Industrial Property

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Contents

INTERNATIONAL UNION

NIGER

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

According to a communication received from the Federal Political Department, the following note was addressed by the Embassies of the Swiss Confederation in the countries of the Paris Union to the Ministries of Foreign Affairs of those countries:

(Translation)

"In compliance with the instructions of the Swiss Federal Political Department dated June 5, 1964, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of the Republic of Niger, by letter of September 10, 1963 [1]), a copy of which is enclosed herewith [2]), has confirmed to the Swiss Government the membership of its country of the International Union of Paris for the Protection of Industrial Property, by virtue of a declaration previously made in accordance with Article 16bis of the Paris Convention for the Protection of Industrial Property.

"By this letter, the Government of the Republic of Niger furthermore expressed its intention to be bound by the Lisbon text of the Paris Convention. Since this is a question of a declaration under Article 16 of the Convention, Niger is considered as having adhered to the Convention as revised at Lisbon. In application of Article 16 (3) of the Convention, this adhesion will take effect on **July 5, 1964.**

"With regard to its share in the expenses of the International Bureau of the Union, this State is placed in Class VI for the purposes of Article 13 (8) and (9) of the Paris Convention as revised at Lisbon."

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This adhesion will bring the membership of the Union to 64 countries with effect from July 5, 1964.

1) Received on April 15, 1964.
2) Annex omitted. *(Ed.)*

LEGISLATION

ITALY

Decrees

concerning the temporary protection of industrial property rights at 17 exhibitions

(Of February 20, 28, March 2, 3, 16, 27, 31 and April 4, 1964) [1])

Single Article

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

XXV^a Fiera di Messina — Campionaria internazionale (Messina, August 9-23, 1964);

IV^a Biennale italiana delle macchine utensile (Milan, October 4-11, 1964);

XIV^o Salone internazionale della tecnica (Turin, September 19-October 1, 1964);

XI^o Salone internazionale dell'aeronautica (Turin, May 27-June 7, 1964);

Salone europeo delle materie plastiche "Plast 64" (Milan, September 19-27, 1964);

XLII^a Fiera di Milano — Campionaria internazionale (Milan, April 12-25, 1964);

II^a Mostra-mercato internazionale della caccia (Florence, October 24-November 18, 1964);

Biennale internazionale imballagio e confezionamento — trasporti industriali interni — macchine per l'industria alimentare IPACK (Milan, June 4-11, 1964);

Mercato internazionale del tessile per l'abbigliamento (Milan, June 4-9, 1964);

"Salone internazionale della ceramica e del vetro" nella "Mostra nazionale dell'oreficeria ed argenteria" e nella "Mostra nazionale biennale del marmo" (Vicenza, September 6-16, 1964);

XI^a Rassegna internazionale elettronica, nucleare e teleradiocinematografica (Rome, June 18-29, 1964);

XXX^a Mostra nazionale della radio e televisione (Milan, September 12-20, 1964);

XXVIII^a Fiera del Levante — Campionaria internazionale (Bari, September 10-23, 1964);

13^a Esposizione triennale internazionale delle arti decorative e industriali moderne e dell'architettura moderna (Milan, May 27-September 27, 1964);

II^o Salone internazionale componenti elettronica (Milan, September 12-20, 1964);

1) Official communication from the Italian Administration.

XIX^a Mostra internazionale delle conserve alimentari e dei relativi imballaggi — Salone internazionale per le attrezzature delle industrie alimentari (Parme, September 20-30, 1964);

XLVI^o Salone internazionale dell'automobile (Turin, October 31-November 11, 1964)

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

GENERAL STUDIES

Intellectual Property and Justice

By Professor Dr. A. TROLLER, Lucerne *)

CORRESPONDENCE

Letter from Hungary

Dr. Alexander VIDA, Lawyer, Budapest

CONGRESSES AND MEETINGS

International Chamber of Commerce

The following Resolution was adopted by the Council of the International Chamber of Commerce at its 103rd Meeting, on May 26, 1964:

"Patentability of Inventions and Economic Progress

Resolution

The granting of patents in all fields of industry promotes the economical creation and commercialization of products, increases both the ability of enterprises to satisfy the needs of all and their incentive to do so, and ensures the optimum development of international trade for the benefit of all nations.

