

Industrial Property

Monthly Review of the International Bureau
for the Protection of Industrial Property
Geneva

2nd Year

No. 4

April 1963

Contents

	Pages
INTERNATIONAL UNION	
Arrangement of Nice concerning the International Classification of Goods and Services to which Trade Marks apply, of 15 th June, 1957	
I. Adhesion of Great Britain and Northern Ireland	66
II. Reservation by Belgium	66
CONVENTIONS AND TREATIES	
African and Malgasy Industrial Property Office	66
LEGISLATION	
Italy. Decrees concerning the temporary protection of industrial property rights at 18 Exhibitions (from 10 th May, 1962, to 18 th February, 1963)	84
GENERAL STUDIES	
The Evolution of the United International Bureaux	85
BOOK REVIEW	92

INTERNATIONAL UNION

CONVENTIONS AND TREATIES

Arrangement of Nice

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

I

Adhesion of Great Britain and Northern Ireland

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

"In compliance with the instructions dated 15th March, 1963, 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 15th June, 1957, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that Great Britain and Northern Ireland has adhered to the above-mentioned Arrangement.

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 dispatch of the instructions issued by the Federal Political Department, that is to say, the 15th April, 1963."

II

Reservation by Belgium

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

"The Belgian Embassy in Berne presents its compliments to the Federal Political Department and, on the instructions of its Government, has the honour to communicate the following declaration relating to the deposit of the Belgian instrument of adhesion to the Arrangement of Nice of 15th June, 1957, concerning the International Classification of Goods and Services to which Trade Marks apply:

'With regard to the application of Article 2 (3) of the Arrangement, it is declared that for a transitory period, the Belgian Administration will not include in the official documents relating to trade mark registrations, the numbers of the International Classification. This reservation will be withdrawn as soon as circumstances make it possible.'

The Embassy will be grateful if the Federal Political Department would communicate this declaration to the countries concerned."

(*Translation*)

African and Malgasy Industrial Property Office¹⁾

The Accord for the creation of an African and Malgasy Industrial Property Office, signed on the 13th September, 1962, by the twelve Member States of the African and Malgasy Union has been ratified by the Central African Republic (law No. 62-327 of 21st November, 1962) and by the Republic of Gabon (law No. 28-62 of 20th December, 1962). The text is published below.

Attention is drawn to certain of its provisions.

1. System of industrial property of the Member States

The Accord establishes between the signatory or adherent States, within the framework of the Convention of the Paris Union, a common system for the obtaining and maintenance of industrial property rights providing for uniform legislation, a system of single deposit and a centralization of administrative procedure in the African and Malgasy Office.

The annexes to the Accord provide for the legislation applicable in each State regarding patents of invention, trade marks and industrial designs or models, but the place and effect of deposit are determined by Articles 3 and 4 of the Accord. When the applicants are domiciled in a Member State, deposits are made with the National Administration or with the Office, according to the provisions put into effect by that State by virtue of Annex IV. Applicants domiciled outside Member States make their deposits directly with the Office. They must, however, appoint a representative in one of the States. Any deposit so made has the effect of a national deposit in each of the Member States.

The Office has the duty of applying the administrative procedure prescribed by the annexes, of registering the deposit and issuing the common certificates having effect in each State. The rights which attach to them are independent national rights.

All communications to the Office must be written in the French language.

2. Location of the Office (Art. 21)

The Office is to be at Yaoundé (Federal Republic of Cameroun).

3. Entry into force of the Accord and its annexes (Art. 24)

The Accord will come into force two months after the deposit of instruments of ratification by two-thirds of the signatory States, that is to say, by eight States.

However, the annexes will only take effect at a later date to be determined by the Regulations of the Office. It is only

¹⁾ See *Industrial Property*, January, 1963, p. 30.

from this date, fixed so as to permit the organisation of the services, that the period of one year, provided for by the transitional provisions for the execution of formalities regarding the maintenance of acquired rights, will begin to run. A notice will be published in due course on this subject in the *Official Bulletin*.

Accord relating to the creation of an African and Malgasy Office of Industrial Property

*The Government of the Federal Republic of Cameroun,
The Government of the Central African Republic,
The Government of the Republic of the Congo,
The Government of the Republic of the Ivory Coast,
The Government of the Republic of Dahomey,
The Government of the Republic of Gabon,
The Government of the Republic of Upper Volta,
The Government of the Malgasy Republic,
The Government of the Islamic Republic of Mauritania,
The Government of the Republic of the Niger,
The Government of the Republic of Senegal,
The Government of the Republic of Chad,*

Animated by the desire to protect upon their territories, in as effective and uniform manner as possible, rights of industrial property;

Undertaking, for this purpose, to adhere to the Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, and last revised at Lisbon on the 31st October, 1958;

Having considered Article 15 of the said Convention which provides "that the countries of the Union reserve to themselves the right to make separately, between themselves, special agreements for the protection of industrial property, in so far as such agreements do not contravene the provisions of the Convention";

Having considered Article 4 A (2) of the said Convention which provides "every application which, under the domestic law of any country of the Union, or under bi-lateral or multi-lateral treaties concluded between countries of the Union is equivalent to a regular national application shall be recognised as giving rise to a right of priority";

Considering the interest manifested in the institution of a system of single deposit of applications for patents, trade marks and industrial designs or models for the obtaining of rights provided by the uniform legislations of their countries, and the creation of an organisation instructed to apply the common administration procedures prescribed by the said legislations;

Have resolved to conclude an Accord relating to the creation of an African and Malgasy Office of Industrial Property, and have designated, for this purpose, plenipotentiaries, who have agreed upon the following provisions:

Article 1

An African and Malgasy Office is created, and instructed, under the conditions hereinafter specified, to apply the common administrative procedures envisaged by the national legislations of the member States in the matter of patents, trade marks, and industrial designs or models.

For each of the member States, the Office shall serve the purpose of the national Office of industrial property, within the meaning of Article 12 of the above-mentioned Convention.

The rights subsisting in patents, trade marks, and industrial designs or models forming the subject of common procedure shall be independent national rights, and subject to the legislation of each of the member States in which they have effect.

Article 2

1. The laws applicable in each member State in the matter of patents, trade marks, and industrial designs or models are prescribed in Annexes I, II and III of the present Accord.

2. However, each member State is entitled, either at the moment of its ratification or adhesion, or subsequently, to give effect upon its territory to the modifications envisaged in Annex IV, to the exclusion of all others.

The said modifications, as well as the date of their coming into force, shall be notified by each member State to the Government of the Federal Republic of Cameroun.

3. Annexes I, II, III and IV constitute an integral part of the present Accord.

Article 3

1. When the applicants are domiciled upon the territory of one of the member States, the filing of applications for patents, trade marks, and industrial designs or models are to be effected either with the competent national Department or with the Office, according to the legal measures in force in such State.

2. Applicants domiciled outside the territories of member States will make the applications referred to above direct to the Office. They must appoint an agent in one of the member States.

3. Applications made to the Office may be transmitted by post.

4. All communications addressed to the Office must be written in French.

Article 4

Every application made to the competent Department of one of the member States, in accordance with the legislation of such State, or made to the Office, has the value of a national application in each member State.

Article 5

1. The Office will proceed to the recording and administrative examination of applications for patents in accordance with the common procedure prescribed by the legislations of member States.

It will grant the patents and assure their publication.

2. Every patent granted produces its effects in each of the member States according to the national law of each State.

Article 6

1. The Office will proceed to the administrative examination, registration and publication of trade marks in accordance with the common procedure prescribed by the legislation of member States.

2. The registered and published trade marks produce their effects in each of the member States according to the national law of each State.

3. The Office will follow a procedure in respect of the international registration of trade marks on the basis of the Madrid Arrangement of the 14th April, 1891.

Article 7

The Office will assure the registration, the processing and the publicity of deposits of industrial designs or models according to the common procedure prescribed by the legislation of the member States.

Deposits of industrial designs or models produce their effects in each of the member States according to the national law of each State.

Article 8

Every publication of the Office will be addressed to the competent Department of each of the member States.

Article 9

The Office, on the joint behalf of the member States, will maintain a special Register of patents, a special Register of trade marks, and a special Register of industrial designs or models, in which the entries prescribed by the national legislations will be made.

Article 10

Every decision taken by the Office rejecting an application is subject to appeal to the higher Commission of appeals attached to the said Office.

This Commission which, if necessary, holds one session each year, shall be composed of three members elected by drawing lots from a list of representatives of each of the member States, the first name drawn being that of the President.

At two-year intervals, each member State will designate its representative, his nomination being renewable.

The procedure governing appeals will be determined by the regulations referred to in Article 13.

Article 11

Any other action relating to the application of the laws of industrial property can be entrusted to the Office by unanimous decision of the Council of Administration referred to in Article 12.

Article 12

1. The Office shall be administered by a Council of Administration composed of representatives of member States, on the basis of one representative per State.

