free distribution of medicaments in public by way of vouchers which could be exchanged in stores, a practice which the Tribunal declared to be contrary not only to public duty, but also to honest commercial practice (Brussels, Tribunal of First Instance, 1961) 153

V. COMMERCIAL OR TRADE NAME

Argentina. Actions for the modification of trade names liable to create confusion with older trade names or marks are time-barred after one year, and this period can only be interrupted by the institution of legal proceedings (Buenos Aires, Court of Appeal, 1961) 181

Assignment of a trade names. The rights in respect of a trade name cannot be assigned from one owner to another, since these rights are acquired by use and not by the fact of registration (Buenos Aires, Court of Appeal, 1960) 182

Danger of confusion between the trade names "Telesur" and "Telesud" (Buenos Aires, Court of Appeal, 1960) 182

Belgium. The trading name of a company, like the surname of an individual person, can only serve as a mark if claimed in a fancy form, so that it can be clearly distinguished from any homonyms which may arise in the market (Brussels, Tribunal of Commerce, 1961) 155

France. Protection of family names. A company cannot include in its trading name the family name of one of its partners, in the presence of a pre-established homonym, unless it has proper reasons for doing so (Douai, Donai Court, 1960) 275, 276

Greece. Mark deposited in bad faith. Cancellation. Notion of bad faith. Use as a mark of the name of another person. Interdiction. Assimilation of the trade name of legal entities to the name of physical persons. Applicability of this rule for the benefit of foreign companies not established in Greece ("Tricosa" case) (Athens, Tribunal of marks of the Second Degree, 1961) 49

VI. INDICATIONS OF SOURCE

Great Britain. Commercial fraud (passing-off). Use of a geographical name on merchandise. Only persons who produce sand at Brereton are entitled to call their sand "Brereton Sand" (London, Chancery Division, 1960) 201

VII. UNFAIR COMPETITION

Belgium. Sequestration of the German marks. The Sequestration Office was further condemned under the heading of illegal competition, for having made use of publicity procedure and free distribution of medicaments in public by way of vouchers which could be exchanged in stores, a procedure which the Court declared to be contrary, not only to their public duty, but also to honest commercial practice (Brussels Court of First Instance, 1961) 153

Pages

It constitutes an act of unfair competition to mark fabrics to the effect that they are treated in accordance with a patent bearing a given number, followed by the number of a licence, and thus give the impression of exclusivity in the process employed, whereas the patent had long expired and the process which it covered was in the public domain (Brussels, President of the Tribunal of Commerce, 1958) 158

France. Unfair competition. An employer who recruits the previous employee of a competitor, despite an agreement on non-competition (Paris, Paris Court, 1959) 276

Unfair competition. A trader who imported machines for re-sale, despite the existence of an exclusive concessionnaire in France (Paris, Paris Court, 1959) 276

Great Britain. Commercial fraud (passing-off). Name of a business, describing the nature of its commercial activity. The Court held that the expression "Taperecording centre" had a descriptive character and that, in the absence of proof establishing that the term had acquired distinctive character in relation to the business of the plaintiffs, they were not entitled to an interlocutory injunction (London, Chancery Division, 1960) . 200

Commercial fraud (passing-off). Procedure followed when certain defendants are outside the jurisdiction of the English Courts ("Harris Tweed" case) (London, Chancery Division, 1961) . . . 201

Commercial fraud (passing-off). Similar titles of trade journals. The Court refused to grant an interlocutory injunction to the publishers of the monthly trade journal "Rubber and Plastics Age" who complained of the publication, by the defendants, of a journal called "Rubber and Plastics Weekly" (London, Chancery Division, 1961) 201

Commercial fraud (passing-off). Use of similar bottles for the sale of drinks. "Coca-Cola" bottles (London, Chancery Division, 1961) 201

Greece. Mark deposited in bad faith. Cancellation. Notion of bad faith. Use as a mark of the name of another person. Interdiction. Assimilation of the trade name of legal entities to the name of physical persons. Applicability of this rule for the benefit of foreign companies not established in Greece ("Tricosa" case) (Athens, Tribunal of Marks of the Second Degree, 1961) 49

