

# Industrial Property

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# INTERNATIONAL UNION

MALGASY REPUBLIC  
REPUBLIC OF SENEGAL

## Declaration of Membership

of the International Union of Paris for the Protection of Industrial Property and of adhesion to the Lisbon text of the Convention

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

(Translation)

In compliance with the instructions of the Swiss Federal Political Department dated 21<sup>st</sup> November, 1963, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Governments of the Malgasy Republic and the Republic of Senegal (in letters dated respectively 7<sup>th</sup> October, 1963, and 16<sup>th</sup> October, 1963)<sup>1</sup> have confirmed to the Swiss Government the membership of their countries in the International Union of Paris for the Protection of Industrial Property by virtue of declarations of applications previously made in accordance with Article 16<sup>bis</sup> of the International Convention for the Protection of Industrial Property.

In these letters, the Swiss Government was also informed of the adhesion of Madagascar and Senegal to the Paris Convention, as revised at Lisbon on 31<sup>st</sup> October, 1958. In application of Article 16 (3) of the said Convention, these adhesions will take effect on 21<sup>st</sup> December, 1963.

With regard to their contributions to the common expenses of the International Bureau of the Union, these States are placed, at their request, in the Sixth Class, for the purposes of Article 13 (8) and (9) of the Paris Convention as revised at Lisbon.

\* \* \*

These adhesions will bring the membership of the Union to 61 with effect from 21<sup>st</sup> December, 1963.

## African and Malgasy Industrial Property Office

Entry into force, the 1<sup>st</sup> January, 1964, of the Annexes and Rules of the Accord of Libreville

We have received the following Notice from the Director-General of the African and Malgasy Industrial Property Office (OAMPI):

(Translation)

"The African and Malgasy Industrial Property Office has fixed the 1<sup>st</sup> January, 1964, as the date of entry into force of the Annexes and Rules of the Accord of Libreville<sup>1</sup>) of the 13<sup>th</sup> September, 1962, ratified by the twelve Signatory States.

<sup>1</sup>) Omitted. (Ed.)

<sup>1</sup>) Published in *Industrial Property*, April 1963, at page 66.

From that date, applications relating to patents of invention, trade marks and designs or models will be received and the period of one year provided for the application of the transitional provisions will run.

A collection of texts, including all the provisions relating to the Office and certain information on practice will be on sale from December, 1963, from OAMPI, B. P. 887, Yaoundé, Cameroon (Post check account: Douala 38-16) at a price of 300 CFA francs, plus postage (postage for a collection of 175 grams by air mail: France: 50 CFA francs; Europe: 200 CFA francs; North and South America: 270 CFA francs)."

## Committee of Experts to Study Industrial Property Problems of Industrially Less Developed Countries

(Geneva, 21<sup>st</sup> - 23<sup>rd</sup> October, 1963)

Report by Mr. Dionis R. Bitegeko (Tanganyika)  
Reporter

The Committee of Experts proposed by the Permanent Bureau of the International Union for the Protection of Industrial Property at its Joint Session with the Permanent Committee of the International Union for the Protection of Literary and Artistic Works, in October, 1962, to study the problems of countries in course of industrial development in the field of industrial property, met in Geneva on the 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> October, 1963.

There were present Delegates from Algeria, Brazil, Colombia, Czechoslovakia, Iran, Japan, Sweden, Tanganyika, United States of America and Venezuela, together with two Experts, Professor Stojan Pretnar, of the University of Ljubljana, Yugoslavia, and M. J. E. Moukoko, Director-General of the African and Malgasy Industrial Property Office, Cameroon. A full list of participants appears in Annex 1 to this Report.

The Meeting was opened by Professor G. H. C. Bodenhäuser, Director of the United International Bureaux for the Protection of Intellectual Property.

The Agenda, Annex 2, was adopted.

Mr. Brahim Bendris (Algeria) was appointed Chairman, Mr. Torwald Hesser (Sweden) Vice-Chairman and Mr. Dionis Bitegeko (Tanganyika) Reporter.

It was agreed that the Committee should adopt the list of questions set out in document PJ/25/1 as a basis of discussion. These questions were as follow:

1. What should be the general attitude of less developed countries with respect to:
  - (a) the protection of industrial property;
  - (b) adhesion to the Paris Union and its related Unions?
2. What are the special requirements of less developed countries in regard to:
  - (a) patents, authors' certificates, utility models;
  - (b) trade marks, service marks, trade names, unfair competition;
  - (c) industrial designs and models;
  - (d) indications of source or appellations of origin?

3. Is it useful and feasible to establish model laws in respect of any or all of these subjects?
4. Should the special interests of less developed countries be taken into account in their patent legislation by:
  - (a) provisions regarding compulsory licences;
  - (b) anti-trust provisions;
  - (c) provisions to protect the balance of payments in regard to royalties under licence agreements?
5. Should a programme for the exchange of trainees between the Industrial Property Offices of developed and less developed countries be established and carried out?
6. What other means can be employed to assist less developed countries in the field of industrial property?

Each question was introduced by the Director of BIRPI and the Experts before each debate.

The Committee proceeded to the discussion of question 1 (a): "What should be the general attitude of less developed countries with respect to (a) the protection of industrial property?"

From a general discussion of this question it appeared that it was difficult to generalize for all individual countries since the problems concerning each were peculiar to that particular country. It was necessary to consider the economic, social, technical and cultural structure which each country has adopted or may wish to adopt. Nevertheless, it was thought that these countries had at least one element in common, namely that it was their aim to achieve as quickly as possible the same technical level as the more developed countries and that protection of industrial property would favour this result.

The Delegate of Czechoslovakia drew attention to the distinction between the systems of protection in capitalist and socialist countries and invited the Committee to adopt solutions which could be applied to both systems respectively.

The Delegates of Sweden and the United States noted that there were certain basic elements of industrial property protection that were widely accepted, for example in the Paris Union, and individual countries could adapt them to their special situations.

The Chairman thought that the function of this Committee was to collect together all the elements of appreciation to enable countries to decide which system of protection would suit them best.

The Delegate of Venezuela said that one of the main characteristics of a less developed country was the unilateral position of its external trade and its reliance on a single product (monoculture). He particularly emphasised the necessity to encourage in the less developed countries the patent of importation by which in his country the importer was granted rights which extended for five years.

It was accepted that the grant of industrial property rights must be real and give a meaningful inducement to investors and inventors without being permitted to be exercised in such a way as to thwart legitimate national interests.

It was concluded that legislation should be established which would ensure a proper protection of industrial pro-

perty while, at the same time, safeguarding the national requirements of each country and its economic needs.

The Chairman indicated that question 1 (b) would be postponed until the end of the Agenda.

The Committee proceeded to consider question 2 (a): "What are the special requirements of less developed countries in regard to patents, authors' certificates, utility models?"

On the proposal of Professor Pretnar, "technical improvements" was added to the other items in 2 (a).

M. Moukoko explained the system obtaining in the African and Malgasy Industrial Property Office and pointed out that the decision not to examine was dictated by lack of finance and lack of skilled personnel but that in cases of difficulty the Office reserved the right to seek an unofficial examination among the various agencies capable of providing it.

In the course of the discussion it was pointed out that the certificate of authorship gives to the State the right to use an invention and at the same time guarantees to the inventor the right to have his invention exploited with suitable remuneration.

It was concluded that, so that each country might decide on the forms of protection most appropriate to its circumstances, the maximum amount of information should be assembled in regard to various systems of protection at present in existence.

The Committee proceeded to examine question 2 (b): "What are the special requirements of less developed countries in regard to trade marks, service marks, trade names, unfair competition?"

The Chairman thought there were no particular problems in regard to these items and after discussion it was concluded that legislation on the items in question 2 (b) was desirable for countries in course of industrial development in order of priority to be decided by each country.

The Committee proceeded to consider question 2 (c): "What are the special requirements of less developed countries in regard to industrial designs and models?"

Although this question might at first sight appear to be less important than the other elements of industrial property, it had to be remembered that in a great many developing countries there was a great store of traditional art and folklore, the products of which were based on native craftsmanship and that industrial designs and models arising from this source should be protected.

It was concluded that industrial designs and models in the countries in course of industrial development should be protected by legislation.

The Committee proceeded to consideration of question 2 (d): "What are the special requirements of less developed countries in regard to indications of source or appellations of origin?"

Again it was emphasised that this question was of considerable importance to less developed countries. In many of them there was a considerable source of economic wealth to be found in their natural resources and attaching to the special qualities to be found in certain geographical areas. As

an instance was given the production of Jaffa oranges which were unknown comparatively recently.

It was also pointed out that the proper publicity of and protection for indications of source and appellations of origin was for the benefit of the public. It was suggested that it was only necessary to provide suitable national legislation and leave to private parties concerned to defend themselves by means of such legislation against infringements. There would be no need of a special machinery for public control.

It was concluded that in the field of appellations of origin some countries have assets which should be used in the public interest, that steps should be taken by means of legislation to protect those assets and that international arrangements existed which would enable an international protection to be established in advance of national legislation.

The Committee proceeded to consider question 3: "Is it useful and feasible to establish model laws in respect of any or all of these subjects?"

The Director of BIRPI said that the establishment of model laws was a means of helping developing countries to establish their own legislation. It is already the intention of BIRPI, together with Unesco and with the assistance of a working party of experts, to prepare a model law on copyright for the African States.