The International Chamber of Commerce has already expressed this position in its statement of 24th November, 1961 (Doc. No. 450/210 Rev.).

There have recently been two international texts on patents — the Convention prepared by the Council of Europe on the unification of patent law and the draft of a European Patent Convention.

The International Chamber of Commerce considers that it is significant that the Convention prepared by the Council of Europe on the subjects of the unification of patent law purports to protect all new inventions in all fields of industry. Reservations are allowed for a transitory period permitting a country to postpone the grant of patents only for food and pharmaceutical products, as distinguished from processes for making such products, and for agricultural and horticultural processes.

Similarly, the draft of the European Patent Convention defines patentability in a broad sense as applying to all new inventions for products and processes in any field, including the pharmaceutical industry. There is only a single exclusion provided for plant and animal varieties and processes essentially biological for the obtention of new plants and animals.

Thus these two important international documents have arrived at substantially the same conclusions in favour of the universality of patent protection. The ICC emphatically concurs with these conclusions because the grant of a patent in any field of industry is based on the ideas that:

1. it encourages research and invention;
2. inventors are induced to disclose their inventions rather than keep them as trade secrets, thereby communicating in precise terms the latest techniques for the benefit of all countries;
3. it provides an opportunity for a return on the investment required to develop inventions to the stage at which they are commercially practicable, and
4. it creates the inducement for the investment of capital in new products and processes, which might not be profitable if others embarked on them simultaneously.

In addition, patents make possible, through patent license agreements, the communication of related 'know-how' or technology, possessed or developed by the patentee, without which the information disclosed by a patent is often not sufficient to be of economic utility to the potential user.

Provisions such as compulsory licensing are available to any Government of any country so as to ensure that the patent right is exercised in conformity with the public interest."

BOOK REVIEWS

(Translation)

Zur Frage des Gütezeichens und der "Certification Mark" (Questions relating to quality marks and certification marks), by *Zoltán Viragh*, Emmenbrücke (Switzerland). Reprinted from "Schweizerische Mitteilungen über gewerblichen Rechtsschutz und Urheberrecht", 1964, 1st volume.

The author examines a somewhat difficult question which has often given rise to misunderstanding at an international level: what are the similarities and dissimilarities between the American and English *certification mark* and the German and Swiss *Gütezeichen* or *Prüfzeichen* (quality mark)?

The comparison is established mainly on the three following characteristics: (i) whether or not the person who makes use of the mark is the owner thereof; (ii) the existence of provisions (rules, standards) to which the user must conform; and (iii) the obligation to grant the mark to whoever wishes to affix it on a product in conformity with the rules.

The author then examines the difference between certification marks and collective marks.

Finally, the article analyses the role of Industrial Property Administration in disputes which may arise between the owner and the users of quality marks.

Mr. Viragh has fully succeeded in clarifying, in a relatively short study (20 pages), a problem which is of great interest, both in practice and in theory. This study of comparative law is evidence of the fact that Mr. Viragh is a specialist in at least four systems of trademark protection (American, British, German and Swiss). A. B.

* * *

(Translation)

Diritto Industriale (Industrial Law), by Professor *Luigi Sordelli*. A reprint from "Novissimo Digesto Italiano". Unione Tipografica-Editrice, Turin.

In his study, Professor Luigi Sordelli summarizes the general legal problems of industrial property, particularly in Italian legislation.

After providing an extensive bibliographical list, he defines "industrial law" as "those rules which cover the exclusive rights over products, works and distinctive signs and which contribute, in the field of competition, to restricting, denying or extending the effects of such competition".