2. Any member State can, where necessary, confer its representation on the Council upon the representative of another member State. No member of the Council may represent more than two States.

3. The Council shall make its own regulations and each year shall designate its President. It shall meet at the initiative of its President, or of one third of its members or, in the event of urgency, of the Director of the Office.

Article 13

Apart from the tasks devolving upon it by virtue of other provisions of the present Accord, the Council of Administration shall determine the general policy of the Office, shall regulate and control its activity and, in particular:

- (1) shall draw up the regulations necessary for the application of the present Accord and its Annexes, especially the financial regulations and the regulations relating to fees, to the Appeal Commission, and to staff matters, and shall control the application of the regulations;
- (2) shall vote the annual budget and, where necessary, any modifying or additional budgets, and shall control their execution;
- (3) shall verify and approve the annual accounts and inventories;
- (4) shall approve the annual report on the activity of the Office;
- (5) shall nominate the Director and the Assistant Director.

Article 14

1. In any decision of the Council of Administration, the representative of each member State shall have a single vote.

2. The decisions of the Council of Administration shall be taken on a majority vote. In the event of equal voting, the President's vote shall prevail.

Article 15

The Director shall manage the Office in accordance with the regulations drawn up by the Council of Administration, and their directives.

Article 16

The Office has juridical status. In each of the member States it enjoys the widest form of juridical capacity recognised in favour of legal entities by the national legislation.

Article 17

The member States shall make an initial payment, the total of which shall be fixed by the Council of Administration and divided into equal parts between the contracting parties.

Article 18

The annual expenses of the Office shall be covered by

- (a) the proceeds from fees prescribed by the regulations of the Office and by the laws of the member States;
- (b) receipts in payment of services rendered;
- (c) all other receipts, and particularly those derived from property of the Office.

In cases where the balance of the budget so requires, a special contribution by the member States shall be made to the Office.

The amount shall be recorded in the budget and divided equally between the contracting parties.

Article 19

1. The Office will prescribe the fees and receipts necessary for its functioning and fix their amounts and method of payment.

2. It will fix the amount and method of payment of fees envisaged by the laws of member States in respect of industrial property.

Article 20

The Office shall pay annually to each member State the portion of any annual budgetary surplus due to such State, after deduction, if necessary, of its special contribution.

Budgetary surpluses are determined after making provision for reserve funds and special funds established by the financial regulations.

They shall be divided, in equal parts, between the member States.

Article 21

The Office shall be located at Yaoundé (Federal Republic of Cameroun). The Office shall be placed under the protection of the Government of the Federal Republic of Cameroun.

Article 22

The regulations established by the Council of Administration by virtue of Article 13 for the application of the present Accord and its Annexes shall, at the request of the Office, be made applicable to the territory of each member State, in accordance with the provisions of its domestic law.

Article 23

The present Accord shall be ratified and the instrument of ratification shall be deposited with the Government of the Federal Republic of Cameroun.

Article 24

The present Accord shall come into force two months after the deposit of the instruments of ratification by at least two thirds of the signatory States.

The date of coming into force of the Annexes to the present Accord shall be determined by the Office.

Article 25

1. Every non-signatory African State which is party to the Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, and last revised at Lisbon on the 31st October, 1958, may apply to adhere to the present Accord. The application shall be addressed to the Council of Administration, who will decide it on a majority basis. Equal voting will involve rejection.

2. The instruments of adhesion shall be deposited with the Government of the Federal Republic of Cameroun.

3. Adhesion shall produce its effects two months after this deposit, provided a later date has not been indicated in the instrument of adhesion.

Article 26

Any State which is a party to the present Accord may denounce it by written notification addressed to the Government of the Federal Republic of Cameroun.

The denunciation shall take effect from the 31st December of the second year following that in the course of which the Government of the Federal Republic of the Cameroun received the notification.

Article 27

The present Accord shall be submitted to periodic revisions, particularly with the object of introducing into it modifications of a nature to improve the services rendered by the Office.

Article 28

The Government of the Federal Republic of Cameroun shall notify the signatory or adhering States:

- (1) of the deposit of instruments of ratification;
- (2) of the deposit of instruments of adhesion, and the date upon which these adhesions take effect;
- (3) where necessary, of modifications made by any of the member States, by virtue of the provisions of Article 2, paragraph 2, and of Annex IV, to the laws prescribed by Annexes I, II and III, and of the date upon which these modifications take effect;
- (4) of the date upon which the present Accord comes into force by virtue of the provisions of Article 24;
- (5) of denunciations envisaged by Article 26, and of the date upon which they take effect.

In faith whereof the undersigned Plenipotentiaries, after presentation of their full powers, recognised in good and proper form, have signed the present Accord.

Done at Libreville the 13th September, 1962, in a single copy, in the French language, which shall be deposited in the archives of the Government of the Federal Republic of Cameroun. A true certified copy shall be sent by the diplomatic channel by the latter Government to the Government of each of the signatory or adhering Governments.

For the Government
of the Federal Republic of Cameroun :
Ahmadou AHIDJO

For the Government
of the Central African Republic :
David DACKO

For the Government
of the Republic of Congo-Brazzaville
Fulbert YOUSOU

For the Government
of the Republic of the Ivory Coast :
Houphouët BOIGNY

For the Government
of the Republic of Dahomey :
Hubert MAGA

For the Government
of the Republic of Gabon :
Léon MBA

For the Government
of the Republic of Upper Volta :
Maurice YAMEOGO

For the Government
of the Malgasy Republic:
Philibert TSIRANANA

For the Government
of the Islamic Republic of Mauritania :
Moktar Ould DADAH

For the Government
of the Republic of the Niger :
Diori HAMANI

For the Government
of the Republic of Senegal :
Léopold Sédar SENGHOR

For the Government
of the Republic of Chad :
François TOMBALBAYE

ANNEX I

Patents

PART I

General provisions

Article 1

Every new invention in all branches of industry confers upon its author, under the conditions and for the terms hereinafter specified, the exclusive right of exploiting the said invention for his own profit.

Article 2

The following are deemed to be new inventions:

- (1) the invention of new industrial products;
- (2) the invention of new means for obtaining a result or an industrial product;
- (3) the new application of known means for the obtaining of a result or an industrial product.

Article 3

The following are not capable of being patented:

- (1) inventions contrary to public order or public security, proper conduct and law;
- (2) pharmaceutical compositions or remedies of any kind, the said products remaining subject to the special laws and regulations in the matter, and the exclusion not applying to processes, means and apparatus serving to obtain them.

Article 4

The term of patents is twenty years calculated from the date of filing of the application prescribed by Article 6.

Each patent gives rise to payment:

- (1) of an application fee and a fee for publication;
- (2) of an annual fee or annuity.

Article 5

Foreigners may obtain patents under the conditions determined by the present Annex.

PART II

Formalities relating to the grant of patents

SECTION I

Applications for patent

Article 6

Any person who wishes to obtain a patent shall lodge with, or send by registered post, with request for acknowledgement of receipt, to the Department responsible for industrial property:

- (1) his application to the Director of the African and Malgasy Office of Industrial Property, in duplicate;
- (2) the document establishing payment to the Office of the application and publication fees;
- (3) an unstamped authorisation, under personal signature, if the applicant is represented by an agent;
- (4) a sealed package containing, in duplicate:
 - (a) a description of the invention forming the subject of the patent applied for;
 - (b) the drawings necessary for the understanding of the description.

Article 7

The application shall be restricted to a single principal object, with the items of detail that constitute it, and its specified applications. It must not contain restrictions, conditions or reservations. It shall have a title designating the subject of the invention in a summary and precise manner.

The description must be written in the French language and must not contain alterations or inter-linear additions. Any words struck out shall be counted and recorded, and all pages and amendments initialled. It must not contain any denominations of weights and measures other than those regarded as legal.

The description shall end with a summary, setting out in one or more numbered paragraphs the fundamental principle of the invention and the secondary points, if any, which characterise it.

The drawings shall be drawn in ink and to a metric scale.

All the documents shall be signed by the applicant or by the agent.

Article 8

Any person who wishes to take advantage of the priority of an earlier application shall be required to attach to his application for patent, or to have sent to the African and Malgasy Office of Industrial Property, at the latest within a period of six months from the filing of his application:

- (1) a written declaration indicating the date and the number of this earlier application, the country in which it was made and the name of the applicant;
- (2) a certified copy of the said prior application;
- (3) and, if he is not the person who made the prior application, a written authorisation of the applicant or the assignees of the applicant qualifying him to avail himself of the priority in question.

The applicant who, in respect of a single application, seeks to avail himself of two or more rights of priority shall, in

respect of each such right, observe the same provisions as those set out above; further, he shall pay a fee in respect of each priority right invoked and produce evidence of the payment of the fee within the same period of six months specified above.

Failure to lodge any one of the documents referred to above within the time specified automatically involves, in respect of the particular application at issue, loss of the benefit of the priority right invoked.