M. Monkoko, in reference to OAMPI, said that such an agreement between a group of States requires common interests between them and might not necessarily be suitable for other States. He suggested that the former British Territories might adopt the same principle based on other traditional and economic concepts.

It was concluded that, in respect of the protection of inventions and technical improvements, BIRPI should study the question and prepare a model law comprising alternatives for different systems to be accompanied by explanatory notes giving the advantages and disadvantages of the various systems.

Attention was drawn to the existence of a model law on trade marks, trade names and unfair competition, already prepared by the International Chamber of Commerce.

The Committee proceeded to the discussion of question 4: "Should the special interests of less developed countries be taken into account in their patent legislation by (a) provisions regarding compulsory licences; (b) anti-trust provisions; (c) provisions to protect the balance of payments in regard to royalties under licence agreements?"

With regard to (a), Professor Pretnar intimated that a system of legislation providing for compulsory licences was aimed at the development of technique and to help exploitation. Less developed countries should make provision for such legislation and the United Kingdom law gave good guidance in its most detailed form. It was pointed out that although a great number of countries had legislation providing for compulsory licences, cases where an application for a compulsory licence were made are rare. Nevertheless the presence of legislation no doubt operated to ensure that licences were more often granted voluntarily.

The Delegate of the United States pointed out that although the United States had no legislative provisions for compulsory licences, there had been a considerable number of cases in which anti-trust proceedings had resulted in compulsory licences.

It was concluded that developing countries would be well advised to provide legislation ensuring the grant of compulsory licences especially as a remedy against non-working, but not so strictly as to discourage foreign investment. A procedure should be established which would encourage confidence in the system and should ensure that final decisions were in the hands of the Courts.

With regard to (b), it was agreed that know-how should be taken into consideration in this item.

On consideration of anti-trust provisions, the Committee observed that such provisions formed part of a much larger problem. However, less developed countries should consider the necessity for an anti-trust provision in their legislation on inventions when more general legislation did not deal adequately with the problem.

With regard to know-how, the Committee appreciated the great importance of this to countries in course of industrial development whose urgent need was to import technology, but the Committee did not feel that it was in a position to arrive at any conclusion on this matter in regard to the legislation of these countries.

However, the model law on inventions and technical improvements might be accompanied by an explanatory note on the concept of know-how and its practical application.

With regard to (c), the Delegate of Japan outlined to the Committee the Japanese law on this subject. It was, however, decided that the question of the protection of balances of payments were only incidentally related to licence agreements and that patent legislation should only deal with the subject in the absence of more general provisions.

The Committee then proceeded to discussion of questions 5 and 6: "Should a programme for the exchange of trainees between the Industrial Property Offices of developed and less developed countries be established and carried out? What other means can be employed to assist less developed countries in the field of industrial property?"

The Director of BIRPI outlined the scheme which had already been started by BIRPI with the object of training officials for the industrial property offices of countries in course of industrial development. The Member States of the Paris Union had been circulated and the response had been, on the whole, encouraging but, nevertheless, there remained problems of language and finance. He sought the opinion of the Committee as to whether or not this plan should be pursued.

Various schemes were put forward by which BIRPI could give assistance in this connection to the developing countries of which perhaps the most interesting was the idea of holding a short Seminar at BIRPI headquarters followed by a period of training in some industrial property office in a more developed country.

The Director of BIRPI pointed out that so far as BIRPI was concerned the possibilities were limited by lack of

finance. There were two problems; one, legislative assistance and the other, administrative. BIRPI anticipated being able to offer aid on the legislation problems of developing countries out of its present resources but there was little prospect at the moment of being able to offer assistance on administrative problems. The question of a Seminar was promising and would be explored.

He thought it might be possible to establish a fund for technical assistance made up of contributions from the Member States of the Union or from industry, and it might be possible to send experts to the countries in course of development to assist with their legislation. He emphasised that the development of legislation must be carefully prepared before there was any question of sending experts to the countries.

On the request of the Delegate of Czechoslovakia, it was understood that any assistance, legislative or administrative, would take into consideration both the socialist and capitalist systems of protection.

The Committee then proceeded to a discussion of question 1 (b) which had been postponed: "What should be the general attitude of less developed countries with respect to adhesion to the Paris Union and its related Unions?"

The Director of BIRPI introduced this question by outlining some disadvantages and advantages of membership of the Paris Union. Amongst the disadvantages, he mentioned that the Members of the Union would be called upon to grant industrial property rights to foreigners which might seem disproportionate at the beginning. However, this phenomenon has not prevented industrial development of countries such as Switzerland and the Netherlands which were themselves quite recently less industrially developed countries. Amongst the advantages of membership he emphasised that the plans outlined under questions 5 and 6 could only be available for the benefit of Member States of the Union.

The Delegate of Venezuela pointed out the benefits which derived from membership of the Paris Union, notably the principles of national treatment and priority. In view of the decisions of the First Latin American Congress on Industrial Property at Puerto Rico in 1963 and the likelihood of a Latin American Seminar organised by BIRPI at Bogota in 1964, the statement of the Delegate of Venezuela appears *in extenso* in Annex 3.

M. Moukoko suggested that improvements could be made in the system of contributions of Member States to the Paris Union. He did not suggest that contributions were unnecessarily high but that the contributions of the less developed countries were out of proportion with those of the highly developed countries. He suggested that at some time a change should be made to a system similar to that of the United Nations Organisation.

#### Miscellaneous

Professor Pretnar suggested that the Committee should recommend that steps be taken to ensure that BIRPI was invited to send a representative to the United Nations Con-

ference on Trade and Development taking place in Geneva early in 1964.

The Chairman presented a series of Recommendations of which one was the proposal of Professor Pretnar in regard to the United Nations Conference on Trade and Development.

The Recommendations were adopted unanimously and they appear in Annex 4.

#### ANNEX 1

##### List of Participants

##### Algeria

M. Brahim Bendris, Directeur de l'Office national de la propriété industrielle.

##### Brazil

M. Tarcisio Marciano da Rocha, Secrétaire d'Ambassade.

##### Colombia

S. E. le Dr. Eliseo Arango, Représentant permanent auprès de l'ONU.

##### Czechoslovakia

Dr. Otto Kunz, Maître de recherches de l'Académie tchécoslovaque des Sciences.

##### Iran

S. E. M. Abbas Ali Bashir Farahmand, Sous-Secrétaire d'Etat à la Justice.

##### Japan

Mr. Yuzuru Murakami, First Secretary of the Japanese Embassy in Germany.

##### Sweden

Mr. Torwald Hesser, Judge at the Court of Appeal.

##### Tanganyika

Mr. Dionis R. Bitegeko, Civil Servant.

##### United States of America

Mr. Harold Levin, Chief, International Business Practices Division, Department of State.

Mr. Vincent D. Travaglini, Director, Foreign Business Practices Division, Department of Commerce.

##### Venezuela

Dr. Marco Tulio Bruni Celli, Consejero de la Delegación Permanente de Venezuela ante ONU.

M<sup>lle</sup> Consuelo Nouel-Gomez, Abogado, Troisième Secrétaire de la Délégation permanente du Venezuela auprès de l'ONU.

##### Experts

M. James Emmanuel Moukoko, Directeur général de l'Office Africain et Malgache de la propriété industrielle, Yaoundé, Cameroun.

Professeur Stojan Pretnar, Professeur à la Faculté de Droit de Ljubljana, Yougoslavie.

##### Bureau of the Conference

Chairman: M. Brahim Bendris (Algeria).

Vice-Chairman: Mr. Torwald Hesser (Sweden).

Reporter: Mr. Dionis R. Bitegeko (Tanganyika).

*United International Bureaux for the Protection of Intellectual Property*

Professor G. H. C. Bodenhausen, Director.

*Secretariat*

Mr. Ross Woodley, Secretary, Counsellor, Head of the Industrial Property Division.

M. G. R. Wipf.

Mr. John Lamb.

Mrs. Rosemary Bourgeois.

ANNEX 2

**Agenda**

1. Opening of the Meeting by Professor G. H. C. Bodenhausen, Director of the United International Bureaux for the Protection of Intellectual Property.
2. Adoption of an Agenda.
3. Election of Chairman, Vice-Chairman and Reporter.
4. Consideration of Document PJ/25/1.
5. Adoption of a Report of the Committee.
6. Miscellaneous.

ANNEX 3

(Translation)

**Statement of the Delegate of Venezuela  
on the question:**

*What should be the general attitude of less industrially developed countries with respect to their admission to the Paris Union and its Separate Arrangements?*

Mr. Chairman,  
Honourable Delegates,

As a representative of a country in the course of development and particularly from a Latin American country, I should like first to recall that at the First Latin American Congress on Industrial Property which was held in Puerto Rico, all the Latin American countries unanimously decided that they could no longer continue to remain outside the Paris Convention. In this respect, Mr. Arpad Bogsch, Deputy Director of BIRPI gave a most interesting address on "The Paris Union for the Protection of Industrial Property and the Latin American countries".