VIII. LEGISLATION AGAINST MONOPOLIES

Great Britain. The Court held that an agreement providing for minimum prices, discounts and rebates was contrary to the public interest (Restrictive Practices Court, 1961) 202

The Court considered an agreement prohibiting tenders, except at minimum rates, and alternatively probibiting tenders concerning certain categories of purchasers, except at minimum rates, to be contrary to public interest (London, Restrictive Practices Court, 1961) 203

Pages

Agreement concerning prices fixed with a view to assuring an economical use of transport (The Cement Makers' Federation Agreement) (London, Restrictive Practices Court, 1961) . . . 203

Plan for a minimum price for the sale of empty glasses, and condition exempting manufacturers from responsibility arising from damages caused by a defective product. Contrary to the public interest (London, Restrictive Practices Court, 1961) 204

Plan designed to prevent too many competitors in the retail newspaper trade. Contrary to public interest (London, Restrictive Practices Court, 1961) 205

Procedure for cancellation, from the Register, of restrictions having no important economic meaning (Restrictive Practices Court, 1960) 206

Pages

Form and manner of notification of an order prohibiting members of an association from performing acts contrary to the public interest (by "recorded delivery" and "registered post") (London, Restrictive Practices Court, 1961) 205

Power of the Restrictive Practices Court to prohibit parties from concluding agreements "having the same effect" as that of earlier agreements declared contrary to public interest (London, Restrictive Practices Court, 1961) 205

Power of the Restrictive Practices Court to deal with offences against them. The High Court has power to punish any person who intentionally publishes anything of a nature to prejudice the trial of a pending matter (London, Restrictive Practices Court, 1961) 206

Chronological Table of Decisions

	Pages
1912	
Paris, Supreme Court, 6th February	273
1924	
Brussels, Court of Appeal, 15th December	154
1929	
London, Chancery Division, 7th November	197
1932	
Brussels, Court of Appeal, 24th November	158
Brussels, Court of Appeal, 24th November	159
1935	
Brussels, Commercial Tribunal, 2nd July	155
1937	
Paris, Supreme Court, 14th August	273
1942	
London, Chancery Division, 25th March	198
1950	
Brussels, Commercial Tribunal, 18th January	155
Brussels, Court of Appeal, 18th December	156
1952	
Buenos Aires, Judge of First Instance, 29th August	181
1953	
Paris, Supreme Court, 14th March	154
Stuttgart, *Oberlandesgericht*, 19th August	226
1954	
Buenos Aires, Court of Appeal, 11th August	181
1955	
Brussels, Brussels Court, 10th August	153
1956	
Paris, Court of Paris, 19th May	272
Berlin, Land Court, 2nd June	231
Namur, Commercial Tribunal, 12th July	155
Karlsruhe, Federal Court, 2nd October	229
Munich, Appeal Board, 15th November	224
Karlsruhe, Federal Court, 11th December	228
Antwerp, Court of First Instance, 12th December	157
Karlsruhe, Federal Court, 21st December	228