Any document reaching the Office more than six months after the lodging of the application for patent will be declared non-receivable.

Article 9

No application will be received if it is not accompanied by either a receipt establishing payment of the filing and publication fees, or by a money order, postal cheque receipt, or notice of a credit transfer covering the amount of these fees.

A written statement, drawn up without charge by the Ministry responsible for industrial property, will acknowledge each application, stating the day and time of lodging the documents, or of the receipt of the package containing them, if sent by post. In any case in which payment of the fees is not effected until later, the date of receipt of the application shall be that of the payment, and the hour of filing shall be the hour of closing on that day of the Office of the Ministry responsible for industrial property.

A copy of the said statement shall be given or addressed to the applicant.

SECTION II *Grant of patents*

Article 10

Immediately after the recording of the application, and within five days of the date of its filing, the Minister responsible for industrial property shall transmit the sealed package sent by the inventor to the African and Malgasy Office of Industrial Property, attaching to it a copy of the application, a certified copy of the statement of filing, the document verifying payment of fees and, in relevant cases, the authorisation mentioned in Article 6 and the priority documents.

The African and Malgasy Office of Industrial Property shall proceed to the opening, the recording of the applications and the grant of the patents in the order of receipt of the said applications.

Article 11

Where the application has been regularly drawn up, patents will be granted without preliminary examination, at the risk of the applicants, and without guarantee as to the soundness, novelty or merit of the invention, or as to the fidelity or precision of the description.

A decision of the Director of the Office, verifying the regularity of the application, will be delivered to the applicant and will constitute the letters patent.

A printed copy of the description and drawings mentioned in Article 23, after their accuracy in relation to those originally furnished has, if necessary, been established, will be attached to the decision.

Article 12

Grant shall not take place until one year after the date of filing of the application, if the said application contains an express request to this effect. Any person who has requested the benefit of this provision may renounce it at any time within the said period of one year.

The benefit of the foregoing provision cannot be claimed by persons who have already profited from the priority periods granted by treaties of reciprocity, particularly by Article 4 of the International Convention for the Protection of Industrial Property of the 20th March, 1883.

Article 13

Every application having as its object an invention which is not capable of being patented by virtue of Article 3 will be rejected.

The same applies to any application which is not accompanied by a copy of the documents specified in paragraph (4) of Article 6, or in which the description is written in a language other than that specified in Article 7, paragraph (2).

An application which fails to satisfy the requirements of the first paragraph of Article 7 may, within a period of six months from the notification that the application as submitted cannot be accepted on the ground of not having one main objective only, be divided into a certain number of applications benefiting from the date of the initial application.

Every application in which the remaining requirements of Article 6, other than paragraph (2) thereof, and those of Article 7, have not been complied with, shall be returned to the applicant or his agent, as the case may be, inviting him to put the documents in order within a period of two months. This period may be extended in cases of justifiable need, upon the request of the applicant or his agent. Any application so regularised within the said period shall retain the date of the initial application.

In any case in which the corrected documents are not furnished within the period allowed, the application for patent will be rejected.

No application may be rejected by virtue of the first paragraph of the present Article without the observations of the applicant or his agent having been obtained.

Prior to grant, any application for patent or for a certificate of addition may be withdrawn by the person who submitted it. The documents filed will only be returned to him if he so requests.

SECTION III *Certificates of addition*

Article 14

The grantee of a patent or of persons deriving title from him, have, for the entire duration of the patent, the right to introduce modifications, improvements or additions to the invention, again complying, for the purposes of the application, with the formalities prescribed by Articles 6, 7, 8 and 9.

These modifications, improvements or additions shall be recorded by way of certificates issued in the same form as the principal patent and producing, as from the respective dates

of the applications and their grant, the same effects as the said principal patent.

Each application for certificate of addition gives rise to the payment of the application and publication fees mentioned in Article 4.

Certificates of addition taken out by any one person deriving title from the grantee shall benefit all other such persons.

Article 15

Certificates of addition expire with the principal patent. However, nullity of the principal patent does not automatically involve nullity of the corresponding certificates of addition; and even in the case where absolute nullity has been pronounced by application of the provisions of Article 32, the certificate or certificates of addition shall survive the principal patent, up to the expiration of the normal term of the latter, subject to the payment of the renewal fees that would have been payable if the said patent had not been annulled.

Article 16

Provided a certificate of addition has not been granted, the applicant can obtain the conversion of his application for a certificate of addition into an application for patent, of which the date of filing shall be that of the date of the application for the certificate. Any patent ultimately granted will then give rise to the payment of the same renewal fees as a patent bearing this latter date.

Article 17

Every patentee who, in respect of a modification, improvement or addition, wishes to obtain a principal patent instead of a certificate of addition expiring with the principal patent, must comply with the formalities prescribed by Articles 6, 7, 8 and 9, and pay the fees specified in Article 4.

Article 18

Any person who has taken out a patent for an invention bearing upon the subject of another patent has no right to exploit the invention already patented and, reciprocally, the owner of the initial patent is not entitled to exploit the invention which is the subject of the new patent.

SECTION IV

Transmission and assignment of patents

Article 19

Rights subsisting in an application for patent or in a patent are transmissible, in whole or in part.

Acts involving either transmission of property, or the grant of the right of exploitation or the determination of such right, or the mortgage or cancellation of a mortgage in respect of an application for patent or a patent shall, under penalty of nullity, be drawn up in writing.

Article 20

The acts mentioned in the preceding Article are not enforceable against third parties unless they have been entered in the special Register of patents kept at the African and

Malgasy Office of Industrial Property. A copy of such acts will be retained by this body.

The African and Malgasy Office of Industrial Property shall supply to any persons who so require, a copy of the entries in respect of patents which are the subject of mortgage, or a certificate establishing the absence of any such entries.

Article 21

Any persons who have acquired from a patentee, or from his successors in title, the right of exploiting the invention shall, as of right, benefit from any certificates of addition that may subsequently be granted to the patentee or to his successors in title. Reciprocally, the patentee or his successors in title shall benefit from certificates of addition that may subsequently be granted to persons who have acquired the right to exploit the invention.

Any persons who are entitled to benefit from such certificates of addition may obtain a copy thereof from the African and Malgasy Office of Industrial Property.

SECTION V

Communication and publication of patent specifications and drawings

Article 22

The specifications and drawings of granted patents and certificates of addition shall be kept in the African and Malgasy Office of Industrial Property where, after publication of the grant of the patents or of the certificates of addition in the catalogue referred to in Article 23, they will be communicated upon request.

After the same date, any person may obtain an official copy of the said specifications and drawings.

The provisions of the two preceding paragraphs are applicable to official copies produced by applicants who have sought to avail themselves of the priority of an earlier filing, and to the documents entitling certain of such applicants to claim such priority.

The owner of an application for patent or of a certificate of addition who seeks to avail himself abroad of the priority of his application before the grant of his patent or certificate of addition may obtain an official copy of his application.

Article 23

The specifications and drawings of all patents and certificates of addition are published, separately and in full, in their order of grant.

In the case of specifications and drawings of patents and certificates of addition in respect of which request has been made for the grant to be deferred for the period of one year specified in Article 12, such publication shall not take place until after the expiration of this period.

Further, a catalogue shall be published of patents and certificates of addition granted.

Article 24

The printed specifications of patents and certificates of addition, as well as the catalogues published in furtherance

of the preceding Article, shall be deposited at the African and Malgasy Office of Industrial Property, at the Ministry responsible for industrial property, and in the places designated by decree of the Minister responsible for industrial property, where they may be consulted, free of charge.

PART III

Null and void cases and actions relating thereto

SECTION I

Null and void cases

Article 25

Patents granted in the following cases are null and of no effect:

- (1) if the invention is not new;
- (2) if the invention is not, within the terms of Article 3, capable of being patented, irrespective of difficulties that might be incurred in the manufacture or marketing of prohibited articles;
- (3) if the patents involve principles, methods, systems, discoveries and conceptions which are theoretical or purely scientific, and of which no indication has been given of industrial application;
- (4) if the title under which the patent has been applied for fraudulently indicates an object other than the true object of the invention;
- (5) if the description associated with the patent is not sufficient for carrying out the invention, or if it does not indicate, in a complete and genuine manner, the true methods of the inventor.

Certificates in respect of modifications, improvements or additions which do not bear upon the principal patent, are likewise null and void.

Article 26

Any invention which, on national or foreign territory, and prior to the date of application for patent, has received sufficient publicity to enable it to be carried out, or which is described in a patent having effect upon the said territory, even if unpublished but benefiting from an earlier date, shall not be deemed to be novel.

Article 27

The patentee who has not paid his renewal fee before the beginning of each year of the term of his patent shall lose all his rights.

However, the person concerned shall enjoy a period of six months in which the payment of his fee may be validly effected. In such a case he must, in addition, pay a supplementary fee.

Payments of renewal fees within the above-mentioned period of six months, following payment of the supplementary fees, will be considered valid.