Two basic principles emerge from the study of the Paris Convention: these are the principle of *national treatment* and the principle of *priorities*. According to the first of these principles, nationals of each country of the Union will enjoy in the other countries of the Union, with regard to industrial property, the same rights as nationals (Article 2). Similarly, persons within the jurisdiction of countries not forming part of the Union, who are domiciled or who have a real and effective industrial or commercial establishment in the territory of one of the countries of the Union, are assimilated to persons within the jurisdiction of the countries of the Union (Article 3). Furthermore, according to the principle of priority, the national of a country of the Union, or a person assimilated according to the Convention, who has duly deposited an application for a patent, shall enjoy in the other

countries of the Union a right of priority for a period of 12 months from the date of the first application — or, as the case may be, from the date which may be considered as that in the country of origin in accordance with the national law of that country — without it being necessary to inquire, for the purposes of priority, if the patented object is patentable or not according to the law of the country in which the first regular application was filed. This is evident if one takes into consideration the fact that the patents granted in each country of the Union in accordance with the provisions of the Convention, are independent and that Section 3 of paragraph A of Article 4 of the said Convention defines a regular national filing as being that which is adequate to establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application (this addition to the Paris Convention was made at the Lisbon Diplomatic Conference in 1958).

If I have referred to these details concerning the Paris Convention it is with a view to clarifying the point of view of the developing countries with regard to the importance for us of the above-mentioned Convention. It is known that the novelty of the invention, a condition required by all legislations either for obtaining a patent or for maintaining industrial property rights or both, may be destroyed by the publication or the divulgation by the inventor in his country of origin in order to obtain the same patent in other countries (this provision is to be found in paragraph 9 of Article 15 of our Industrial Property Law). Thus, for example, if a Venezuelan inventor applies for a patent in our country before applying in the United States, he may not obtain it in the United States because the Venezuelan application destroys the novelty of the invention in the United States. This problem could well be avoided as far as my country is concerned if Venezuela adhered to the Paris Convention for the Protection of Industrial Property; in this case, an inventor in Venezuela would enjoy the priority of 12 months provided for in the Convention, and during these 12 months, any divulgation, publication or working of the patented object by the inventor would not destroy the novelty of the invention when applying for a patent in another country. In such a country, the application filed would bear the date on which the original application had been made, and any acts subsequent to this date would not deprive the invention of its novelty, the patent being at all times subject to the legislation of the country where it is filed whether granted or not as an independent patent (i. e. having no relation to the outcome of the application which gave rise to the right of priority and which is generally established in the country of origin). In addition to the advantages which admission offers to inventors by virtue of the principles described above of national treatment and priority, admission to the Convention will result in an increase in the number of applications in the countries of the Union because many of the obstacles to patent grants will be removed, as I have already mentioned with reference to novelty.

There is no doubt that an increase in the number of applications may create possibilities for the development of national industries, because of new capital investments both

from national and foreign sources for the purpose of exploiting inventions. Furthermore, it must also be remembered that fiscal revenues will be increased because the procedure for the filing and the granting of patents and deposit of trade marks is subject to the payment of various fees which are due when interested persons file their applications.

Another important factor should be mentioned here; the Convention obliges the countries to adopt certain standard provisions for the prevention of unfair competition. The Convention nevertheless leaves the legislation of each country to determine questions relating to the granting of its trade marks and patents and any administrative or judicial action.

The XIII<sup>th</sup> Inter-American Bar Association Conference, held in Panama from 19<sup>th</sup> to 26<sup>th</sup> April, 1963, noted with interest the address in which Mr. Jeremiah D. McAuliffe envisaged the necessity for unifying Latin American laws on industrial property and proposed, as one of the best means of achieving this object, adhesion to the Convention, because it represents "the most effective agreement governing industrial property rights" and because it would help fill "the gaps in the national laws in force and would place all signatory countries on an equal footing".

The First Latin American Congress on Industrial Property which met in Ponce (Puerto Rico) emphasised even more the necessity of adhesion to the Convention in a Recommendation which, with your permission, Mr. Chairman, I will read:

"Considering,

That it is in the interest of each Latin American country to assure to its national inventors the opportunity of obtaining in the other countries the same protection as is assured in such countries to the nationals thereof;

That while a country is outside the International Union for the Protection of Industrial Property (the Paris Union), its nationals do not enjoy the right of priority guaranteed by the Convention of the Union (the Paris Convention);

That membership of the Paris Union is capable of accelerating the development of the national economy, due to the favourable influence that the international protection of industrial property exercises on national and foreign investment;

That membership of the Union involves no important national juridical regulations, since the Paris Convention leaves each country in almost complete liberty to legislate in the matter according to its legal traditions and economic needs;

The First Latin American Congress on Industrial Property assembled at San Juan de Puerto Rico, from 21<sup>st</sup> to 25<sup>th</sup> July, 1963,

Calls the attention of the Governments of the Latin American countries which are not yet members of the Paris Union to the advantages that adhesion of their countries to the Paris Convention would involve."

I would also recall that the Inter-American Bar Association Conference, which I have already mentioned above, on the proposal submitted by Colombia and as amended by Venezuela and Chile, approved the following Resolution:

"Consequently, it is agreed that the XIII<sup>th</sup> Conference of the Inter-American Bar Association expresses the hope that all member countries will unify their laws in the field of trade marks and industrial property and proposes setting up a Special Commission whose task will be to report on the advisability of adhering to the Paris Convention of 1883, before the meeting of the Inter-American Congress on Industrial Property in Mexico."

#### ANNEX 4

##### Recommendations

The Committee of Experts to study the problems of countries in course of industrial development in the field of industrial property, meeting in Geneva on the 21<sup>st</sup>, 22<sup>nd</sup> and 23<sup>rd</sup> October, 1963,

Having considered all the problems concerning industrial property in countries in course of industrial development

##### Recommends

1. that, especially in the light of the important contribution industrial property protection makes to economic development, the countries in course of industrial development:
  - (a) should establish legislation and an administration appropriate to their needs in the field of industrial property; and
  - (b) so far as they are not members of the Paris Union for the Protection of Industrial Property, should consider the possibility of adhering to that Union taking into account the advantages of such an adhesion;
2. that BIRPI should undertake to prepare a draft of a model law for the protection of inventions and technical improvements, taking into account the various existing systems, and accompanied by explanatory notes;
3. that BIRPI should put in hand a programme of technical assistance for the benefit of member countries of the Paris Union and should request for this purpose a voluntary contribution from the member countries, from industry and from the international funds of the United Nations Organisation.
4. that the Secretary-General of the United Nations Organisation should be requested to invite BIRPI to send an observer to the United Nations Conference on Trade and Development to be held in Geneva in 1964 in order that BIRPI shall be fully apprised of matters relevant to the interests of the Paris Union that are taken up at that Conference.

# LEGISLATION

## UNION OF SOVIET SOCIALIST REPUBLICS

### Statutes

#### of the Export and Import Enterprise "Licencintorg"<sup>1)</sup>

#### General (Translation)

1. — The enterprise "Licencintorg" has been set up with the object of carrying out operations relating to the sale of patents protecting Soviet inventions and of licences for their exploitation abroad, for the purchase of foreign patents and licences for their exploitation and the sale and purchase of technical documentation.

2. — "Licencintorg" is an independent economic organisation enjoying the rights of a legal entity and operating on a commercial basis.

3. — The operations and liabilities of "Licencintorg" are guaranteed by its assets and legal action may be taken against it in accordance with the laws in force in the USSR.

"Licencintorg" is not responsible for obligations undertaken by the State, its administration or other organisations.

The State is not responsible for the operations and obligations of "Licencintorg".

4. — The head office of "Licencintorg" is in Moscow.

5. — "Licencintorg" possesses a circular seal with its commercial name inscribed.

#### Functions

6. — "Licencintorg":

- (a) engages in the sale of Soviet patents and licences authorising their exploitation abroad and the sale of all technical documentation;
- (b) engages in the purchase of foreign patents and licences authorising their exploitation and the purchase of all technical documentation;
- (c) engages in the commercial exchange of patents, licences and technical documentation with foreign contractors;
- (d) engages in the sale and purchase of machines, equipment, materials, and of products, the delivery of which in the form of prototypes is provided for in the terms of agreements for licences;
- (e) ensures the control, with regard to the execution by Soviet organisations and foreign contractors, of the rights and obligations under the agreements concluded;
- (f) estimates the value of licences, patents and technical documentation sold, purchased or exchanged on the basis of the initial information supplied by the owners of Soviet inventions and by other competent organisations;
- (g) takes part in the examination as to the method and appropriateness of the use by the People's Economic Councils,

Scientific research institutes, enterprises and other organisations, of patents, licences and technical documentation acquired abroad;

- (h) takes part jointly with the Committee for Inventions and Discoveries of the Council of Ministers of the USSR, the Ministers of the Union and of the Republics, the Academy of Sciences of the USSR, the People's Economic Councils and other organisations and institutions, in the selection of Soviet inventions which could be licenced abroad, and finds foreign contractors interested in the purchase or the sale of patents, licences, and technical documentation;
- (i) systematically studies foreign legislation in the field of industrial property and the trade in licences as well as the practice in transactions, the object of which is the conclusion of agreements for patents and licences, as currently practised abroad;
- (j) organises publicity campaigns for inventions and for Soviet scientific technical achievements with the aim of selling licences; such campaigns include, *inter alia*, participation in commercial and industrial fairs, publishing of special catalogues, prospectuses and cinematographic films for television, collaboration with specialised publicity agents and the study of foreign publicity;
- (k) develops and applies measures likely to increase its activity.