The historical evolution, as described by M. Sordelli, leads us to the modern concept of industrial law, in its private and public aspects in regard to its problems of comparative and international law. These elements determine the scope of exclusive rights over certain intellectual creations.

According to M. Sordelli, industrial law is not autonomous, forming part of commercial law though kept separate from other subject-matter for practical and didactic reasons.

The general principle of free competition is restricted by possible exclusive rights over intellectual creations. The function of these rights is, by their very structure, to reconcile the paradox between competition and exclusiveness.

There are two aspects to the legal problem; on the one hand, to identity "intellectual creations", and on the other hand, to determine the content, extent and effect of exclusive rights. Modern theory, which the author supports, includes in intellectual creations (apart from those creations of the mind having an industrial, technical or aesthetic result), distinctive signs taken in the broadest sense of the word, and the result of a creation effected by means of communication.

However, doctrine is not unanimous with regard to the suitability of the means for ensuring exclusive rights. Several theories on this subject are based on different foundations such as intengible assets, goodwill, clientele, the exercise of economic activity, competition, monopolies.

The author gives us a complete survey of the theories leading to legal systems of protection, by quoting all the distinguished lawyers who have prepared them and comes to the following interesting conclusions: all theories tend to embrace, in the field of industrial law, the different subjects of protection, setting them out in relief in order to determine the different categories and relationships which unite them.

He therefore considers industrial law in its widest sense, including intellectual creations, the subject of exclusive rights, distinctive signs, intellectual works having an aesthetic or utilitarian object, competition in all its regulated forms.

He excludes, however, from the sphere of industrial law, those rules which concern the contractor, the enterprise and the business concern because such matters belong to commercial law. Taking Italian legislation as a basis, the author establishes the following classification:

(a) *Intellectual creations* in the narrow sense: industrial inventions, utility models, ornamental designs and models, intellectual works as such (literary, figurative, musical, cinematographic works and works of applied art, etc.).

(b) *Distinctive signs:* trade names, insignia, abbreviations, trademarks, appellations of origin, indications of source, titles of intellectual works and reference numbers, names of type and models of machines or products of industry and manufacturing in general.

(c) *Competition:* rules governing competition (including interventions by the public authorities in the economy and the legal regulations concerned therewith); clauses regarding competition, industrial combinations; anti-trust laws; prevention of unfair competition; any object whose purpose is to distinguish products or production or for attracting customers, such as "slogans", packaging, original means of presentation of products. and all other means or distinctive signs considered as instruments of competition.

Commercial and industrial publicity (advertisement) and the "*industrial design*" have points in common with the subject-matter of this list.

The author observes that the problems of exclusive rights over certain objects can be foreseen under one or another of the titles of protection, though cumulative protection must, in principle, be eliminated.

With reference to Italian law, he excludes any kind of superimposition or interference between patents and industrial models, ornamental models and applied art in industry, between the trademark and the title of a work (in particular, the title of a periodical). He also excludes conflict between distinctive signs and products, even if these are patented and, similarly, between appellations of origin and indications of source.

Finally, the author remarks that the rules of private law are not the only form of protection in the field of industrial property. Penal sanctions are provided for in the domain of industrial property by the Italian Penal Code (Art. 473, 474, 507, 513, 514, 515, 517, 623), by the Italian Civil Code (Art. 2635, 2636 *et seq.*) and by special laws (Art. 67 of Decree No. 92 of June 21, 1942, on Trademarks, 88 and 89 of Decree No. 1127 on Patents, also applicable, by virtue of Art. 1 of Decree No. 1411 of August 25, 1940, to Industrial Models and Ornamental Models and Designs, Art. 171 *et seq.* of Law No. 633 of April 22, 1941, on Copyright Infringement), by certain other special laws (No. 125 of April 10, 1954, for the Protection of Appellations of Origin and typical names of cheeses, and No. 1068 and 1069 of November 4, 1950, on the production of certain typical wines).