	Pages
1957	
Karlsruhe, Federal Court, 15th January	230
Brussels, Court of Appeal, 6th March	155
Karlsruhe, Federal Court, 5th February	227
Munich, Appeal Board, 20th February	224
Paris, Court of Paris, 1st April	274
Munich, Appeal Board, 17th July	224
Karlsruhe, Federal Court, 25th October	227
Karlsruhe, Federal Court, 22nd November	227
Brussels, Commercial Tribunal, 23rd November	155
1958	
Karlsruhe, Federal Court, 14th February	227
Brussels, President of the Commercial Trib., 27th Febr.	158
Charleroi, Court of First Instance, 23rd May	157
Paris, Supreme Court, 24th June	274
Buenos Aires, Judge of First Instance, 30th June	182
Karlsruhe, Federal Court, 23rd September	225
Paris, Court of Paris, 15th October	274
Munich, Appeal Board, 18th November	223
Munich, Appeal Board, 6th November	223
Karlsruhe, Federal Court, 11th November	226
Paris, Court of the Seine, 9th December	275
1959	
Brussels, Brussels Court, 21st January	157
Brussels, Commercial Tribunal, 5th February	155
Paris, Court of Paris, 4th March	275
London, Superintending Examiner, 31st March	196
Karlsruhe, Federal Court, 21st April	225
Antwerp, Court of First Instance, 23rd May	157
Paris, Supreme Court, 3rd June	274
Ghent, Court of Appeal, 4th June	158
Paris, Supreme Court, 8th June	273
Brussels, Court of Appeal, 12th June	158
Paris, Court of Paris, 22nd June	275
Paris, Court of Paris, 26th June	276
Paris, Court of Paris, 29th June	276
Paris, Court of Paris, 30th June	275
Paris, Court of Paris, 6th July	272
Brussels, Court of Appeal, 24th September	154
Brussels, Court of Brussels, 24th September	155
Buenos Aires, Judge of First Instance, 24th September	183
Karlsruhe, Federal Court, 6th October	222
Liege, Commercial Tribunal, 12th October	154
Paris, Court of Paris, 26th October	274
Buenos Aires, Judge of First Instance, 30th October	180
Paris, Court of Paris, 3rd November	272
Paris, Court of Paris, 3rd November	275
Paris, Court of Paris, 10th November	272
Paris, Court of Paris, 10th November	274
Liege, Court of Appeal, 23rd November	155

Pages

Paris, Court of Paris, 24th November 274
Paris, Court of Paris, 7th December 275
Karlsruhe, Federal Court, 18th December 231
Paris, Court of Paris, 23rd December 272

1960

Perpignan, Commercial Tribunal, 5th January 273
Paris, Court of Paris, 14th January 271
Paris, Court of Paris, 21st January 272
Brussels, Court of Appeal, 22nd January 157
Paris, Court of Paris, 25th January 272
Paris, Court of Paris, 28th January 275
Paris, Court of the Seine, 1st February 274
Paris, Court of Paris, 6th February 275
Paris, Supreme Court, 10th February 273
Karlsruhe, Federal Court, 12th February 221
Paris, Court of Paris, 16th February 273
Paris, Court of the Seine, 17th February 274
Paris, Supreme Court, 22nd February 272
Brussels, Commercial Tribunal, 23rd February . . . 156
Brussels, Court of Appeal, 3rd March 157
Brussels, Court of First Instance, 15th March 158
Douai, Court of Douai, 15th March 276
Brussels, Court of Appeal, 16th March 157
Brussels, Court of Appeal, 25th March 156
Lyon, Court of Lyon, 28th March 274
Buenos Aires, Court of Appeal, 29th March 180
Karlsruhe, Federal Court, 29th March 222
Paris, Court of Paris, 30th March 273
Paris, Court of Paris, 2nd April 271
Paris, Court of Paris, 26th April 275
Paris, Court of Paris, 28th April 275
Brussels, Court of First Instance, 11th May 158
Buenos Aires, Judge of First Instance, 23rd May . . . 179
Lyon, Court of Lyon, 25th May 273
Brussels, Court of Appeal, 2nd June 153
Brussels, Commercial Tribunal, 8th June 155
Brussels, Court of Brussels, 17th June 156
Brussels, Court of Appeal, 17th June 159
Paris, Court of Paris, 22nd June 276
Bordeaux, Court of Bordeaux, 29th June 274
Bordeaux, Court of Bordeaux, 11th July 276
Buenos Aires, Court of Appeal, 19th August 183
London, Chancery Division, 19th August 200
Buenos Aires, Court of Appeal, 28th September . . . 182
London, Assistant-Comptroller, 29th September . . . 197
Paris, Court of Paris, 1st October 272
London, Assistant-Comptroller, 3rd October 196
Brussels, Court of Brussels, 14th October 159
Buenos Aires, Court of Appeal, 21st October 180
Karlsruhe, Federal Court, 8th November 222
London, Restrictive Practices Court, 10th November . . 206
Aix-en-Provence, Court of Aix-en-Provence, 22nd Nov. 275
Paris, Court of Paris, 28th November 273