#### Rights of the enterprise

7. — With a view to carrying out, in compliance with the law, those functions mentioned in Article 6, "Licencintorg" has the right to:

- (a) conclude acts of any kind and other legal actions including credit operations, the establishment of treaties, banking operations, etc., with organisations, enterprises, companies such as joint-stock companies, private companies etc., private persons both in the USSR and abroad, to sue or to defend in the courts or in arbitration;
- (b) establish, erect, acquire, transfer, rent or hire the services of enterprises capable of helping its activity, and any kind of movable or real estate both in the USSR or abroad;
- (c) establish in the USSR and abroad subsidiary companies (chain-stores) offices, representatives or agencies etc., and participate in associations, companies and organisations of any kind having an activity consistent with the aims of the enterprise.

#### Means

8. — The registered capital of "Licencintorg" is of 1,000,000 (one million) roubles.

#### Direction

9. — "Licencintorg" is directed by its President. The President and his deputies are appointed according to the established order. The distribution of work between the President and his deputies is determined by the President.

10. — The President directs all activities and manages the assets of the enterprise, passes and concludes acts or other legal transactions of all kinds on behalf of the enterprise, may enter into direct relationship with all organisations, enter-

<sup>1)</sup> The text of these Statutes was kindly communicated to us by Professor K. Katzarov, Geneva.

prises or persons in connection with any business concerning the enterprise.

11. — All acts relating to foreign trade concluded in Moscow by "Licencintorg" must be signed by two persons, one of whom must be the President or his deputy and the other the person empowered to sign documents relating to transactions connected with foreign trade, by appointment signed by the President of the enterprise.

Treaties and other acts relating to foreign trade, issued by the enterprise in Moscow must bear the signature of the President or his deputy or the chief accountant of the enterprise.

All contracts relating to acts concluded by "Licencintorg" as well as documents relating to the acquisition, transfer, renting or hiring of any assets outside Moscow (both abroad and in the USSR), must be signed by two persons, one of whom shall be the President of the enterprise or his deputy, the other being a person acting by appointment of the President; or by two persons empowered to sign on behalf of the President by appointment.

#### *Accountancy and sharing of profits*

12. — The fiscal year of "Licencintorg" runs from the 1<sup>st</sup> January to the 31<sup>st</sup> December of each calendar year.

13. — The accounts and the balance-sheet of "Licencintorg" are established and approved in conformity with the laws and regulations in force in the USSR.

14. — The sharing of the net profit of the enterprise "Licencintorg" is conducted in conformity with the legislation in force in the USSR.

#### *Liquidation*

15. — The liquidation of the enterprise "Licencintorg" shall be determined by the legislation in force in the USSR.

## GENERAL STUDIES

### International Patenting and the Draft Convention relating to a European Patent Law

#### *Corrigendum*

## Some Considerations on the Proposed European Trademark Convention

By Eric D. OFFNER, New York 1)



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**The Interpretation of Patent Claims in Relation  
to the Proposed European Patent System**

By J. A. KEMP, London







satisfactory system of law. If it is desired to ensure that the free flow of goods across frontiers cannot be impeded by both patents and trade marks, the remedy is obvious: the approach would then be to treat the whole of the territory of the Six as a single territory for patent and trade mark purposes, and then there will be no artificial barriers set up by the existence of either patents or trade marks in different hands in the different territories. This remedy involves the abolition of national patent systems, and logically also requires that only the countries adherent to the Treaty of Rome should participate.

This approach is advantageous to the economy of countries prepared to integrate their economic existence, and to industry active in such countries, of having a unitary patent in the economically integrated territory.

A completely different approach is to provide for a common patent for a number of countries. This would meet the general desire to have greater uniformity of patent protection in a number of countries. It would also present the advantage to inventors of covering a wide territory by means of a single patent; and the advantage to the national administrations and to the public of reducing the existing multiplicity of work in granting corresponding national patents.

By efficient concentration of work a single patent should be obtainable for a number of countries. Such a federal patent system could well coexist with national systems and any number of countries could participate in it. If such a system were set up, harmonization of national laws and views would gradually develop.

No attempt should be made to do too much at once (*qui trop embrasse, mal étreint*). The system must work well from the very beginning.

Coexistence of the Federal patent and national patents would be necessary, at least during an initial period.

With such a federal system it would be possible for the Six (or any other group of countries having a common economic system) to conclude a special arrangement containing provisions fostering the aims of this economic community.

In fact the Draft provides for a system of coexistence of national and federal patents, without even any indication that national patent systems are going to cease to exist after the transitional period. Indeed the provisions for the conversion of a federal patent application into one or more national ones, not being transitional, seem to assume that the federal patent will not meet all possible requirements. Nevertheless numerous Articles reflect the political philosophy of the Treaty of Rome.

It should be remembered that a valid patent is granted for something added to what existed, so that when a patent gives the patentee some exclusive rights for that addition to the prior art, the free flow of things already existing is not hampered at all.

A patent system, by providing a reward for invention, encourages investment in the research leading to invention and attracts the risk-capital required for manufacture and marketing, without which the public would not benefit by the invention.

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## Committee of National Institutes of Patent Agents CNIPA

### Report on the draft Convention relating to a European Patent Law

*Contents:* Introduction. — Novelty. — Extent of Protection (Claims). — Preliminary Examination. — Deferred Examination. — Confirmation of the Provisional European Patent as a Final European Patent. — Patents of Addition. — Amendments. — Languages. — Representation.

#### Introduction

A Sub-Committee of CNIPA (D. A. Was, E. Wiegand, W. P. Williams) has already written two reports<sup>1)</sup>. Study of the Draft Convention shows that many principles and ideas contained in the draft correspond with views expressed in the reports of this Sub-Committee, and at the outset CNIPA expresses its appreciation of this fact and also its admiration for the work done by the authors of the Draft.

Unfortunately it appears to CNIPA that the Draft suffers from one basic defect which prevents it from forming a

<sup>1)</sup> See *Industrial Property*, 1962, pp. 18 and 130.

A patent system also encourages publication of the results of such research and without it the commercial interest of the possessors of such results would be to keep them secret as far as possible. These desiderata will be seriously jeopardized by a requirement for the immediate free flow of every newly invented thing, which will deter the inventor from taking out federal patents. Consequently the immense work of creating a new patent system of kind which devalues the very nature of a patent should be given up.

In order that the best and most uniform systems of patent protection shall exist in as many countries as possible, CNIPA is in favour of the second method of approach indicated above. In other words CNIPA is in favour of a workable federal patent system based on sound *technical* principles and likely to be extensively used. If a federal patent gives less benefit to the patentee than national patents, inventors will tend to apply only for national patents and the federal patent will have no chance to become a living and well-developing thing, the more so since the cost of obtaining a federal patent is likely to be high.

In the remainder of this report CNIPA makes every effort to assist in the production of a sound patent system incorporating much of the Draft, and hopes that its comments, based on the very considerable experience of its members, will be accepted in the spirit in which they are offered, namely as a constructive contribution to one of the most important and interesting developments ever seen in the field of industrial property.

#### Novelty

##### Article 11

CNIPA considers that any attempt, such as is introduced by Article 11 (3), to deal with the problem of double patenting by artificially including unpublished matter in the state of the art cannot lead to a satisfactory result. If, for instance, everything disclosed in a patent of earlier date forms part of the state of art, then it becomes impossible to obtain in a later patent protection for matter which, though so disclosed, is not the subject matter claimed in the earlier patent.

A distinction should be drawn between that part of the description of the earlier patent which is clearly the basis of the claims, and another part which is possibly not directly relevant to the claims, e. g. a description of a device which may be used merely in association with the device which is the subject of the invention claimed.

CNIPA strongly urges that this problem of double patenting should be dealt by a provision as follows:

Protection shall be refused for any invention insofar as it forms the subject matter of a provisional or confirmed European patent having an earlier date of priority. For this purpose the subject matter of a patent consists of any way of carrying out the invention claimed that is described in the patent or any obvious modification of any such way that is covered by the claims.

As to the latter part of Article 11 (3) which accords priority in time on any day, CNIPA considers this provision should be cancelled and the Convention should adopt the

generally accepted system of according the same filing date to all applications filed on the same day.

#### Extent of Protection (Claims)

##### Article 21

##### Article 21 (1)

CNIPA believes that this Article merits careful reconsideration and revision.

In a system of patent law, such as the Draft Convention seeks to establish, it is of course important to ensure that justice is done to the inventor by giving him adequate protection, but it is also important to ensure that the public knows what can be done without encroaching on the protected area. Reasonable certainty as to the scope of the protection afforded by the patent is as important as reasonable certainty that the final European patent is valid. Clearly the Draft Convention aims towards certainty as to validity but, in the opinion of CNIPA, it falls short of ensuring a comparable degree of certainty as to scope. CNIPA recommends that this shortcoming be remedied by providing in the Convention (or the Implementing Regulations) more rigid guidance on the interpretation of claims. The basic requirement is that each claim *indicates the boundary* between what is the inventor's exclusivity and what is not.

The situation would be improved by amending Article 21 (1) to read:

"The scope of protection conferred by the patent shall be determined by the language of the claims. The language of the claims shall be given its natural meaning in the art unless otherwise particularly defined in the description."

The following might with advantage be added in respect of sub-claims:

"A sub-claim which is worded so as to lie within the ambit of a main claim shall not be construed as giving protection beyond the limit determined by the main claim."