Payments effected on the basis of renewal fees and supplementary fees falling due, and relating to an application for patent resulting either from the conversion, in accordance with Article 16, of an application for a certificate of addition,

or from the division of an application for patent in accordance with the third paragraph of Article 13, shall equally be considered valid, provided these payments take place within a period of six months from the application for conversion, or from the lodging of applications resulting from the division.

Article 28

Any person who, by means of signs, notices, prospectuses, posters, marks or stamps, assumes the quality of a patentee, without being the owner of a patent granted in accordance with the laws, or after the expiration of an earlier patent, or who, being a patentee, mentions his quality as patentee without addition of the words "without guarantee of the Government", shall be punishable by a fine of from 50,000 to 150,000 francs CFA. In the event of recidivism, the fine may be doubled.

SECTION II

Actions for nullity or voiding

Article 29

Actions for nullity or actions for voiding may be undertaken by any person having an interest in the matter.

Such actions, as well as all disputes relating to the ownership of patents, shall be taken before the civil tribunals.

Article 30

If the proceedings are directed simultaneously against the owner of the patent and against one or more part-concessionaires, they shall be brought before the civil tribunal of the domicile of the owner of the patent.

Article 31

The matter shall be proceeded with and judged in the manner prescribed for summary proceedings. It shall be communicated to the Public Prosecutor (*Procureur*) of the Republic.

Article 32

In every proceeding seeking to obtain a pronouncement of nullity or voidance of a patent, the District Attorney (*Ministère public*) may join himself as an intervening party and make application for the pronouncement of absolute nullity or voidance of the patent.

He may also directly provide, by way of a main action, for the pronouncement of nullity in the cases specified in paragraphs (2) and (4) of Article 25.

Article 33

In the cases provided for in Article 32, all persons having an interest in the patent, and whose titles to such interest have been registered at the African and Malgasy Office of Industrial Property in accordance with Article 20, shall be joined in the proceedings.

Article 34

When absolute nullity or voidance of a patent has been pronounced by a judgment or decree which has acquired the force of *res judicata*, notice of it shall be given to the African and Malgasy Office of Industrial Property, and notice of the

nullity or voidance on the national territory shall be entered in the special Register of patents and published in the form determined by Article 23 in respect of granted patents.

PART IV Compulsory licences

Article 35

Every patent which, without valid reason, is not exploited in an effective and serious manner by the owner, either personally or through the intermediary of a licensee, may form the subject of an application for licence, known as a compulsory licence.

Such application for licence can only be formulated if the owner has not undertaken the exploitation referred to above within a period of three years from the grant of the patent or of four years from the lodging of the application for patent, whichever is the longer.

The same provisions apply in the case of a patent of which the exploitation has been discontinued, without valid reason, for more than three years.

The owner of a patent in respect of which a compulsory licence has been granted is required to allow the beneficiary of the licence to exploit his patent without imposing any obstacle or opposition, under penalty of liability for damages in favour of the holder of the compulsory licence.

Article 36

Any person applying for a compulsory licence must produce evidence of having previously approached the owner of the patent and of having been unable to obtain from him, upon a friendly basis and within a period of three months, a licence to exploit.

Article 37

The application, which must be supported by the evidence specified in the preceding Article, shall be brought before the Civil Tribunal of the domicile of the patentee or, if the patentee is domiciled abroad, before the Civil Tribunal of the locality of his elected domicile.

The Tribunal shall summon the applicant and the patentee, or their representatives, to appear before them, as well as other interested parties, if any, and shall hear their explanations publicly, and under cross-examination.

It may order an enquiry and expert evidence, or one or other of these measures.

It shall seek the opinion of the Minister responsible for industrial property who shall, if the occasion so requires, consult other Ministers interested. The Minister responsible for industrial property may delegate a representative to intervene in the debate and to make any observations that may be useful. The views of the District Attorney should also be heard.

Article 38

In its decision, the Tribunal shall rule, if the occasion so requires, that the patent has not been the subject of effective and serious exploitation; it shall pronounce as to the value of the excuses proffered and, where relevant, as to the exist-

ence of an abuse of monopoly justifying the grant of a compulsory licence.

In order to determine the existence of abuse, it shall take account of all circumstances and, in particular, the conditions and interest attaching to possible exploitation of the patent upon the national territory.

Its decision shall prescribe the conditions under which the compulsory licence is granted, particularly as regards its duration, its field of territorial application and, in the absence of agreement between the parties, the amount of royalties payable. These conditions may subsequently, even when agreement exists between the parties as to the amount of royalties, be the subject of revision by the tribunal, either on application by the owner of the patent or the licensee, and in accordance with the provisions of Article 37 and the present Article.

Article 39

A compulsory licence can only be non-exclusive.

However, the patentee may not agree to other licences and conditions of a more advantageous character than those of the compulsory licence.

Article 40

The decision of the Tribunal granting a compulsory licence will be notified by the Registrar (*Greffier*) to each of the parties involved. The period for appeal which the parties may make to the Appeal Court (*Cour de ressort*) runs from this notification.

The Court shall deal with the matter and shall issue a decision following the principles enunciated in Article 37 above. Its decision is subject to appeal to the Supreme Court.

All decisions taken by the Tribunals, the Courts of Appeal and the Supreme Court, in matters of compulsory licences, must be notified immediately by the Registrars to the Director of the African and Malgasy Office of Industrial Property, and recorded in the special Register of patents.

Article 41

The holder of a compulsory licence shall not, as of right, enjoy the benefit of certificates of addition pertaining to the patent; he can, however, in the absence of friendly arrangement, apply in the manner indicated above for the grant of a compulsory licence in respect of a certificate of addition, even if the conditions as regards the periods of time specified in Article 35 are not fulfilled, or if the certificate has been assigned by the owner of the patent, or if the owner of the patent exploits it directly, or has authorised its exploitation by a third party.

Article 42

The holder of a compulsory licence may take action for infringement, provided the owner of the patent or other beneficiaries by way of licence do not object. Any such objection must be formulated within a period of one month from the time when the compulsory licensee has, by registered letter requiring acknowledgment of receipt, acquainted the owner of the patent of his intention to take action.

Article 43

Every voluntary transfer of the rights under a compulsory licence, with or without valuable consideration, or wholly or in part, shall, under penalty of nullity, be submitted for authorisation to the Tribunal which granted the licence. The owner of the patent shall be compulsorily summoned. Appeal may be made from the decision of the Tribunal, either by the applicants or by the owner of the patent.

The Tribunal and the Court of Appeal shall seek the opinion of the Minister responsible for industrial property who shall, if the occasion so requires, consult the other Ministers interested. The Minister responsible for industrial property may delegate a representative to present his observations to the Tribunal.

Withdrawal of the compulsory licence may be ordered, at the request of the patentee and without prejudice as regards damages, by the correctional Tribunal in any case where the provisions of Article 46 apply, and where the repressible acts follow a transfer of the compulsory licence effected contrary to the provisions of the present Article.

Article 44

If the holder of a compulsory licence fails to comply with the conditions under which the licence was granted, the Minister responsible for industrial property, the owner of the patent, the other licensees, or any other applicant for licence, may submit to the Tribunal which granted the compulsory licence an application seeking either the withdrawal of the licence, or modification of the conditions under which it was granted.

The provisions of Article 37 above are applicable.

If the application does not emanate from the Minister responsible for industrial property, the Tribunal shall seek his opinion and he shall, if the occasion so requires, consult the other Ministers interested. The Minister responsible for industrial property may delegate a representative to present his observations to the Tribunal.

In its decision, the Tribunal shall, if the case so requires, pronounce upon the excuses and justifications put forward by the licensee. If withdrawal of the licence is ordered, the Tribunal may grant compensation for the benefit of the owner of the patent or of any other interested party.

The decision of the Tribunal shall be notified to each of the parties involved and to the Minister responsible for industrial property.

Appeal may be lodged by any of the parties. The Court of Appeal shall investigate the matter and issue its decision under the conditions prescribed by Article 37 above. Its decision is subject to appeal to the Supreme Court.

Article 45

Every action for the nullity of a patent must be conducted against the patentee. If a legal judgment which has become definitive declares the nullity of the patent, the holder of the compulsory licence is freed from all obligations resulting from the decision granting him the compulsory licence.

PART V

Infringement, legal proceedings and penalties

Article 46

Every injury to the rights of a patentee, either by manufacture of products or by the employment of means which form the subject of his patent, constitutes the offence of infringement. This offence is punishable by a fine of from 50,000 to 300,000 francs CFA.

Article 47

Any person who has knowingly harboured, sold or exposed for sale, or introduced on to the national territory, one or more infringing objects shall be punishable by the same penalties as infringers.

Article 48

The penalties prescribed by the present Annex shall not be cumulative.

The greatest penalty only is imposed in respect of acts prior to the first action for infringement.