Pages

London, Chancery Division, 2nd December 200
Lyon, Court of Lyon, 9th December 276
London, Chancery Division, 16th December 201
London, Chancery Division, 16th December 202
Karlsruhe, Federal Court, 19th December 225
Buenos Aires, Court of Appeal, 20th December . . . 180
Paris, Court of Paris, 21st December 274

1961

London, Patents Appeal Tribunal, 30th January . . . 198
London, Chancery Division, 1st February 201
Paris, Court of Paris, 7th February 276
Brussels, Commercial Tribunal, 8th February 156
Buenos Aires, Court of Appeal, 16th February 182
London, Chancery Division, 24th February 197
Buenos Aires, Court of Appeal, 28th February 180
London, Chancery Division, 3rd March 200
London, Restrictive Practices Court, 8th March . . . 205
Brussels, Court of First Instance, 14th March 153
London, Chancery Division, 15th March 196
London, Restrictive Practices Court, 16th March . . . 203
London, Chancery Division, 21st March 197
London, Restrictive Practices Court, 24th March . . . 203
London, Restrictive Practices Court, 24th March . . . 204
London, Chancery Division, 29th March 198
London, Chancery Division, 29th March 199
London, Court of Appeal, 13th April 200
Paris, Court of Paris, 18th April 272
Paris, Court of Paris, 20th April 274
Buenos Aires, Court of Appeal, 24th April 182
London, Assistant-Comptroller, 27th April 197
London, Chancery Division, 9th May 198
Paris, Court of Paris, 9th May 272
Buenos Aires, Court of Appeal, 10th May 181
London, Chancery Division, 12th May 201
London, Chancery Division, 16th May 199
London, Patents Appeal Tribunal, 19th May 196
Brussels, Commercial Tribunal, 30th May 155
London, Restrictive Practices Court, 22nd June . . . 202
Paris, Supreme Court, 13th July 276
London, Restrictive Practices Court, 27th July . . . 205
London, Court of Appeal, 28th July 196
Buenos Aires, Court of Appeal, 11th August 182
London, Chancery Division, 5th October 199
London, Patents Appeal Tribunal, 25th October . . . 196
Brussels, Supreme Court, 3rd November 159
London, Court of Appeal, 7th December 206
London, Restrictive Practices Court, 21st December . . 206

1962

London, Queen's Bench Division (Divisional Court), 8th February 195
Paris, Supreme Court, 11th July 276
London, House of Lords, 29th May 200