CNIPA recommends that, in the Convention, guidance should be given as to the construction of claims to ensure for example that in the case of obvious piracy the Courts shall have a discretion, in justice to the patentee, to go beyond the precise terminology of the claims in construing their scope.

In considering this matter it must also be borne in mind that (according to the Draft Convention) infringement and validity proceedings are to be conducted before different tribunals. In the absence of further guidance in the Convention on the question of claim interpretation, a National Court examining infringement might well put a very different construction on a claim to that given to it by the European tribunal in judging validity. Again confusion would arise if the same alleged infringement of the same European patent came before the Courts of several member States and they (being hitherto accustomed to different methods of interpretation) put different constructions on the same claim, resulting in decisions "for" infringement in one State and "against" in another. It is thought that revision of Article 21 (1) on the lines suggested herein would go a long way towards avoiding these further difficulties.

## Preliminary Examination

### Articles 76-87

Before the grant of a provisional European patent the application is subjected to a preliminary examination by an Examining Section whose decisions will be taken by one examiner (Art. 55).

Obviously there must be a preliminary examination but CNIPA believes that Article 76 (2) gives to Examining Sections powers which in various respects are so indefinite that examiners may feel justified in making an interpretation which is far wider than may be intended. Thus, in the opinion of CNIPA, sub-paragraphs (a); (b) so far as it relates to Article 10 (b); and (f) should not be retained in Article 76 (2).

Sub-paragraphs (a) and (c) may be considered together. It is obviously undesirable that applications for subject matter which it is impossible to patent should go forward. However, it should be enough for this purpose to rely on sub-paragraph (c). The examiners' view is not necessarily the right view, and no real harm would arise from the publication and grant of a provisional patent which, as a result of thorough investigation in subsequent confirmation procedure by an Examining Division consisting of three technical examiners (Art. 56 [2]), may be found to be unworthy of confirmation.

As regards sub-paragraph (b) of Article 76, which refers to Article 10, the question whether or not an invention is not patentable because (Art. 10 [b]) it is essentially a biological process for the production of plants or animals may likewise depend too much on the individual view of a particular examiner.

Similar comments apply to sub-paragraph (f) of Article 76. It is therefore recommended that sub-paragraph (a), (b), so far as it relates to Article 10 (b), and (f) should come out of Article 76 (2), and that sub-paragraph (b) should be restricted to what is not patentable under Article 10 (a). If, as the result of experience in practice, it should be found essential to give further powers to Examining Sections, this could be provided by regulation at the appropriate time.

According to Article 77 (2) an Examining Section may inform an applicant that it finds that the invention which is the subject matter of his application is obviously not new, but apparently the applicant need not take consequent action. If this be so it should be made clear. CNIPA would be opposed to power being given to an Examining Section to refuse an application on the ground of an invention, in the opinion of an examiner, being obviously not new.

The position with regard to divisional applications is far from clear. CNIPA suggests that the provisions should be as follows:

- (a) An applicant may divide an application at any time before the grant of a provisional patent either on his own initiative or in reply to an objection by the examiner.
- (b) A divided application should be the subject of a specific novelty search.
- (c) A divided application must include a description relating only to the invention claimed in it, but this description must not include any new matter.
- (d) It is probable that when the parent application is ready for publication the divided application will still be being

searched. In order to give the public information on the scope of the matter it is hoped to protect, the claims of the divided application should be published with the parent application, even if the novelty report on the divided application is not available. Naturally, the divided application would itself later be published with the novelty report on it.

## Deferred Examination

### Articles 76-90

CNIPA would prefer a system in which all applications would be promptly and fully examined; but if promptness is impossible, CNIPA must accept with reluctance the principle of a deferred examination procedure. By deferring the full examination for a time there are bound to be casualties among the applications and consequent elimination of unnecessary work.

Whether or not the full examination is deferred, but particularly when it may be, there has to be taken into account the interest of third parties of knowing as soon as possible what claims for patent protection may be pending which might affect them. Therefore interim publication of specifications of pending applications is a matter of importance.

Likewise it is of value to third parties, as also to applicants, to be apprised at an early stage of the state of the art in relation to the prospects of sound patent protection.

Therefore, it is agreeable to CNIPA that a system of deferred examination with an early publication and novelty search report should be adopted in the Convention.

There is, however, a question as to what interim or retroactive rights an applicant or patentee should have as from the time of provisional publication of his specification. It is thought to be sound that under certain conditions and safeguards there should be given such rights. One condition should be, in the opinion of CNIPA, that the claims of the final patent should not be wider than or so different in scope from the claims of the provisional patent as to bring into infringement of a final patent that which would not be an infringement of the provisional patent.

Of course, it is realised that if the provisional claims are to define the maximum scope of the ultimate patent, applicants will be tempted to obtain the publication of one or more very wide provisional claims, either originally or by amendment under Article 82, so as to provide subsequent freedom to restrict in various ways in accordance with the knowledge they may possess at the time of confirmation procedure. Such wide claim or claims may, however, be directly anticipated by something found in the novelty search. Since this is obviously undesirable and could not be properly done in good faith, it is important that means should be provided to prevent or discourage it.

The incentive to bring this about might take various forms. One possibility would be to give the Examiner power to refuse to allow any obviously anticipated claim to be published. However, this in turn would have the disadvantage of burdening the Examining Section and of delaying publication just at the time when early publication is most desirable. Another possible remedy, which might be better, would be to

give to a Court a general discretion in infringement proceedings to deprive a patentee of some of the relief to which he would otherwise be entitled, for example by refusing to grant retroactive damages, in whole or in part, if the Court should decide that the patentee had acted otherwise than in good faith in having obtained the publication in his provisional patent of a claim which is obviously anticipated by a single document cited in the novelty search report.

#### Confirmation of the Provisional European Patent as a Final European Patent

##### Articles 88-97

CNIPA holds the view that a main objective is that the final federal patent should be valid and obtained in a reasonable period of time.

To attain the first of these objects the possibility of intervention by third parties is desirable. For this reason the possibility that any third party may write to the Patent Office (given by Article 92) is desirable.

CNIPA finds the provisions relating to intervention unsatisfactory. For example, the procedure prescribed by Articles 91-96 does not permit an intervener to learn the reply of the applicant to contentions made by the intervener, nor does it appear that the intervener would be informed of the reason of the Examining Division for allowing some or all of the claims. Thus the intervener is not in a position to supply "reasoned observations to the Examining Division" as prescribed by Article 96.

CNIPA therefore proposes an alternative system based on the following principles:

1. It should be possible (as already provided) for any third party to initiate the confirmation procedure.
2. The third party should be free, but not obliged, to refer to prior art and to present arguments.
3. When the fact that the confirmation procedure has begun is published, any other third party can similarly refer to prior art and present arguments.
4. Thereafter the proceedings should be conducted solely between the applicant and the Patent Office up to the stage at which the final form of the claims is agreed.
5. When this stage is reached the patent is confirmed. Within one year from the confirmation, "belated opposition" before the Examining Division (with appeal only to the Board of Appeal) should be allowed.

Because any third party could refer to prior art and present arguments before the beginning of the examination, there would in many cases be no need for intervention or opposition immediately before confirmation.

#### Patents of Addition

##### Article 24

The period in which application may be made for a patent of addition should not be restricted, as it is in Article 24 (1), to that before the publication of the parent patent. Many improvements are made at a later date than this, and it is in the public interest that they should be disclosed in patents of addition instead of being kept secret.

If the period is thus extended, the provision of Article 24 (3) that the invention of a patent of addition need not dis-

play an inventive step over the parent patent must be considered. This provision exists in the law of the United Kingdom, and has proved of great benefit to patentees, so that it can be said that Article 24 (3) could well be left unchanged despite amendment of Article 24 (1). It can, however, also be said that because this would give the proprietor of the parent patent, an advantage over everyone else there would be undesirable discrimination which should be avoided.

The word "improvement" is sometimes held to mean only something which would infringe the parent patent, and sometimes given an even more restricted meaning, namely something which flows directly from the "characteristic feature" of the main claim of the parent patent, so that a variation in a feature appearing in the "preamble" to that claim is not regarded as an improvement. Many developments of patented inventions are in fact modifications which are not covered by the parent patent, e. g. the claim of the parent patent may be limited to some integer and the development may be the replacement of this integer by another. Patents of addition should be granted for such modifications.

#### Amendments

##### Article 81 and others

The provisions for amending the description and claims of a specification appear to be inadequate. A description which suggests that the invention is wider than what is actually claimed is most misleading. It must be remembered that the reader of the specification may be a manufacturer not accustomed to construing a patent specification, and it is desirable that the specification should indicate the real invention to him before he reaches the claims. The description should be consistent with the claims. Such amendment should be required (under Article 81) at the provisional stage and also (under Article 95) at the confirmation stage.

At the confirmation stage no claim which does not contain the limiting features of the widest claim first published should be accepted. Industry must know the maximum scope of the patent at the provisional stage.

At any stage amendment to clarify the disclosure should be allowed provided no new subject matter is introduced.

Even though normally the claims of a final patent will define invention over the prior art, there can be no certainty that all the prior art will have been considered. The owners of final patents will not infrequently become aware of relevant prior art which was never discovered during the confirmation proceedings. They should be allowed to make application to the European Patent Office to amend their final patent specifications, so as to exclude from the claims what, in the light of their subsequent knowledge, is old or unpatentable.