Article 49

In the event of recidivism, imprisonment of from one month to six months shall be ordered, in addition to the fine specified in Articles 46 and 47.

Recidivism shall be deemed to exist when, in the course of the five preceding years, a first conviction has been recorded against the offender for one of the offences specified in the present Annex.

Imprisonment of from one month to six months may also be ordered if the infringer is a workman or an employee who has worked in the workshops or in the establishment of the patentee, or if the infringer, being associated with a workman or an employee of the patentee, has obtained knowledge, through the latter, of the processes described in the patent.

In this latter event, the workman or employee may be proceeded against as an accomplice.

Article 50

National provisions relating to extenuating circumstances are applicable to the offences specified in the present Annex.

Article 51

Corrective action for the application of the above penalties can only be taken by the District Attorney following complaint by the injured party.

Article 52

The corrective Tribunal, dealing with an action for infringement, shall take account of any pleas put forward by the accused, such as nullity or lapsing of the patent, or questions relating to its ownership.

Article 53

Acts occurring prior to the grant of a patent shall not be considered as being prejudicial to the rights of the patentee, and cannot justify conviction, even upon a civil basis, except

in the case of acts subsequent to a communication to the presumed infringer of an official copy of the specification of the invention attached to the application for patent.

Article 54

The owners of the patent may, by virtue of an order of the President of the Civil Tribunal of the locality where action should be taken, proceed in conjunction with all ushers or public or ministerial officers and, if the case so requires, with the aid of an expert, to the detailed designation and description, with or without seizure, of the alleged infringing objects.

The order will be given upon a simple request and upon presentation of the patent.

When seizure is involved, the said order may require the petitioner to furnish security, which he shall be required to deposit before seizure is effected.

Security is always required from any foreign person seeking seizure.

The detainer shall have a list of the objects described or to be seized under the order and, where necessary, of the document verifying the deposit of security, all under penalty of nullity and damages against the usher or public or ministerial officer.

Article 55

In the event of the failure of the petitioner to take action, either by civil or corrective means, within a period of one month, the seizure or description shall automatically become null, without prejudice to the damages, if any, that may be claimed.

Article 56

The confiscation of objects recognised as infringements and, where necessary, that of instruments or tools destined specially for their manufacture will, even in the case of acquittal, be pronounced against the infringer, the receiver, the introducer or the retailer.

The confiscated objects shall be remitted to the owner of the patent, without prejudice to more ample compensation and to the possible placarding of the judgment.

PART VI

Special and transitional provisions

Article 57

As from the date of coming into force of the present Annex, the amended Law of the 5th July, 1844, in respect of patents, Articles 3 and 4 of the Law of the 26th June, 1920, as well as the decrees applying the said Laws, are repealed.

Article 58

Nationals may, for the protection of rights deriving from industrial property, claim the application in their favour of the provisions of the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, as well as the provisions of the Arrangements, Additional Acts and Protocols of Closure which have modified or may hereafter modify the said Convention, in all cases

where these provisions are more favourable than those of the present Annex.

Article 59

Subject to the provisions of Article 60, rights resulting from applications for patents and from patents currently valid on the national territory before the date of its acquisition of autonomy shall continue to produce their effects after this date upon the said territory according to the provisions of the present Annex, and particularly for the term of twenty years specified in Article 4.

Contracts relating to the assignment or the grant of licences to exploit shall remain operative during the extended period of the term of the patent, provided the beneficiaries of these contracts do not declare their intention to renounce them by notice given six months before the expiration of the term originally agreed.

In the absence of agreement between the parties, the tribunals shall rule as to the amounts and royalties to be paid for the period during which the rights of assignees and licensees are thus prolonged.

Article 60

Every owner of the rights mentioned in Article 59 shall, under penalty of their lapsing, send to the African and Malagasy Office of Industrial Property, within a period of one year from the coming into force of the present Annex, a declaration that the said rights are being maintained, and shall pay a fee under such conditions as shall be determined by the Office.

However, the owners of rights resulting from applications lodged on the national territory are exempt from the formalities and fees specified in the preceding paragraph.

The patents so maintained give rise to the payment of fees falling due according to the provisions of Article 27.

Article 61

During a period of one year from the date of coming into force of the present Annex, applications for patents may be validly lodged, claiming the right of priority specified in Article 4 of the revised International Convention for the Protection of Industrial Property of the 20th March, 1883, for inventions the subject of applications for patents or of granted patents, of which the first filing in one of the countries of the International Union has been effected not more than one year before the acquisition of autonomy.

When the period of one year is exceeded, the period which elapsed between the two deposits referred to in the above paragraph shall be deducted from the period of protection.

Article 62

Patents in respect of which the application was lodged with the competent national Department subsequent to the date of acquisition of autonomy will be granted by the African and Malagasy Office of Industrial Property, in accordance with the provisions of the present Annex.

The renewal fees which have fallen due may be validly paid within a period of one year from the date of coming into force of the present Annex.

ANNEX II**Trade Marks****PART I****General provisions****Article 1**

A trade mark is optional.

However, decrees can, as a matter of exception, declare it to be obligatory in respect of the products they specify.

Article 2

Surnames taken alone or in a distinctive form, special, arbitrary or fancy names, the characteristic form of a product or its get-up, labels, envelopes, emblems, prints, stamps, seals, vignettes, selvedge, edging, combinations or arrangements of colours, drawings, reliefs, letters, figures, devices, pseudonyms and, in general, all material signs serving to distinguish the products or objects of any business shall be considered to be trade marks.

The utilisation of a surname by way of a trade mark by a person of the same name does not constitute injury to the rights of the proprietor of the mark if this utilisation takes place in a form and under conditions of such a kind as to avoid the risks of confusion.

Article 3

Signs, the utilisation of which would be contrary to public order, to proper conduct or to law, as well as signs excluded by Article 6 of the revised Paris Convention of the 20th March, 1883, cannot constitute a mark nor form part thereof.

Article 4

Foreigners shall enjoy the benefit of the present Annex by complying with the formalities which it prescribes.

Article 5

Subject to the reservations which follow, the mark belongs to the person who has first made use of it or who has effected deposit of it.

No person may claim exclusive property in a mark by exercise of the acts specified in the present Annex if he has not effected the deposit of it under the conditions prescribed in Article 8 below.

When a mark which has been deposited in a regular manner has been exploited publicly and in a continuous manner on the national territory for at least three years without having given rise to proceedings shown to be well-founded, the ownership of the mark can no longer be contested with the first depositor on the basis of prior user, unless it can be established that, at the time of deposit, the depositor could not have been unaware of the mark of the first user.

The first user, if he has not taken legal action to establish his claim under the conditions specified in the preceding paragraph, shall cease exploitation of the mark at the latest five years after formal notice by way of extra-judicial act made at the request of the depositor.

Article 6

The proprietor of a mark which is well-known within the meaning of Article 6^{bis} of the revised International Convention for the Protection of Industrial Property signed at Paris on the 20th March, 1883, may claim annulment of the effects upon national territory of the deposit of a mark capable of creating confusion with his own. This action cannot be taken after the expiration of a period of five years from the date of deposit, if the deposit was effected in good faith.

Article 7

User can only be proved by written or printed matter or by contemporary documents giving the facts of user which it is sought to establish.

PART II**Deposit, registration and publication****Article 8**

Any person who wishes to deposit a mark shall send to the Clerk's Office of the Civil Tribunal of his place of domicile:

- (1) an application for registration addressed to the Director of the African and Malgasy Office of Industrial Property;
- (2) an unstamped authorisation under private signature, if the applicant is represented by an agent;
- (3) a representation of the mark, enumerating the products to which it is to be applied and the corresponding classes of the classification in force.

The representation of the mark shall be deposited in four copies, one of which shall be marked by the applicant with the word "Original".

Every copy shall be signed by the applicant or his agent;

- (4) a block of the mark.

The right of priority attaching to an earlier deposit shall be claimed at the time of deposit of the mark or, at the latest, within the two months which follow it. In the latter event, the claim shall be addressed direct to the African and Malgasy Office of Industrial Property. Any claim reaching the Office more than two months after the deposit of the mark will be declared non-receivable.

Article 9

The deposit of a mark gives rise to the payment of a filing fee and a fee in respect of each class of products in excess of the third.

Article 10

A written statement drawn up by the Court Registrar (*greffier*) will acknowledge each filing, setting out the day and hour of the lodging of the documents.

A copy of the statement shall be sent to the applicant.

The Court Registrar will transmit the documents to the African and Malgasy Office of Industrial Property within a period of five days of the deposit.

Article 11

The Office, after verifying that the mark is not contrary to the provisions of Article 3, that the deposit has been re-

gularly made, and that the required fees have been paid, shall proceed to registration and publication of the mark.

The legal date of registration is the date of deposit.

The original copy of the representation of the mark determines the scope of the mark. It shall be inserted in the special Register of marks, provided for by Article 18.

The Office shall send the applicant a copy of the representation of the mark, bearing mention of registration.