Index of parties

	Pages
Aga Heat Limited	199
Agreement between the Newspaper Proprietor's Association, Ltd. and The National Federation of Retail Newsagents, Booksellers and Stationers	205
Aktiebolaget B. A. Hjorth & Cie	181
Associated Transformer Manufacturer's Agreement, The	203
Barr & Co., Ltd., A. G. —	201
Bayer	153
Beacon Argentina S. R. L.	182
Beacon International Corporation de la Argentina	182
Beacon S. A.	182
Black Bolt and Nut Association of Great Britain's Agreement, The —	204, 205
Blyth & Platt Ltd.	183
British Bottle Association's Agreement, The —	204
Bristol Repetition, Ltd.	197
Bollinger J.	202
Bosch	255
Butterworth	206
Café Bonafide	182
Cannon Rubber Manufacturers, Ltd.	198
Casa Primus C. Longuet S. R. L.	181
Cement Maker's Federation's Agreement, The —	203
Coca-Cola Company	201
Coiffeur Supplie, Ltd.	200
Costa Brava Wine Co.	202
Cow & Co., P. B. —	198
Credit Management Co., Ltd.	200
Domec, Cia de Artefactos Domésticos S. R. L.	182
Donoghue	204
Dunlop Rubber Co., Ltd.	198
Du Pont de Nemours and Company's Patent	196
Establicimientos Anilinas Colibri	183
Fette	197
Fieldhouse Ltd., George —	201
Fomento (Sterling Area), Ltd.	197
Fromagerie Bel S. A.	180
Geus, de	241
Grundig	251
Haller	231
Harris Tweed	201
Heller, Gustav and Wilhelm —	231
Henkel (Solingen)	227
Hepworths Ltd.	201
Imperial Tobacco Company	207
Inchauspe & Cie	183
Ivaldi, Enrique —	180
Jacq Toohey & Co., Ltd. and Affleck & Brown Ltd.	199
Knoll International Limited	200
Koh-I-Noor, Fabrique de crayons L. & C. Hardtmuth, Entreprise nationale —	153
Koh-I-Noor, L. & C. Hardtmuth	153
Linoleum Manufacturer's Association's Agreement, The	202
Macaulay Tweeds Ltd., A. —	201
Maclaren & Sons Ltd.	201
Marre & Cie S. A.	180
Mary Jane Ltd.	199
Maschinenfabrik Augsburg-Nürnberg AG.	197
Masciorini & Cie S. A., E. —	179
Monsavon l'Oréal and Golden, Ltd.	200
Moulinage et Retorderie de Chavanoz	196
Nóbrega, José — and Baccri, Carmelo —	182
Office Cleaning Services Ltd.	201
Omega	154
Ortkras, Germann —	183
Pares & Cie S. R. L., Pablo —	183
Parker-Knoll Limited	200
Philips AG.	252
Poly-Resin Products Ltd.	196
Prais, Enrique —, — Beacon International Corporation de la Argentina	182
Prins	251
Radio-Import GmbH.	252
Rousek, Miroslav —	181
Rubber & Technical Press Ltd.	201
Salvador Adib Canen	179
Shallwin Limited	198
Singer Manufacturing Company	180
Smith, Arthur — (S. & B. Foundry Sands) Ltd.	201
Société Bosch and Van Rijn	241
Stevenson	204
Svenska Aktiebolaget Gasaccumulator	199
Swift & Co.	195
Sypha Sound Sales Ltd. and Tape Recorder Centre Ltd.	200
Taeschner & Cie	230
Tape Recorders (Electronics) Ltd.	200
Tatra National Corporation	181
Telesud S. A.	182
Telesur S. R. L.	182
Time Trade Mark	199
Torti, J. —	180
Toyo Tsushniki Kabushiki Kaisha	196
Tricosa S. A.	49
Usher and Usher	197
Vandervell Products, Ltd. and Vandervell	197
Via. Metalurgica Austral Argentina S. A.	180
Wade	196
Water Tube Boilermakers' Agreement, The —	203
Westminster Window and General Cleaners Ltd.	201
Wholesale Confectioners' Alliance of Great Britain and Northern Ireland's Agreement	205
Wykmanshytte Bruks A. B.	196
Yarn Spinner, The —	204, 206
Yorkshire Copper Works	105

Index of the Book Reviews

Beil, Walter. *Grundzüge des gewerblichen Rechtsschutzes und des Erfinderrechts* . . . . . Pages 107

Blum, Rudolf E. and Pedrazzini, Mario. *Das schweizerische Patentrecht. Kommentar zum Bundesgesetz betreffend die Erfindungspatente vom 25. Juni 1954* (Swiss Patent Law. A Commentary on the Federal Patent Law of 25th June, 1954) 107

Blinov, A. A. and Vasiliev, I. V. *Poriadok patentovania sovetskikh izobretenii za granitsei* (Conditions for the grant of patents abroad for Soviet inventions) . 208

Boguslavski, M. M. *Bourzhouaznoe patentnoe pravo i sovetskoe izobretatelskoe pravo* (The "bourgeois" law on patents of invention and Soviet legislation on inventions) 208

Bossung, Otto. *Grundfragen einer europäischen Gerichtsbarkeit in Patentsachen* 107

Bouju, André. *Protection of inventions in the United States of America. The American Patent* 86

Collection of legislation and ordinances relating to inventions and improvements (USSR) 208

Dorkin, A. J. and Tkatch, Z. A. *Prava i obyazannosti izobretatelei i ratsionalizatorov* (Rights and obligations of inventors and improvers) 208

Elsaesser, M. *Der Rechtsschutz berühmter Marken* (The protection of famous marks) 232

Englert, Christian. *L'invention faite par l'employé dans l'entreprise privée* 139