#### Languages

##### Article 34

The opinion of CNIPA is as follows:

An application for a European patent may be filed in the language of the Contracting State from which the application emanates. The authentic text of the application and of the European patent, provisional and final, shall be the text in said language.

For purposes of publication of the application, both provisional and final, if the application is in a language other than English, French or German, it shall be translated by the European Office into one of said languages to be chosen by the Applicant, and the claims shall be translated into each of said three languages.

Communications from the Applicant to the Patent Office shall be in the language of one of the Contracting States, such language to be at the choice of the Applicant. If the language used in any official communication to the Applicant is other than said language, the official communication shall, if so requested by the Applicant, be accompanied by a translation thereof into said language.

At Hearings before the European Patent Office and the European Court, there should be provided official interpreters.

#### Article 217 (Authentic Texts)

CNIPA recommends that the opening part of this Article be amended to read:

The present Convention shall be drawn up in a single original in the languages of each of the signatory States, each of the texts being equally authentic . . . . .

#### Representation

##### Articles 171-173

In the first of the two Sub-Committee reports referred to in the Introduction the opinion was expressed that in proceedings before the Federal Office the intermediary of qualified patent agents was imperative. CNIPA now confirms that opinion and recommends that appropriate requirements should appear in the Convention. These should provide that at least every legal person (*personne morale, juristische Person*) must be represented by a person in the list referred to in Article 171 (1).

Representation can only be adequately given by persons with sufficient technical and practical experience.

However, as regards all matters pertaining to representation and to qualifications for representation CNIPA takes the view that the governing provisions should be given, not in the Convention itself, but in the Implementing Regulations.

One reason for this point of view arises from the fact that at present the qualification requirements vary very greatly in the several member states, and in certain cases changes in these requirements are now under consideration.

Another reason is that regulations on qualifications may have to be varied from time to time and it would be much simpler to amend Regulations than to amend the Convention. Only experience can show what the appropriate provisions should be.

CNIPA recommends that of Chapter IV only Article 171 (1) be retained as part of the Convention and that the other matters dealt with in this chapter should be covered in the Implementing Regulations.

It should be added that as to some of the provisions at present appearing in Chapter IV, and generally on the question of qualification CNIPA has criticisms to make. It is thought, however, that it will be appropriate to postpone to a later date a detailed discussion of these points.

## CONGRESSES AND MEETINGS

### First Latin-American Congress on Industrial Property

(Puerto Rico, July 1963)

#### Report<sup>1)</sup>

The First Latin-American Congress on Industrial Property, convened and organised by the Institute of Comparative Law of Puerto Rico, directed by Professor C. E. Mascareñas, Dean of the Faculty of Law of Ponce, was held at San Juan de Puerto Rico from the 21<sup>st</sup> to the 25<sup>th</sup> July, 1963, inclusive.

In the inaugural session, Professor C. E. Mascareñas, a well-known specialist in industrial property matters, stressed the importance of the study of comparative law, especially in the field of industrial property, as in the case of copyright, and that the domestic law of individual countries was not of interest only to persons living in such countries, but also to inventors in other countries, who sought to obtain patents to protect their inventions, and to industrialists who sought to protect their trade marks. He pointed out that, whereas in economic and military fields, regional pacts and unions are possible, they are not possible in the field of industrial property, and international problems must be resolved on a global basis. Finally, he pleaded for the unification of the laws governing industrial property, and suggested that this task might be undertaken by the International Bureau for the Protection of Industrial Property.

The inaugural session was also addressed by Dr. Rainaldo Mosquera Guzmán, Head of Industrial Property of the Ministry of Development (*Ministerio de Fomento*) of Colombia and Professor Froilán J. R. Tavares, Dean of the Faculty of Law of Santo Domingo.

The themes dealt with at this Congress were: I. Persons entitled to obtain patents for inventions; II. The subject-matter of patents for inventions; III. The novelty of the subject-matter of a patent; IV. Systems governing the grant of patents; V. Treatment of foreigners in connection with the obtaining of patents for inventions.

The chief exponent of the first theme, Dr. Ramiro Castro-Duque (Colombia), Lawyer and Secretary-General of the Colombian Association for the Protection of Industrial Property, dealt with the question of the person entitled to the patent, and the subjective conditions of the protection of the invention.

He specified three groups:

- (1) The person entitled to the patent is the inventor. Within this group must be considered those legislations which regard only the inventor as being the person entitled to obtain a patent for invention. Such legislations do not similarly regard persons who derive title from the inventor (heirs, assignees). Within this group, he indicated two sub-groups: (a) that of the first inventor (El Salvador); (b) that of the inventor or author of the inven-

<sup>1)</sup> Report established by the Secretariat of the Congress.

tion, without necessarily being the first inventor (Dominican Republic, Nicaragua, Paraguay and Venezuela).

- (2) The person entitled to the patent is the inventor, but he may ask for the patent to be granted in the name of another person (Cuba).
- (3) The inventor or his successor in title. The patent may be applied for by the inventor himself or by any other person deriving title from him. Here, two sub-groups can be established: (a) the inventor or his successor in title (Argentina, Bolivia, Brazil, Chile, Colombia, Guatemala, Honduras, Panama, Peru, Uruguay); (b) the first inventor or his successor in title (Mexico).

And, finally, the matter does not appear to be clear in the legislation of Costa Rica and Ecuador.

Expositions of a national character dealing with this theme were submitted by Dr. Walter Gomes de Pinho (Brazil); Dr. Guillermo Guerrero Vz. (Ecuador); Licenciada Sonia Mendieta (Panama) and Señores Hugo Berkemeyer and Gabriel A. Salomoni (Paraguay). A statement was submitted by Dean Mascareñas.

The principal exponent of the second theme, Señor Miguel Ranon Aguiló, Professor of Administrative Law of the Faculty of Law of the Catholic University of Puerto Rico and Secretary-General of the Institute of Comparative Law of Puerto Rico, dealt with the subject-matter of patents for inventions, that is to say, the conditions which an object has to satisfy in order to be patentable, but without dealing with the question of novelty, which formed the subject of another theme of the Congress.

Firstly, he indicated that the object in question must constitute an invention, notwithstanding that legislations do not give a concept of invention, although certain laws, such as those of Colombia and Venezuela, seek to give a definition. There are legislations which, in addition to the provisions which specify what may form the subject of a patent, also contain negative precepts of the objects which are not capable of supporting claims to a patent, precisely by reason of the fact that they do not themselves constitute an invention.

Thus, the new use of known objects or elements is excluded (Chile, Guatemala); the application to another industry of methods or apparatus of a different industry (Cuba, Guatemala, Venezuela); natural substances (Guatemala); systems or methods of work (Chile, Venezuela); products obtained directly from the soil or from the animal or vegetable kingdoms (Cuba); anything which already exists in a natural state, although previously unknown to man (Mexico); the discovery of minerals, plants, animals, forms of energy and other matters existing in nature (Peru).

Furthermore, changes or variations as regards form, dimensions or material are not patentable. This is established by the laws of Chile, Venezuela, Guatemala, Mexico, Cuba and Ecuador, the last-named specifying dimensions. Insofar as this exception is concerned, he proceeded to indicate that the law of Mexico grants a patent for an invention when the modification results in "the obtaining of a new industrial result". A similar saving is encountered in Article 42, paragraph 2, of the Cuban legislation, which states "... not resulting in an essential modification of the properties thereof".

As regards new vegetable varieties, he indicated that in Brazil "new varieties of plants", and that in Cuba "a new variety of plant reproduced asexually, except plants propagated by means of tubers" could be the subject of patents. But, in other countries, if the objective conditions of invention, novelty and industrial application are present in new vegetable varieties, they may claim to be patentable.

He explained that in Brazil, certain minor inventions are capable of protection as utility models.

By express provision in the laws, it is laid down that the subjects of inventions which, by their inherent nature would be patentable, may not be patented if they produce results contrary to public order, public health and public interest. Professor Aguiló indicated the extent of these prohibitions in the laws of the various Latin-American countries.

Finally, he referred to the requirement that the invention should be capable of industrial exploitation, a requirement common to all laws.

Papers on the national law on this theme were submitted by Señores Pedro Johansson and Pablo Langlois (Chile), and Señores Hugo Berkemeyer and Gabriel A. Salomoni (Paraguay).

The principal exponent of the third theme, Dr. David Rangel Medina (Mexico), Lawyer and Director of the "Mexican Review of Industrial and Artistic Property", dealt with the theme of the novelty of the subject-matter of patents.

In order to emphasise the importance of this objective condition of the protection of inventions, it is sufficient to recall that the question of original inventive activity of this class of rights in industrial property invariably involves one constant factor: novelty.

An examination of Latin-American legislations reveals that reference is made to this requirement in defining the concept of patentable invention, or in delimiting the field of legal protection by means of a simple enumeration of what is patentable. Other laws impose the requirement of novelty in an indirect manner, when they expressly indicate objects to be excluded from patent protection. Further, there are legislations which require a formal declaration in the application for patent to the effect that the subject of the invention is new (Bolivia, Nicaragua, Mexico).