Article 12

Every deposit which fails to satisfy the requirements of Article 3 shall be rejected.

In the event of material irregularity or of failure to pay the required fees, a period of two months will be allowed to the applicant to regularise his deposit. This period may be prolonged upon a justifiable request by the applicant or his agent. In the event of failure to regularise within the period granted, the application will be rejected.

Rejection will be pronounced by the Director of the African and Malagasy Office of Industrial Property.

No deposit can be rejected unless the observations of the applicant or his agent have been submitted.

Article 13

The deposit of a mark is only effective for twenty years, but the proprietorship of the mark can be maintained indefinitely by successive deposits.

No person other than the original proprietor or, failing him, his successors in title, or any person authorised by him may, within a period of three years from the legal date of cessation of the effects of the deposit of a mark, validly deposit such mark.

Article 14

The proprietor of the deposit of a mark may, by declaration addressed to the African and Malagasy Office of Industrial Property by registered letter, with provision for receipt, renounce the effects of this deposit for all or part of the products to which the mark applies. This renunciation shall be recorded in the special Register of marks and shall be published. It shall take effect on the day of its recording at the Office.

PART III

Nullity

Article 15

Marks lacking distinctive character, due, in particular, to the fact that they consist exclusively of signs or indications which constitute the necessary or generic designation of the products, as well as deposits of marks which comprise indications liable to deceive the public, or the signs prohibited by Article 3, shall be null and void.

Article 16

The annulment of the effects upon national territory of the deposit of a mark shall be pronounced by the Civil Tribunals at the request either of the District Attorney (*Ministère public*) or of any person or trade association interested.

PART IV

Transmission and assignment of marks

Article 17

The rights subsisting in a mark are transmissible, in whole or in part, and either by themselves or in conjunction with the business.

Acts which constitute either transmission of the property or grant of the right of exploitation or the determination of this right, or mortgage or cancellation of mortgage, shall, under penalty of nullity, be drawn up in writing.

Transmissions of property and grants of the rights of exploitation may be made in respect of all or part of the products to which the mark applies. Only grants of the right of exploitation may contain a limitation of their effectiveness on the national territory.

Article 18

The Acts mentioned in the preceding Article can only be asserted against third parties if they have been entered in the special Register of trade marks kept at the African and Malagasy Office of Industrial Property. A copy of the acts will be retained by this organisation.

The Office shall deliver to all persons who so require a copy of the entries appearing in the special Register of trade marks, a note of entries made in respect of marks forming the subject of mortgage, or a certificate establishing that no such entries exist, as well as certificates of identity reproducing particulars of the original copy of the representation of the mark.

Article 19

Every final legal decision pronouncing annulment of the effects on the national territory of the deposit of a mark shall, upon notification to the African and Malagasy Office of Industrial Property by the Clerk of the Court, be entered in the special Register of marks and be the subject of a notification published by the said Office.

PART V

Penalties

Article 20

The following shall be punishable by a fine of from 50,000 to 300,000 francs CFA, and imprisonment of from three months to three years, or to one of these penalties only:

- (1) persons who have infringed a mark or who have made use of an infringing mark;
- (2) persons who have fraudulently applied to their products, or to the objects of their trade, a mark belonging to others;
- (3) persons who have knowingly sold or put on sale one or more products bearing an infringing or fraudulently-applied mark.

Article 21

The following shall be punishable by a fine of from 50,000 to 150,000 francs CFA and imprisonment of from one month to one year, or to one of these penalties only:

- (1) persons who, without infringing a mark, have made a fraudulent imitation of it of such a nature as to deceive the purchaser, or who have made use of a mark which is fraudulently imitative;
- (2) persons who have made use of a mark bearing indications capable of deceiving the purchaser as to the nature of the product;
- (3) persons who have knowingly sold or placed on sale one or more products furnished with a mark fraudulently imitative, or bearing indications capable of deceiving the purchaser as to the nature of the product.

Article 22

The following shall be punishable by a fine of from 50,000 to 100,000 francs CFA and by imprisonment of from fifteen days to six months, or by one of these penalties only:

- (1) persons who have not affixed to their products a mark which has been declared compulsory;
- (2) persons who have sold or placed on sale one or more products which do not bear the mark declared obligatory for this kind of product;
- (3) persons who have contravened the provisions of the decrees issued in execution of Article 1 of the present Annex.

Article 23

The penalties prescribed by the present Annex cannot be cumulative.

The maximum penalty is only imposed for all acts prior to the first legal action.

Article 24

The penalties imposed by Articles 20, 21 and 22 may be doubled in the event of recidivism.

Recidivism shall be deemed to exist when, in the five preceding years, judgment has been passed against the accused person for one of the offences specified in the present Annex.

Article 25

The national provisions relating to extenuating circumstances are applicable to the offences specified in the present Annex.

Article 26

Offenders may, further, be deprived of the right of participating in elections of the Chambers of commerce and industry and the Chambers of agriculture for a period not exceeding ten years.

The Tribunal may order the placarding of the judgment in such places as it may determine, and its insertion in its entirety or by way of extracts in such newspapers as it may designate, all at the expense of the guilty party.

Article 27

Confiscation of products when the mark is recognised as being contrary to the provisions of Articles 20 and 21 may, even in cases of acquittal, be pronounced by the Tribunal, as well as confiscation of instruments and tools which have specially served to commit the offence.

The Tribunal may order the confiscated products to be remitted to the proprietor of the mark infringed or fraudulently applied or imitated, independently of more extensive compensation, if any.

It shall, in all cases, order the destruction of marks recognised as being contrary to the provisions of Articles 20 and 21.

Article 28

In the case specified in the two first paragraphs of Article 22, the Tribunal shall always order that the mark declared to be obligatory shall be applied to the products which are subject to them.

The Tribunal may pronounce confiscation of the products if the guilty party has incurred, during the five preceding years, conviction for one of the offences specified in the two first paragraphs of Article 22.

PART VI

Jurisdiction

Article 29

Civil actions in respect of trade marks are taken before the civil Tribunals, and decided as summary matters.

If, in the case of action taken on a correctional basis, the accused raises in his defence questions relating to the ownership of the mark, the correctional police Tribunal will rule as to this exception.

Article 30

The proprietor of a trade mark may, by virtue of an order of the president of the civil Tribunal of the locality in which the operations require to be effected, proceed by way of all ushers or public or ministerial officers and, if the case so requires, with the aid of an expert, to a detailed description, with or without seizure, of the objects which he alleges are marked in a manner prejudicial to him and in contravention of the provisions of the present Annex.

The order will be issued upon simple request and upon evidence of registration of the mark.

When seizure is required, the judge may require security from the person seeking seizure, which such person shall be required to furnish before causing the seizure to be undertaken. Security is always required from any foreign person seeking seizure.

The detainers of the objects described or seized shall be furnished with a copy of the order and of the document establishing the deposit of security, when such occurs, all being under penalty of nullity and compensation against the usher or the public or ministerial officer.

Article 31

In the event of failure by the plaintiff to proceed either by civil or correctional means within the period of one month, the description or seizure shall automatically become void, without prejudice to the compensation, if any, that may be claimed.

PART VII

Special and transitional provisions

Article 32

As from the date of coming into force of this Annex, the amended Law of the 23rd June, 1857, in respect of trade marks, Articles 1 and 2 of the Law of the 26th June, 1920, as well as the decrees applying the said Laws, are repealed.

Article 33

Nationals may claim the application in their favour of the provisions of the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, as well as the Arrangements, Additional Acts and Protocols of Closure which have modified or may hereafter modify the said Convention, in all cases in which these provisions are more favourable than those of the present Annex in protecting rights deriving from industrial property.

Article 34

Subject to the provisions of Article 35, rights resulting from the deposit of trade marks currently valid upon the national territory before the date of its acquisition of autonomy shall continue to produce their effects upon the said territory after this date in accordance with the provisions of the present Annex and, in particular, for the period of twenty years referred to in Article 13.

Article 35

Every proprietor of rights mentioned in Article 34 shall, under penalty of their lapsing, address to the African Office of Industrial Property, within a period of one year from the date of coming into force of the present Annex, a declaration that the said rights are being maintained, and shall pay a fee, under conditions that will be determined by the Office.

However, the owners of the rights resulting from deposits effected upon the national territory shall be exempt from the formalities and fees specified in the preceding paragraph.

Article 36

The deposits of trade marks referred to in Article 34, and which have reached the limit of the period of protection of twenty years between the date of the acquisition of autonomy and the date of coming into force of the present Annex, may be validly renewed during a period of one year from the said date of coming into force. The renewals will have retroactive effect to the term of protection referred to above.

The period between such term and the date of application for renewal shall be deducted from the new period of protection.

Article 37

During a period of one year from the date of coming into force of the present Annex, deposits may be validly effected, with claim to the right of priority specified in Article 4 of the revised International Convention for the Protection of Industrial Property of the 20th March, 1883, in respect of trade marks of which the first deposit in one of the countries of

the International Union was effected not more than six months before the date of the acquisition of autonomy.