Katzarov, Konst. *Patent Directory*. 6th Edition 207

Kulikova, E. M. *Metodika podscheta economii ot vnedrenia izobretenii i ratsionalizatotskikh predlozhenii na promyshlennykh predpriiatiakh* (Methods for calculating economies obtained by the exploitation of inventions and suggestions for improvement) . . . 208

Mascareñas, C. E. *Los delitos contra la propiedad industrial* . . . . . Pages 160

Mousseron, Jean-Marc. *Le droit du breveté d'invention. Contribution à une analyse objective* (The right of the patentee. Contribution to an objective analysis) 256

Pedrazzini, Mario and Blum, Rudolf E. *Das schweizerische Patentrecht. Kommentar zum Bundesgesetz betreffend die Erfindungspatente vom 25. Juni 1954* (Swiss Patent Law. A Commentary on the Federal Patent Law of 25th June, 1954) 107

Rotondi, Mario. *Diritto comparativo* (Comparative Law). Milan University. Reprint from *Novissimo Digesto Italiano* 86

Schade-Schippel. *Die Vergütung von Arbeitnehmererfindungen im privaten Dienst, nebst Erläuterungen* (Compensation for employees' inventions of private enterprises, with commentaries) 276

Sidjanski, Dusan. *L'originalité des communautés européennes et la répartition de leurs pouvoirs* 139

Tkatch, Z. A. and Dorkin, A. J. *Prava i obyazannosti izobretatelei i ratsionalizatorov* (Rights and obligations of inventors and improvers) 208

Vasiliev, I. V. and Blinov, A. A. *Poriadok patentovania sovetskikh izobretenii za granitsei* (Conditions for the grant of patents abroad for Soviet inventions) . 208

Wirner, Helmut. *Wettbewerbsrecht und internationales Privatrecht* 108

Yaitchkov, K. K. *Izobretenie i evo pravavaya okhrana v SSSR* (The invention and its legal protection in the USSR) 208

List of Official Documents

INTERNATIONAL UNION. — State on 4th January, 1962 . . . . . Pages 2

Convention of Paris. Arrangement of Madrid (Indications of Source). Lisbon Texts. Reservations by Czechoslovakia and Roumania to Ratification by the German Federal Republic 4

Arrangement of Nice (International Classification). Ratifications by Denmark and German Federal Republic 5

Official communication from the Spanish Administration regarding former colonies 66

Note from the Swiss Federal Council (Political Department) concerning the application of *(a)* the Arrangement of Madrid (Trade Marks), Nice text, and *(b)* the Arrangement of Nice (Classification) to all the Territories of the French Republic (29th March, 1962) . . 90

Note from the Swiss Federal Council (Political Department) relating to the adhesion of Iceland to the Convention of Paris for the Protection of Industrial Property (London text) (5th April, 1962) . . . . . Pages 90

Vacancy in the post of Director of the United International Bureaux 110

Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply of 15th June, 1957. Adhesion of Belgium (6th June, 1962) 110

Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models, as revised at London on 2nd June, 1934. Signature by Belgium, Morocco and Spain (Belgium, 9th March, 1962; Morocco, 30th March, 1962; Spain, 30th March, 1962) 110

Pages

Agreement between the International Bureau for the Protection of Industrial Property and the International Olive Oil Council 111

Permanent Bureau of the Consultative Committee of the Paris Union for the Protection of Industrial Property (Meeting in Geneva, 29th and 30th March, 1962) 112

Note from the Swiss Federal Council (Political Department) concerning the ratification by Belgium of the Arrangement of Madrid (Trade Marks) of 14th April, 1891, as last revised at Nice on 15th June, 1957 (of 7th June, 1962) 142

Note from the Swiss Federal Council (Political Department) concerning the adhesion of Hungary to the London texts of the Convention of Paris, the Arrangement of Madrid (False Indications of Source) and the Arrangement of Madrid (Trade Marks) (14th June, 1962) 142

First Meeting of the Committee of Experts of the Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply (Geneva, 7th to 11th May, 1962) 142