There is no uniformity in the laws as to the various causes which give rise to the loss of novelty. They admit that the invention ceases to be new when it has been disclosed before the submission of the application, or when there is anticipation by other inventions. The laws of Argentina, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Mexico, Peru, El Salvador and Venezuela regard description of an invention in the press or in any other work as being disclosure.

Other countries regard the fact that the invention has been exploited commercially prior to the application (for patent) as constituting publication or disclosure, legislations being separated into two groups, according to the territorial field in which disclosure occurred. The laws of Argentina, Bolivia, Colombia, Cuba, Dominican Republic, Guatemala, Honduras, Mexico, El Salvador, Uruguay and Venezuela do not distinguish between publication effected within their own country and that effected abroad. The laws of Chile, Ecuador, Nicaragua and Peru restrict the consequences of disclosure to

that effected within their respective countries. The condition under which the result of publication shall be such that the invention could be put into effect by an expert in the art is only adopted in Cuba and Paraguay.

The concept of anticipation, stemming from the loss of novelty as a result of the existence of an earlier patent at the date of submission of the application, is not uniform. The laws which require absolute novelty regard as an anticipation any anticipating patent, whatever its country (Bolivia, Dominican Republic, Guatemala and Mexico). Other legislations only regard the existence of national patents in respect of the same invention as constituting anticipation (Chile, Peru, Uruguay).

The countries which recognise the right of priority established by the Convention of the Union of Paris, and insofar as they are signatories thereto (Brazil, Cuba, Dominican Republic, Haiti and Mexico) admit an exception to the rules of anticipation as being destructive of novelty. Without belonging to the Paris Union, Bolivia has adopted the same principle.

The laws of Argentina, Bolivia, Chile, Cuba, Honduras, Mexico, Peru, Uruguay and Venezuela regard the use or exploitation of the invention as constituting anticipation.

Lack of novelty of the object at issue is a ground of nullity in Argentina, Bolivia, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, Mexico, Paraguay, Peru and Uruguay. It is not regarded as a ground of nullity by the laws of Guatemala, Honduras, El Salvador and Venezuela.

Papers on the national law on this theme were submitted by Dr. Juan M. Quevedo (Ecuador), Licenciada Sonia Mendieta (Panama); and Señores Hugo Berkemeyer and Gabriel A. Salomoni (Paraguay).

Informative memoranda were submitted by the investigators of the Institute of Comparative Law of Puerto Rico; by Señor Francisco Guzmán Rivera as regards the Laws of Bolivia, El Salvador, Nicaragua, Peru and Uruguay, and by Señor José-Enrique Ayorca Santaliz, as regards the Laws of Costa Rica, Guatemala and Honduras.

Dean Mascareñas submitted a memorandum raising various considerations in respect of novelty, and of novelty in comparative law.

The principal exponent of Theme IV, Dr. J. J. Santa-Pinter, Professor of Mercantile Law (Argentina), dealt with the systems for the grant of patents.

The differences that exist, and which can be discussed in relation to the different systems of grant, refer to the examination undertaken by the Administration in respect of the form of the application and the patentability of the invention.

The systems existing in Latin-America are the following:

- (1) System of grant without previous examination. The Administration does not investigate whether the invention is new and capable of industrial exploitation. If, by its nature, the object is patentable, and all the documents are in proper form, the Administration grants the patent (Dominican Republic, Haiti, Paraguay).
- (2) System without previous examination, but with provision for opposition. The Administration makes no detailed examination. By reason of publication, the application for patent becomes open to opposition by third parties. If there is no opposition, the patent is granted. If there

is opposition, the Administration will examine the question in detail, according to the facts and proofs put forward by the applicant for the patent and the opponent. The examination will be restricted to the allegations made by the opponent (Bolivia, Colombia, Panama, Venezuela). The grounds of opposition vary considerably, according to the country concerned. Thus, in Bolivia the opposition can be based upon the lack of patentability of the object, upon the absence of invention, or upon the non-existence of novelty; whereas in Colombia, opposition can only be based upon the greater claim of the opponent.

- (3) System of previous examination, limited to earlier patents in the country involved, with invitation for oppositions. This is the case in Cuba and El Salvador.
- (4) System of previous examination. The Administration makes an examination not merely as to form and patentability of the object from the point of view of its nature and of legal prohibitions, but also an examination of the other conditions of patentability, especially the novelty of the invention. This is the system followed in Argentina and Mexico.
- (5) System of previous examination, with invitation for oppositions. In this system, oppositions by third parties are invited but, in addition, the Administration undertakes a more or less extensive previous examination. This is the practice in Brazil, Ecuador, Guatemala, Honduras, Nicaragua, Peru and Uruguay. Opposition by third parties is of varying scope in the different countries. There are also important differences as regards the detailed examination: (a) As regards the scope of the examination, this can be very extensive, covering all aspects of patentability (Ecuador, Guatemala, Honduras, Nicaragua), or may remain limited to the aspect of novelty (Peru, Uruguay); (b) as regards the actual persons carrying out the examination, these can be: exclusively experts nominated for the purpose (Ecuador, Peru); the Administration for one aspect and experts for another (Guatemala); the Administration or experts (Nicaragua); the Administration (Honduras); experts or organisations (Uruguay); the Administration, with power to refer to other official specialist technical services and organisations, recognised by the Government as consulting bodies (Brazil).

Expositions of a national character were submitted by Licenciada Sonia Mendieta (Panama) and Señores Hugo Berkemeyer and Gabriel Salomoni (Paraguay).

Señor A. Souza Barros (Brazil) submitted a memorandum examining the problem of disclosure and non-disclosure of patents for inventions, examining the laws of Argentina, Mexico, Venezuela, Peru, Uruguay, Colombia and Brazil, and maintaining that the appraisal of the value of the inventor and of the importance of patents are important conditions in the development of Latin-America, and that failure to disclose patents, and obstacles to the ready public access to them, constitutes the weakest point in the field of industrial property in Latin-America. He stressed the advantages of disclosure of patents and the means that could be employed to this end.

The chief exponent of Theme V, Dr. Mariano Uscátegui Urdaneta (Venezuela), Lawyer and Professor of the University

of Caracas, referred to the treatment of foreigners in connection with the obtaining of patents for inventions, concluding with an indication of the advantages that all Latin-American countries would derive from adhesion to the Paris Convention of 1883 for the International Protection of Industrial Property.

Statements dealing with the national aspects of this theme were submitted by Dr. Walter Gomes de Pinho (Brazil); Dr. Cesar A. Guerrero Villagómez (Ecuador); Señores Hugo Berkemeyer and Gabriel A. Salomoni (Paraguay) and Dr. Mariano Uscátegui (Venezuela).

Dean Mascareñas submitted a memorandum indicating that the most advanced solution in this matter is that provided by the Paris Convention of 1883, and dealing with the so-called "principle of assimilation" and "principle of priority".

Dr. Arpad Bogsch, Deputy Director, United International Bureaux for the Protection of Intellectual Property, spoke on the Paris Union for the Protection of Industrial Property. He gave a brief historical account of the Union. He indicated the three main objects of the Paris Convention: firstly, it guarantees equal treatment to the nationals of each of the member countries; secondly, it establishes the so-called right of priority; thirdly, it establishes a minimum guarantee for the owners of the rights of industrial property.

He referred to certain guarantees, contained in the Convention, for the owners of industrial property rights. He gave an account of the functioning of the Geneva Bureau, and of the advisory services that it can provide. He also made reference to the five restricted Unions and, finally, indicated the value of membership of the Union, not only to inventors, but also on general grounds, as regards the value to the economy of the entire country, to national production, and to the rapid development of industry.

The various sessions of the Congress were presided over by the following persons: Dean C. E. Mascareñas, Director of the Institute of Comparative Law of Puerto Rico; Professor Gautama Fonseca (Honduras); Dr. Juan M. Quevedo (Ecuador); Dr. Hildegart Rondón de Sansó (Venezuela); Dr. Ramón Cadena (Guatemala); Dr. Kleber Avila Pereira (Brazil) and Dr. Ramiro Castro-Duque (Colombia).

The following persons acted as Secretaries: Licentiada Sonia Mendieta (Panama); Dr. César A. Guerrero (Ecuador); Dr. Manuel Pachón (Colombia); Señor Alain Coriat (Venezuela).

The Congress adopted the following resolution and conclusions:

#### Resolution

Considering,

That it is in the interest of each Latin-American country to assure to its national inventors the opportunity of obtaining in the other countries the same protection as is assured in such countries to the nationals thereof;

That while a country is outside the International Union for the Protection of Industrial Property (the Paris Union), its nationals do not enjoy the right of priority guaranteed by the Convention of the Union (the Paris Convention);

That membership of the Paris Union is capable of accelerating the development of the national economy, due to the

favourable influence that the international protection of industrial property exercises on national and foreign investment;

That membership of the Union involves no important change in the national law, since the Paris Convention leaves each country in almost complete liberty to legislate in the matter according to its legal traditions and economic needs,

The First Latin-American Congress of Industrial Property assembled at San Juan de Puerto Rico, from the 21<sup>st</sup> to the 25<sup>th</sup> July, 1963,

Calls the attention of the Governments of the Latin-American countries which are not yet members of the Paris Union to the advantages that adhesion of their countries to the Paris Convention would involve.

#### Conclusions

##### I

Affirming the importance and transcendency of the meeting which will take place in the City of Bogotá in the forthcoming year, 1964, under the auspices of the United International Bureaux for the Protection of Industrial, Literary and Artistic Property, of Geneva, (the Congress) urges the Governments of the Latin-American countries to send their representatives to this meeting.

##### II

That, from the comparative examination of the Laws in force in Latin-America it emerges:

- (1) that the differences existing in the Laws of the various countries, in the matter of what can form the subject of a patent for invention, are matters of terminology rather than of fundamental character, and that no manifest contradictions exist;
- (2) that in certain legislations the absence of novelty is not expressly regarded as a ground of nullity;
- (3) that in Latin-American legislations, the following systems of grant are encountered: (a) system of free grant, without previous examination; (b) system without previous examination, with invitation for oppositions; (c) system of previous examination, limited to earlier patents in the actual country, and with invitation for oppositions; (d) system of previous examination; (e) system of previous examination with invitation for oppositions;
- (4) that, according to the country concerned, the persons entitled to obtain patents for inventions can be: (a) the first inventor; (b) the inventor; (c) the inventor and his successors in title.

##### III

That, taking account of what the various Latin-American legislations regard as patentable subject-matter, it is understood that the invention of new vegetable varieties can be considered as a patentable invention, without the necessity of amending their laws.

##### IV

That the requirement of absolute novelty or relative novelty is a matter that depends upon the attitude of each of the States.

## V

That it is advisable expressly to establish in the laws that the absence of novelty in the subject-matter of a patent shall be considered as a ground for nullity.

## VI

That it is advisable to enable the successor in title of the inventor to be entitled to obtain the patent.

## List of Participants

*Argentina*

Dr. J. J. Santa-Pinter, Professor of Law, Buenos Aires.

*Brazil*

Dr. Kleber Avila Pereira, Attorney at Law, Rio de Janeiro.

*Colombia*

Dr. Ramiro Castro-Duque, Attorney at Law, Secretary-General of the Colombian Association for the Protection of Industrial Property, Bogota.

Mr. Reinaldo Mosquera Guzman, Director of Industrial Property, Ministry of Fomento, Bogota.

Dr. Manuel Pachón Muñoz, Bogota.

*Cuba*

Dr. Agustín Aguirre, Professor of Law, Río Piedras, Puerto Rico.

*Dominican Republic*

Dr. Jaime Guerrero Pou, Legal Advisor to the Ministry of Industry and Commerce, Santo Domingo.

Prof. Froilán J. R. Tavares, Dean of the Faculty of Law of Santo Domingo.

*Ecuador*

Dr. César A. Guerrero, Attorney at Law, Quito.

Dr. Juan M. Quevedo, Attorney at Law, Quito.

*Guatemala*

Lic. Ramón Cadena, Attorney at Law, Guatemala.

*Honduras*

Dr. Gautama Fonseca, Attorney at Law, Legal Adviser to the Ministry of Economy and Finance, Tegucigalpa.

*Mexico*

Lic. David Rangel Medina, Attorney at Law, Mexico, D. F.

*Panama*

Lic. Sonia Mendieta, Attorney at Law, Panama.

*Venezuela*

Mr. Alain Coriat, Industrial Property Agent, Caracas.

Dr. Hildegart Rondon de Sanso, Attorney at Law, Legal Adviser to the Registry of Industrial Property of Venezuela, Professor of Law, Caracas.

Dr. Mariano Uzcategui Urdaneta, Attorney at Law, Caracas.

*Puerto Rico*

Prof. Miguel R. Aguilo, Secretary-General of the Institute of Comparative Law, Ponce.

Mr. Francisco Guzman Rivera, Section Secretary at the Institute of Comparative Law, Ponce.

Prof. C. E. Mascareñas, Director of the Institute of Comparative Law, Ponce.

Mr. Roberto Morales, Attorney at Law, San Juan.

*International Organisations*

Dr. Arpad Bogsch, Deputy Director, United International Bureaux for the Protection of Intellectual Property, Geneva (Switzerland).

Mr. C. H. V. Rogers, Caribbean Organisation, San Juan (Puerto Rico).

**OBITUARY****Albert Colas****Philippe Coppieters de Gibson**

Industrial property circles have been severely hit by death during the past months. We have already had the sad task of commemorating the memory of Plinio Bolla; today we record a message of condolence to two men whose collaboration was most valuable to the United International Bureaux: Albert Colas and Philippe Coppieters de Gibson.

Albert Colas, an associate Member of an important Patent Agency in Paris, the "Cabinet Lavoix", combined with the professional experience of the practitioner the wisdom of the lawyer and held a place of honour in the national and international associations of industrial property where he was always heard with great profit.

He was President of the International Federation of Patent Agents in 1950 and 1951 and President of the "Compagnie française des ingénieurs-conseils" from 1956 to 1958; he also acted as President and Reporter on several commissions of the French Association for the Protection of Industrial Property and the French Group of IAPIP. In fulfilling these various functions he was often called upon to work out draft proposals for the revision of certain articles of the Paris Convention. He devoted particular attention to problems connected with the importation into a country of the Union of goods, the manufacturing process of which is patented in the that country, and he was one of the promoters of the new Article 5<sup>quater</sup> which was inserted into the Paris Convention by the Diplomatic Conference of Lisbon.

He was also the originator and moving spirit behind a special Commission for the study of statistics concerning the protection of inventions in France and in other Unionist countries whose work was of considerable interest to all specialists in the field of industrial property.

Albert Colas played an extremely active part in the discussions of the Committee of Experts set up by the United International Bureaux charged with the study of the creation of an International Documentation Centre for patents under priority and which held two meetings in 1955 and 1956. He was thus one of the authors of the Draft Arrangement, submitted to the Diplomatic Conference of Lisbon with a view to establishing a documentation centre. Though unanimity on this draft was not reached at Lisbon and consequently it was not adopted, the preparatory work involved served a useful

purpose and contributed to the improvement of Article 4 of the Paris Convention.

The name of Albert Colas will be remembered as that of a great worker in the cause of industrial property.

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A descendant of a long line of distinguished Belgian lawyers, Philippe Coppieters de Gibson added a new brilliance to a name already made famous by his father Daniel Coppieters de Gibson, and thereby justified the motto inscribed on the family coat-of-arms: *sitio justitiam*.

A Doctor of Law of the University of Brussels and Member of the Bar since 1926 (*Ordre des avocats*), at the Brussels Court of Appeal, he was a Member of the Council of his Order from 1953 to 1956.

He was also a Member of the General Council of the Belgian Federation of Lawyers and was Vice-President from 1955 to 1957.

As author of several legal studies, in particular his masterly work on "unfair competition", his authority in the field of industrial property and copyright was well recognised; his high competence was put to the service of both national and international associations devoted to intellectual rights.

An untiring attendant at meetings over which he sometimes presided (he was Chairman of the Belgian Group of the International Association for the Protection of Industrial Property), his opinions were sought whenever delicate problems arose. He was appointed by his Government as Plenipotentiary Delegate to the Diplomatic Conferences of Nice in 1957, of Lisbon in 1958 and of The Hague in 1960.

He was made responsible for the General Report of the Nice Conference concerning the International Classification of Goods and Services and his report is an exhaustive commentary on an entirely new Diplomatic Act. He was also charged with establishing the difficult Report of the General Commission of the Diplomatic Conference of The Hague, which revised in 1960 the Arrangement concerning the International Deposit of Industrial Designs and Models. In the delicate appreciation of the complex provisions of this new International Act, he once more gave proof of his clear and penetrating legal mind.

The services rendered by Philippe Coppieters de Gibson to the cause of Intellectual Property are of a kind that will not be forgotten.

Ch.-L. M.

## NEWS ITEMS

### JAPAN

#### *Appointment of a new Director General of the Patent Office*

We are informed that M. Shigeru Sahashi has been appointed Director General of the Japanese Patent Office as from the 23<sup>rd</sup> July, 1963. He succeeds M. Zenei Imai who has resigned.

We take this opportunity of congratulating the new Director General on his appointment.

### Calendar of BIRPI Meetings\*

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	25-29 November 1963	Conference of the Directors of National Industrial Property Offices of the Member States of the Madrid Union	Consideration of certain matters concerning the Madrid Union for the International Registration of Trade Marks	Directors of Industrial Property Offices of the countries members of the Madrid Union	Other Member States of the Paris Union
Geneva	25-26 November 1963	Conference of the Member States of the Hague Union	Consideration of financial questions concerning the Union for the International Registration of Industrial Designs	States Members of the Hague Union	Other Member States of the Paris Union
Geneva	27-29 November 1963	Interunion Coordinating Committee	Consideration of the program and the budget of BIRPI	States Members of the Permanent Committee of the Berne Union and of the Permanent Bureau of the Paris Union	Other Member States of the Berne Union and Paris Union
New Delhi	2-7 December 1963	Eleventh Ordinary Session of the Permanent Committee of the Berne Union	Consideration of various questions concerning Copyright	The States Members of the Permanent Committee	States not Members of the Permanent Committee Interested international intergovernmental and non-governmental organisations
Geneva	27-30 January 1964	Study Group on Certificates of Authorship	Study of the problem of certificates of authorship in relation to the Paris Convention	Bulgaria, Czechoslovakia, Hungary, Israel, Netherlands, Poland, Roumania, United-Kingdom, United States of America, Yougoslavia	USSR

\* Meetings for which dates have been definitely arranged