Professor Sordelli ends his study with a complete review of the basic principles and sources of the international rules governing industrial property and lists those Conventions, Agreements and bilateral Agreements to which Italy is a party.

This systematic study contains useful information in the field of industrial property and gives a clear picture of general legal theories and problems. G. R.

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(Translation)

Das Internationale Privatrecht des unlauteren Wetthewerhes, in vergleichender Darstellung der Rechte Deutschlands, Englauds, Frankreichs, Italiens, der Schweiz und der USA (Private International Law on Unfair Competition, being a comparative study of the law in Germany, the United Kingdom, France, Italy, Switzerland and the U. S. A.), hy *Kamen Troller*, Doctor of Law. A volume of 147 pages, 24 × 16 cm. Editions Universitaires, Frihourg (Switzerland), 1962. Price: Swiss francs 17.50 *(in German)*.

This study deals with the law applicable to an act of unfair competition which has repercussions ahroad.

The growing interest aroused by the search for an answer to this question is due to the progress of integration in the Western World; industry and commerce in the various countries are increasingly competing with each other in the many markets.

The author gives some example to show the legal difficulties in seeking an equitahle solution to the conflicts caused hy acts of unfair competition having repercussions ahroad. By making a study of comparative law he has tried to define the nature of an act of unfair competition and cites, in particular, the definition given in Article 10bis of the Convention of the Paris Union, which mentions the most important and most frequent cases.

After considering in detail the situation at national level which seeks to provide protection against unfair competition, the author concludes that ideas on this suhject vary more or less strongly from one country to another. His own eventual definition is: The act of unfair competitiou is an unlawful act, the illegality of which arises solely from the violation of a standard of conduct or legal ohjective; that is to say, of a prohihition from using, in competition, unfair means.

Hitherto hoth theory and case-law have heen at pains primarily to treat unfair competition according to the rules governing offences in civil law. This assimilation has frequently, however, led to unsatisfactory results; the fact is, as the author convincingly demonstrates, unfair competition differs at important points from the unlawful act in civil law. It is true that the act of unfair competition falls within the category of offences in civil law; accordingly, the place of commission may he taken into consideration in this context. According to a doctrine which to-day is widespread, however, the place of commission of an unlawful act is situated where the latter has its centre of gravity. The author has accordingly made it his task to estahlish what considerations may be taken as hasic in order to determine the centre of gravity of an act of unfair competition.

He points out that, since the act of unfair competition does not constitute a violation of a specified legal property, but consists purely in an infringement of standards of conduct or ohjective law, it lacks an essential quality to enahle it to he assimilated to the unlawful act in the sense of an offence in civil law, and to be related to the place in which it injured legal property or the interests connected therewith, that is to say, the place of commission in the sense in which it is understood in civil law offences. Neither can the place where the injury was caused be sustained, since the injury is a necessary consequence of any successful act of competition, whether unfair or not.

The author holds that, in view of the nature of the act of unfair competition, the only applicahle law is that of the place where the interests of the competitors conflict. After carefully analyzing the different acts of competition, he concludes that the applicable law may be determined exactly, and at any moment, for each of these acts; the centre of gravity of the different acts of unfair competition which fall within a particular category is always situated in the same place.

The author has commendably made a careful study of the question of applicahle law concerning unfair competition. He has provided a clear, well-considered appreciation on a numher of related problems which are highly important in hoth theory and practice. R. W.

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(Translation)

Die Schuldwährung der Ansprüche aus Immaterialgüterrechtsverletzungen, ein Beitrag zur Rechtsvereinheitlichung im Geldrecht (The proper currency for payment of compensation for infringement of intangihle rights, a contrihution to the unification of monetary law), hy *Aloys Rutz*, Doctor of Law. 77 pages, 24 × 16 cm. Editions Universitaires, Frihourg (Switzerland), 1962. Price: Swiss francs 10.— *(in German)*.