When the period of six months has been exceeded, the time which has elapsed between the two deposits mentioned in the preceding paragraph shall be deducted from the period of protection.

The deposit relating to a mark which has ceased to have effect upon the national territory prior to the date of the acquisition of its autonomy shall not constitute an obstacle to a subsequent deposit of the said mark effected after such date being presumed to be the first deposit for the purposes of the present Article.

Article 38

Deposits effected with the national Department subsequent to the date of acquisition of autonomy will be registered by the African and Malagasy Office of Industrial Property in accordance with the provisions of the present Annex.

ANNEX III

Industrial designs or models

PART I

General provisions

Article 1

Every creator of an industrial design or model, and persons deriving title from him, have the exclusive right to exploit, sell or cause to be sold such design or model, under the conditions specified in the present Annex, without prejudice to the rights that they may have under other legal provisions.

Article 2

The present Annex is applicable to every new design, to every new plastic form, to every industrial object which can be differentiated from similar ones, whether by a distinct and recognisable configuration which confers a character of novelty upon it, or whether by one or more exterior features which give it a distinctive and new appearance.

If the same object can be simultaneously considered as a new design or model and as a patentable invention, and if the constituent elements of the novelty of the design or model are inseparable from those of the invention, the said object can only be protected in accordance with Annex I relating to patents.

Article 3

Designs or models regularly deposited enjoy only the benefit of the present Annex.

The ownership of a design or model belongs to the person who has created it or to persons deriving title from him; but in the absence of proof to the contrary, the first depositor of the design or model shall be presumed to be the creator of it.

The publicity given to a design or model prior to its deposit, by being placed on sale or by any other means, does not involve lapsing either of the right of ownership or of the special protection granted by the present Annex.

Article 4

Foreigners shall enjoy the benefits of the present Annex by complying with the formalities which it prescribes.

PART II

Deposit and publicity

Article 5

Any person who wishes to deposit an industrial design or model shall send to the Registrar (*greffe*) of the Civil Tribunal of his place of domicile:

- (1) a declaration of deposit;
- (2) an unstamped authorisation under personal signature, if the person making the deposit is represented by an agent;
- (3) under penalty of nullity of the deposit, two identical copies of a representation or specimen of the design or model, contained in a sealed package.

The same deposit may consist of from one to one hundred designs or models, which shall be numbered from the first to the last. Designs or models in excess of one hundred shall not be considered as validly deposited in relation to the present Annex.

Article 6

A written statement drawn up by the Registrar shall acknowledge each deposit, setting out the day and hour of the lodging of the documents.

A copy of the statement shall be sent to the depositor.

The Registrar shall transmit the documents to the African and Malgasy Office of Industrial Property, within five days from the date of deposit.

Article 7

The Office, after having verified that the deposit is in proper form, shall proceed to its registration. It shall send a certificate of registration to the depositor.

The legal date of registration is the date of the deposit.

In the case of material irregularity which does not involve nullity of the deposit, or of failure to pay the required fees, a period of two months shall be allowed to the depositor to put his case in order. This period may be prolonged upon a justifiable request of the depositor or his agent. Failing regularisation within the period allowed, the deposit will be rejected.

The rejection will be pronounced by the Director of the African and Malgasy Office of Industrial Property.

Article 8

The total term of protection granted by the present Annex to a deposited design or model is twenty years from the day of the deposit. This term shall be divided into one period of five years and one period of fifteen years.

Protection shall cease at the end of the period of five years, if maintenance of the deposit has not been requested by the depositor or his successors in title before the end of this term, or within the ensuing six months.

A request for the maintenance of a deposit may involve either all the designs or models comprised in the deposit, or only one or several of them.

Article 9

During the first period of protection, the deposit of the design or model will remain secret, unless publicity has been requested by the depositor or his successors in title.

A request for publicity may involve either all the designs or models comprised in the deposit, or only one or several of them.

Article 10

The African and Malgasy Office of Industrial Property will cause the designs or models affected by the request referred to in Article 9 to be reproduced.

A print of the reproduction will be available to the public at the Office.

Copies bearing mention of the publicity of the deposit will be delivered, at their request, to any depositor or person deriving title from him, as well as to any person involved in litigation relating to the design or model.

Article 11

Deposits of designs or models maintained in accordance with the provisions of Article 8 will be made public by the Office, if they have not already been made public during the first period of protection.

Article 12

A notification will be published by the Office as to the designs or models whose deposit has been made public.

Article 13

Designs and models which have been deposited will be destroyed if not claimed by their proprietor within two years following the term of protection.

Article 14

Deposit gives rise to the payment:

- (1) of a filing fee, irrespective of the number of designs or models deposited;
- (2) of a fee in respect of each design or model deposited.

PART III

Transmission and assignment of industrial designs or models

Article 15

The rights attaching to a design or model are transmissible, in whole or in part.

Acts covering either transmission of ownership, the grant of the right of exploitation or the cessation of this right, or mortgage or cancellation of mortgage relating to a design, are required, under penalty of nullity, to be drawn up in writing.

Article 16

The acts referred to in the preceding Article are not enforceable against third parties unless they have been recorded in the special Register of designs or models kept at the African and Malgasy Office of Industrial Property. A copy of the acts will be retained by the Office.

The Office shall supply to any persons requesting it a copy of the entries made in the special Register of designs or models, as well as particulars of existing entries in respect of designs or models forming the subject of mortgage, or a certificate verifying that no such entries exist.

PART IV

Penalties

Article 17

Every infringement knowingly made of the rights guaranteed by this Annex is punishable by a fine of from 50,000 to 300,000 francs CFA.

Article 18

In the event of recidivism, or if the delinquent is a person who has been in the employment of the injured party, sentence may further include imprisonment of from one to six months.

Recidivism shall be deemed to exist where, during the five preceding years, a first conviction has been pronounced against the accused for one of the offences specified in the present Annex.

The national provisions relating to extenuating circumstances are applicable to the offences specified in the present Annex.

Article 19

In addition, delinquents can be deprived of the right of taking part in the elections of the Chambers of commerce and industry for a period not exceeding ten years.

The Tribunal may order placarding of the judgment in such places as it may determine, and its insertion, totally or in extract form, in such newspapers as it may designate, all being at the cost of the person convicted.

Article 20

Confiscation, for the benefit of the injured party, of objects damaging the rights guaranteed by the present Annex may be ordered, even in cases of acquittal.

The Tribunal, in case of conviction, may further order the confiscation of instruments having specially served in the manufacture of the infringing objects.

PART V

Legal actions and procedure

Article 21

Facts occurring prior to deposit do not give rise to any action under the provisions of the present Annex.

Facts occurring subsequent to a deposit, but prior to its publication, cannot, under the provisions of Article 17, give rise to action, even on a civil basis, designed to establish bad faith on the part of an accused person, except at the instance of the injured party.

No action, whether penal or civil, can be instituted, by virtue of the same Article, before the deposit has been made public.

When the facts are subsequent to the publication of the deposit, their author may plead to have acted in good faith, but only if they are able to produce proof thereof.

Article 22

Civil actions relating to designs or models shall be brought before the civil Tribunals and decided as summary matters.

Article 23

Correctional action for the application of the penalties specified in Part IV can only be taken by the District Attorney following complaint by the injured party.

Article 24

In the case of action instituted on a correctional basis, the Tribunal shall take account of any exceptional matters brought forward by the accused, such as nullity of the deposit or questions relating to the ownership of the design or model.

Article 25

The injured party may proceed by way of all ushers or public or ministerial officers and, if necessary, the assistance of an expert, to a detailed description, with or without seizure of the incriminated objects, by virtue of an order given by the president of the civil Tribunal in the locality in which the operations should be carried out. The order shall be issued upon simple request and upon presentation of an attestation of publication issued by the African and Malgasy Office of Industrial Property.

When seizure is requested, the judge may require security from the person seeking seizure, and such person shall be required to furnish the security before steps are taken to effect seizure. Security will always be required from any foreigner requesting seizure.

The detainers of the objects described shall be furnished with a copy of the order and of the document establishing the deposit of security, where such occurs, all being under penalty of nullity and compensation against the usher or the public or ministerial officer.

Article 26

If the plaintiff fails to proceed, either on a civil or correctional basis, within a period of one month, the description or seizure shall automatically become void, without prejudice to the compensation, if any, that may be claimed.

Article 27

Any Court involved in litigation may request the African and Malgasy Office of Industrial Property to communicate a design or model previously made public.

PART VI

Special and transitional provisions

Article 28

The amended Law of the 14th July, 1909, relating to designs or models, as well as the decrees applying the said Law, are repealed as from the date of coming into force of the present Annex.

Article 29

Nationals may claim the application in their favour of the provisions of the International Convention for the Protection of Industrial Property, signed at Paris on the 20th March, 1883, as well as the provisions of Arrangements, Additional Acts and Protocols of Closure which have modified or may hereafter modify the said Convention, in all cases where these provisions are more favourable than those of the present Annex in the protection of rights deriving from industrial property.

Article 30

Rights resulting from the deposits of designs or models and existing on the national territory before the date of its acquisition of autonomy shall continue, after such date, to produce their effects upon the said territory for the duration of the period of protection current at that date.

Article 31

Deposits effected not more than five years before the date of the acquisition of autonomy by the national territory, and of which the maintenance was not requested before such date, will be prolonged up to the total term of protection of twenty years specified in Article 8, if the depositor so requests within a period of one year from the coming into force of the present Annex, either by way of the declaration of maintenance provided for by Article 32, or subsequent thereto.

Article 32

Every owner of the rights mentioned in Articles 30 and 31 shall, under penalty of their lapsing, send to the African and Malgasy Office of Industrial Property, within a period of one year from the date of coming into force of the present Annex, a declaration of the maintenance in force of the said rights, and shall pay a fee under conditions to be determined by the Office.

Article 33

Deposits effected with the national Department since the date of acquisition of autonomy will be transmitted to the African and Malgasy Office of Industrial Property.

The same applies in the case of deposits which have been maintained by the application of Article 31 which were effected on the national territory and are still in the hands of the Court Registrars.

ANNEX IV

Article 1

Member States shall be entitled to replace the totality of Article 6, the second paragraph of Article 9, and Article 10 of Annex I relating to patents by the following provisions:

Article 6. — Any person who wishes to obtain a patent shall lodge with or send by registered post, with request for acknowledgement of receipt, to the African and Malgasy Office of Industrial Property:

- (1) his application to the Director of the Office;
- (2) the document establishing payment of the application and publication fees;
- (3) an unstamped authorisation under personal signature, if the applicant is represented by an agent;

(4) a sealed package containing, in duplicate:

- (a) a description of the invention forming the subject of the patent applied for;
- (b) the drawings necessary for the understanding of the description.

Article 9, second paragraph. — A written statement, drawn up without charge by the African and Malgasy Office of Industrial Property will acknowledge each application, stating the day and time of lodging the documents, or of the receipt of the package containing them, if sent by post. In any case in which payment of the fees is not effected until later, the date of receipt of the application shall be that of the payment, and the hour of filing shall be the hour of closing on that day of the Office.

Article 10. — The African and Malgasy Office of Industrial Property shall proceed to the opening, the recording of the applications, and the grant of the patents in the order of receipt of the said applications.

Article 2

Member States shall be entitled to replace the totality of Articles 8 and 10 of Annex II relating to trade marks by the following provisions:

Article 8. — Any person who wishes to deposit a mark shall lodge with or send by way of registered post, with request for acknowledgement of receipt, to the African and Malgasy Office of Industrial Property, the following:

- (1) an application to the Director of the said Office for registration;
- (2) an unstamped authorisation under personal signature, if the applicant is represented by an agent;
- (3) a representation of the mark, enumerating the products to which it is to be applied and the corresponding classes of the classification in force.

The representation of the mark shall be deposited in four copies, one of which shall be marked by the applicant with the word "Original".

Each specimen shall be signed by the applicant or his agent;

- (4) a block of the mark.

The right of priority attaching to an earlier deposit shall, under penalty of the lapsing of this right, be claimed at the time of deposit of the mark or, at the latest, within the two months which follow it. Any claim reaching the Office more than two months after the deposit of the mark shall be declared non-receivable.

Article 10. — A written statement drawn up by the Office will acknowledge each deposit, setting out the day and hour of the lodging of the documents, or of the receipt of the package containing them, if they have been sent by post.

A copy of the statement will be handed or sent to the applicant.

Article 3

Member States are entitled to replace the whole of Articles 5 and 6 of Annex III relating to industrial designs or models by the following provisions:

Article 5. — Any person who wishes to deposit an industrial design or model shall lodge with or send by way of registered post, with request for acknowledgement of receipt, to the African and Malgasy Office of Industrial Property:

- (1) a declaration of deposit;
- (2) an unstamped authorisation under personal signature, if the applicant is represented by an agent;
- (3) under penalty of nullity of the deposit, two identical copies of a representation or specimen of the design or model, contained in a sealed package.

The same deposit may consist of from one to one hundred designs or models, which shall be numbered from the first to the last. Designs or models in excess of one hundred shall not be considered as validly deposited in relation to the present Annex.

Article 6. — A written statement drawn up by the Office will acknowledge each deposit, stating the day and hour of the lodging of the documents, or of the receipt of the package containing them, if they have been sent by post.

A copy of the statement will be handed or sent to the depositor.

Article 4

Member States are entitled to decide as to Tribunals whose Registrars are competent to receive deposits of trade marks and of industrial designs or models.

A list of the said Tribunals will be notified to the African and Malgasy Office of Industrial Property.

Article 5

Member States may modify the list of the organisations to the election of which delinquents may be denied the right of taking part by virtue of Article 26 of Annex II relating to trade marks and Article 19 of Annex III relating to industrial designs or models.

Article 6

Member States are entitled to modify the minimum amount of correctional fines specified in Article 28 and 46 of Annex I, in Articles 20, 21 and 22 of Annex II and in Article 17 of Annex III.

LEGISLATION

ITALY

(Translation)

Decrees

concerning the temporary protection of industrial property rights at 18 Exhibitions

(From 10th May, 1962, to 18th February, 1963)¹⁾

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

II^a Mostra delle apparecchiature chimiche (Milan, 30th September-18th October, 1962);

XV^a Fiera di Bolzano — Campionaria internazionale (Bolzano, 14th-24th September, 1962);

Mercato internazionale del tessile per l'abbigliamento (Milan, 12th-17th November, 1962);

Salone-mercato internazionale dell'abbigliamento (Turin, 13th-18th October, 1962);

H^a Salone nautico internazionale (Genova, 2nd-12th February, 1963);

I^a Fiera internazionale delle comunicazioni marittime, fluviali, lacuali e delle telecomunicazioni (Genova, 25th May-9th June, 1963);

X^a Salone internazionale dell'aeronautica (Genova, 7th-15th September, 1963);

LXV^a Fiera internazionale dell'agricoltura e della zootecnia (Verona, 10th-19th March, 1963);

XV^a Salone della macchina agricola (Verona, 10th-19th March, 1963);

XVIII^a Fiera del Mediterraneo — Campionaria internazionale (Palermo, 25th May-9th June, 1963);

X^a Mostra internazionale avicola (Varèse, 27th June-1st July, 1963);

Settimana della calzatura e del cuoio — XXVII^a Salone internazionale (Vigevano, 14th-22nd September, 1963);

XXVII^a Mostra-Mercato internazionale dell'artigianato (Florence, 24th April-12th May, 1963);

XXIV^a Fiera di Messina — Campionaria internazionale (Messina, 4th-19th August, 1963);

XV^a Fiera campionaria della Sardegna (Cagliari, 9th-24th March, 1963);

Salone Mercato internazionale dell'abbigliamento (Turin, 24th-31st March, 1963);

XVIII^a Mostra internazionale delle conserve ed imballaggi — Salone internazionale delle attrezzature per le industrie alimentari (Parma, 20th-30th September, 1963);

VIII^a Esposizione europea della macchina utensile (Milano, 4th-13th October, 1963)

shall enjoy the temporary protection provided by laws No. 1127 of 29th June, 1939²⁾, No. 1411 of 25th August, 1940³⁾, No. 929 of 21st June, 1942⁴⁾, and No. 514 of 1st July, 1959⁵⁾.

²⁾ See *Prop. ind.*, 1939, p. 124; 1940, p. 84.

³⁾ *Ibid.*, 1940, p. 196.

⁴⁾ *Ibid.*, 1942, p. 168.

⁵⁾ *Ibid.*, 1960, p. 23.

GENERAL STUDIES

(*Translation*)

**The Evolution
of the United International Bureaux**

G. H. C. B.

BOOK REVIEW

Internationale Lizenzverträge, Berichte von Praktikern aus 38 Ländern
(International licencing contracts, reports submitted by practitioners from 38 countries), by *Eugen Langen*. Second edition, much enlarged. 491 pages, 22 × 15 cm. Published by "Verlag Chemie GmbH", Weinheim (Bergstrasse), 1958.

The second edition of this work is composed of clear and brief reports dealing with the law applicable to licencing matters in a total of 38 countries and includes all the more important points to be observed in each of the countries for concluding licence contracts of international scope.

The authors of the reports have clearly brought out the details of their national legislation and have not hesitated to draw the attention of their readers to a number of problems of particular importance often the subject of controversy.

This work will be of considerable assistance to practitioners. In view of the increasing trend towards the internationalisation of the protection of intellectual property, this work is recommended to all those persons who deal with licencing contracts of an international nature.

A. K.