Meeting of the Working Group of the Permanent Bureau of the Paris Union (12th to 14th June, 1962) 143

Ratification by France of the Additional Act to the Arrangement of The Hague (of 25th May, 1962) . . 162

Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply, of 15th June, 1957. Adhesion of the Netherlands and Switzerland (20th July, 1962) 186

Arrangement of Madrid for the International Registration of Trade Marks (Nice text of 1957). Ratification by the Netherlands and Switzerland (11th May and 2nd October, 1962) 210

Entry into force of the Additional Act to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models on 1st December, 1962. Ratification by the Federal Republic of Germany (25th October, 1962) 234

Joint Meeting of the Permanent Bureau of the Consultative Committee of the Paris Union and the Permanent Committee of the Berne Union (Geneva, 15th to 19th October, 1962) 234

Additional Act, signed at Monaco on 18th November, 1961, to the Arrangement of The Hague concerning the International Deposit of Industrial Designs or Models of 6th November, 1925, revised at London on 2nd June, 1934. Ratification by Switzerland (7th November, 1962) 258

United International Bureaux for the Protection of Industrial, Literary and Artistic Property. Change in the Post of Director 278

— Conventions and Treaties:

International Conference for the Protection of New Plant Products (Paris, 1961) 5

Ratification by France of the European Convention relating to the Formalities required for Patent Applications (18th January, 1962) 42

Accord between the Government of the French Republic and the Government of the Federal Republic of Germany for the Mutual Safeguarding of the Secrecy of Inventions and Technical Information relevant to Defence (of 28th September, 1961) 91

Convention of Paris for the Protection of New Varieties of Plants. Signature by Denmark, Great Britain and Switzerland (Denmark and Great Britain, on 26th November, 1962; Switzerland, on 30th November, 1962) 278

— Legislation:

A. Unionist countries

AUSTRALIA. — Patents Act 1952-1960 112, 144, 162, 186

FRANCE. — Decree concerning the statement of the characteristics of the invention referred to in Article 14 of Decree No. 60-507 of 30th May, 1960, providing for special patents for medecines (of 6th March, 1962) 119

INDONESIA. — Act concerning Trade Names and Trade Marks (No. 21 of 11th October, 1961) 210

IRELAND. — Notice concerning the temporary protection of inventions at an exhibition (of 15th October, 1962) 237

ISRAEL. — Patents and Designs Ordinance (Amendment) Law (of 5721-1960) 238

ITALY. — Decree for the temporary protection of industrial property rights at three exhibitions (of 1st February, 1962) 66

Decrees for the temporary protection of industrial property rights at seven exhibitions (of 10th, 12th, 13th, 14th, 15th, 21st and 22nd March, 1962) 96

Decrees for the temporary protection of industrial property rights at eight exhibitions (of 13th, 16th, 17th, 20th, 22nd, 24th, 25th and 29th March, 1962) 119

Decrees for the temporary protection of industrial property rights at twelve exhibitions (of 11th, 12th, 30th April, 2nd, 3rd, 4th, 5th, 7th, 8th, 12th and 25th May, 1962) 169

POLAND. — Inventions Act (of 31st May, 1962) . . . 278

SWEDEN. — Trade Marks Act (No. 644, of 2nd December, 1960) 42

Collective Marks Act (No. 645, of 2nd December, 1960) 48

Act relating to the Protection for Coats of Arms and other Official Insignia (No. 646, of 2nd December, 1960) 48

Law amending the Decree on Patents of Invention (No. 132, of 31st May, 1961) 49

SYRIAN ARAB REPUBLIC. — Presidential Decree concerning the compulsory Use of Arabic Language in Syrian Arab Republic (No. 135, of 30th November, 1961) 71

YUGOSLAVIA. — Law on Trade Marks and Trade Names (of 4th November, 1961) 96

Law on Designs and Models (of 4th November, 1961) . . 120

Non-Unionist countries

KUWAIT. — Patents, Designs and Industrial Models Law (No. 4, of 1962) 259

LIBYA. — Law No. 8 relating to Patents, Designs and Industrial Models (of 25th November, 1959) 66