The author considers in what currency a Swiss, for example, could claim payment of compensation due to him for infringement of his patents obtained in France. This is a prohlem which has hitherto received little attention. It is true that the International Law Association has considered it, and it is also a fact that the integration of Europe increasingly raises in practice questions on the currency of payment.

The present study envisages the estahlishment of a draft law. Another of its main ohjects is to introduce more clarity into the whole field of the currency of payment of dehts. The author deserves praise for treating these inter-related questions thoroughly and systematically. R. W.

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(Translation)

Kommentar zum schweizerischen Markenschutzgesetz (Commentary on the Swiss Trademark Law), second edition, hy *Heinrich David*, Doctor of Law and Advocate. 363 pages, 22 × 16 cm. Puhlishers: Helhing and Lichtenhahn, Basle and Stuttgart. Basle, 1960. Price: Swiss fraucs 37.— *(in German)*.

In Switzerland " David " has become a classic work for those interested in the protection of trademarks. The first edition appeared twenty years ago. The second incorporates all the qualities of the first. The Swiss Trademark Law is commented on clearly and in such a way as to facilitate reference to the work. The author has not heen content merely to exhaust the ahundant material furnished hy Swiss case-law; he has also considered German law, more so even than in the first edition. A happy typographical layout of the text further enhances its practical usefulness. R. W.

Calendar of BIRPI Meetings

Place	Date	Title	Object	Invitations to participate	Observers
Bogotá	July 6 to 11, 1964	Latin American Industrial Property Congress	Discussion of industrial property questions of interest to Latin American States	Argentina, Brazil, Bolivia, Costa Rica, Cuba, Chile, Dominican Republic, Ecuador, El Salvador, Guatemala, Haiti, Honduras, Mexico, Nicaragua, Panama, Paraguay, Peru, Uruguay, Venezuela	All Member States of the Paris Union outside Latin America; United Nations Organization, Organization of American States, International Patent Institute, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce
Geneva	September 28 to October 2, 1964	Interunion Coordination Committee	Program and budget of BIRPI	Belginm, Brazil, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Portngal, Rnmania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union
Geneva	September 30 and October 1, 1964	Consultative Committee and Conference of Representatives (Paris Union)	Triennial budget of the Paris Union	All Memher States of the Paris Union	—
Geneva	October 5 to 8, 1964	International Committee of Novelty-Examining Patent Offices	Examination of the problem: "Abandonment of inventions to the pnblic by an international publication of patent applications where the grant of a patent is no longer required	Australia, Austria, Brazil, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, Germany (Fed. Rep.), Hungary, Iceland, Ireland, Israel, Japan, Mexico, Netherlands, New Zealand, Norway, Poland, Rumania, South Africa, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	Certain non-Member countries of the Paris Union and certain International Organisations
Geneva	October 12 to 16, 1964	Committee of Experts concerning the international classification of industrial designs	Stndy of an international classification of indnstrial designs	All Member States of the Paris Union	—
Geneva	Octoher 19 to 23, 1964	Committee of Experts for the study of a model law concerning inventions and technical know-how for developing countries	Study of a model law concerning inventions and technical know-how for developing countries	Afghanistan, Algeria, Argentina, Bolivia, Brazil, Burma, Bnrundi, Cambodia, Ceylon, Chile, China (Taiwan), Colombia, Congo (Leopoldville), Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Ethiopia, Ghana, Gnatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran, Iraq, Jamaica, Jordan, Kenya, Korea, Kuwait, Laos, Lebanon, Liberia, Libya, Malaysia, Mali, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Pern, Philippines, Rwanda, Saudi Arabia, Sierra Leone, Somalia, Sudan, Syrian Arab Repnblic, Tanganyika and Zanzibar, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Republic, Urugnay, Venezuela, Viet Nam, Western Samoa, Yemen	United Nations Organization, Council of Europe, African and Malgasy Industrial Property Office, International Patent Institute, Interamerican Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents