

# Industrial Property

Monthly Review of the United International Bureaux  
for the Protection of Intellectual Property (BIRPI)  
Geneva

3<sup>rd</sup> Year

No. 7

July 1964

---

## Contents

	Pages
INTERNATIONAL UNION	
Trinidad and Tobago. 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 . . . . .	139
BIRPI Working Party on an Administrative Agreement (Geneva, May 20 to 26, 1964) . . . . .	139
REPORTS OF INTERNATIONAL ORGANIZATIONS	
The United Nations Conference on Trade and Development (Geneva, March 23 to June 16, 1964) . . . . .	141
CONGRESSES AND MEETINGS	
Inter-American Association of Industrial Property (ASIPI). First General Assembly (Acapulco and Mexico City, April 11 to 16, 1964) . . . . .	146
International Typographic Association (Cambridge, May 30, 1964). Resolution . . . . .	148
CORRESPONDENCE	
Letter from Great Britain (Frederick Honig) . . . . .	148
BOOK REVIEW	
Marcas de fábrica y nombres comerciales, by German Cavelier . . . . .	158
NEWS ITEMS	
Calendar of BIRPI Meetings . . . . .	159



## † Jacques Secretan

With profound regret we announce the death, on July 25 at Dardagny, Geneva, of Professor Jacques Secretan, Director of BIRPI from 1953 to 1963. An appreciation of the career of Professor Secretan will follow in our next issue.

# INTERNATIONAL UNION

## TRINIDAD AND TOBAGO

### 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 July 1, 1964, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Government of Trinidad and Tobago in a letter of May 14, 1964, a copy of which is enclosed<sup>1)</sup>, has confirmed to the Swiss Government the membership of its country to the International Union of Paris for the Protection of Industrial Property by virtue of a declaration of application previously made in accordance with Article 16<sup>bis</sup> of the International Convention for the Protection of Industrial Property.

"According to the above-mentioned letter the Government of Trinidad and Tobago further declares its adhesion to the Convention of Paris, as revised at Lisbon on October 31, 1958. In application of Article 16 (3) of the said Convention, the adhesion of Trinidad and Tobago will take effect on August 1, 1964.

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

\* \* \*

This adhesion will bring the membership of the Union to 65 countries with effect from August 1, 1964.

<sup>1)</sup> Annex omitted. (Ed.)

## BIRPI Working Party on an Administrative Agreement

(Geneva, May 20 to 26, 1964)

The Permanent Bureau of the International Union for the Protection of Industrial Property (Paris Union) and the Permanent Committee of the International Union for the Protection of Literary and Artistic Works (Berne Union) decided, in a joint meeting held in October 1962, to set up a working party to start work for a diplomatic conference to revise some of the administrative clauses of the existing Conventions and other Agreements administered by BIRPI and draw up an "administrative convention". The Government of Sweden accepted to act as the inviting power of the diplomatic conference which is now scheduled to take place in Stockholm in 1967.

The Permanent Bureau and the Permanent Committee decided to invite the following countries to constitute the Working Party: Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America. The list of actual participants appears in an annex to the present note.

Under the chairmanship of Dr. Hans Morf, Head of the Swiss Delegation, the Working Party met in Geneva at the Headquarters of BIRPI from May 20 to May 26, 1964.

The Working Party drew up a draft instrument entitled "Draft Convention of the World Intellectual Property Organization". According to the draft, "WIPO" would take the place of what is today known as BIRPI. The new Organization would be a world-wide forum for industrial property, copyright, and related questions. It would be entrusted with the administrative tasks of the Paris Union, the Special Agreements established in relation with that Union, and the Berne Union. But the Unions would maintain their complete independence as far as their own affairs are concerned: the program and budget of each Union would be determined by the General Assembly of that Union consisting only of the Member Countries of such Union. On the other hand, the budget and the program of the Organization as such would be determined by the General Conference of the Organization.

The draft of the Working Party is going to be circulated to the Member States of the Paris and Berne Unions, and will be examined by a committee of experts early in 1965. To that committee, all States Members of either Union will be invited.

ANNEX

## Participants

## 1. Countries

*Czechoslovakia*

- Mr. Jaroslav Němeček, President, Patent Office, Prague;  
 Dr. Radko Fajfr, Legal Department, Ministry of Foreign Affairs, Prague;  
 Dr. Jiří Kordač, Ministry of Education and Culture, Prague.

*France*

- Mr. Henry Puget, Honorary Counsellor of State, President of the National Committee of Intellectual Property, Paris;  
 Mr. Guillaume Finnis, Inspector-General of Industry and Commerce; Director, National Institute of Industrial Property, Paris;  
 Mr. Roger Labry, Counsellor of Embassy, Direction of Economic and Financial Affairs, Ministry of Foreign Affairs, Paris;  
 Mr. Charles Rohmer, Civil Servant, Head of the Copyright Bureau, Ministry of Cultural Affaires, Paris;  
 Mr. Marcel Pierre, Civil Servant, National Institute of Industrial Property, Paris;  
 Mr. J.-L. Jeauffre, Honorary Controller of State, Paris.

*Germany (Fed. Rep.)*

- Mr. Albrecht Krieger, Regierungsdirektor, Federal Ministry of Justice, Bonn;  
 Dr. Dirk Rogge, Landgerichtsrat, Federal Ministry of Justice, Bonn;  
 Mr. Peter Schönfeld, Consul, Geneva.

*Hungary*

- Mr. Emil Tasnádi, President, Patent Office, Budapest;  
 Dr. Gyula Jelenik, Secretary, Ministry of Foreign Affairs, Budapest;  
 Dr. Gyula Pusztai, Chief of the Legal Section, Patent Office, Budapest;  
 Dr. János Zakár, Legal Adviser, Office for Copyright Protection, Budapest.

*Italy*

- Mr. Valerio de Sanctis, Attorney-at-Law, Rome;  
 Mr. Giuseppe Trotta, Legal Expert, Ministry of Foreign Affairs, Rome;  
 Mr. Paul Marchetti, Inspector-General, Ministry of Industry, Central Patent Office, Rome.

*Japan*

- Mr. Yuzuru Murakami, First Secretary, Embassy of Japan in the Federal Republic of Germany, Bad Godesberg.

*Sweden*

- Mr. Ake von Zweigbergk, Director-General of the National Patent and Registration Office, Stockholm;  
 Mr. Torwald Hesser, Judge at the Court of Appeal, Ministry of Justice, Stockholm;  
 Mr. Claes Uggla, Legal Adviser to the Board of Appeals of the National Patent and Registration Office, Stockholm;  
 Mr. J. L. Myrsten, Head of Section, Ministry of Foreign Affairs, Stockholm.

*Switzerland*

- Dr. Hans Morf, Attorney-at-Law, Berne;  
 Mr. Joseph Voyame, Director, Federal Office of Intellectual Property, Berne;  
 Mr. Rodolphe Bühler, Division of International Organizations, Federal Political Department, Berne;  
 Mr. Charles F. Pochon, Head of Section, Federal Office of Financial Control, Berne.

*United Kingdom*

- Mr. William Wallace, C. M. G., Assistant Comptroller of the Industrial Property Department, Board of Trade, London.

*United States of America*

- Mr. George A. Tesoro, Counsellor, U. S. Mission, Geneva;  
 Miss Sylvia Nilsen, Office of the Assistant Legal Advisor for Treaty Affairs, Department of State, Washington;  
 Mr. James R. Wachob, Second Secretary, U. S. Mission, Geneva.

## 2. BIRPI

- Prof. G. H. C. Bodenhausen, Director;  
 Dr. Arpad Bogsch, Deputy-Director;  
 Mr. Charles-L. Magnin, Deputy-Director;  
 Mr. Georges Béguin, Counsellor, Head, General Administrative Services Division;  
 Mr. Claude Masouyé, Counsellor, Head, Copyright Division.

## 3. Officers of the Meeting

- Chairman: Dr. Hans Morf (Switzerland);  
 Vice-Chairman: Mr. Henry Puget (France);  
 Vice-Chairman: Mr. Emil Tasnádi (Hungary);  
 Secretary: Dr. Arpad Bogsch (BIRPI).
-

## REPORTS OF INTERNATIONAL ORGANISATIONS

### The United Nations Conference on Trade and Development

(Geneva, March 23 to June 16, 1964)

The United Nations Conference on Trade and Development has finally run its three months' course. The wide coverage given to the debates in the press will have been sufficient to show the vast area explored by the delegates of the 119 countries represented. The International Union for the Protection of Industrial Property was one of the International Organizations expressly invited by the Economic and Social Council to send observers to the Conference.

Only a small part of the area covered was directly concerned with patents, but it is easy to see that, in a Conference largely devoted to the industrial development of less developed countries, there were many items on the Agenda upon which patents could have their effect.

The particular point where patents were specifically discussed was in connection with the invisible trade of developing countries, one feature of which was the effect of royalty payments under patent licences on the balance of payments of those countries.

The Conference had before it the Report of the Secretary-General of the United Nations on "The Role of Patents in the Transfer of Technology to Under-Developed Countries" (Document No. E/3861; E/C.5/52/Rev.1; E/CONF.46/69), in the preparation of which BIRPI cooperated with the United Nations Secretariat. It also had before it a Paper (Document No. E/CONF.46/101) prepared by BIRPI and circulated as a Conference document (see Annex).

The subject of patents was first considered in the Third Committee (consisting of representatives of all countries attending the Conference) and the debates are summarized in the official records as follow<sup>1)</sup>:

*The Chairman invited the Committee to consider the draft recommendation on the transfer of technology (E/CONF.46/C.3/L.69).*

*Mr. Flère (Yugoslavia), introducing the draft recommendation<sup>2)</sup> of which his delegation was a sponsor, said that the*

<sup>1)</sup> Documents E/CONF.46/C.3/SR.44; E/CONF.46/C.3/SR.49.

<sup>2)</sup> Transfer of technology. — *The Conference recommends that:*

1. *Developed countries should encourage the holders of patented and non-patented technology to facilitate the transfer of licences, know-how, technical documentation and new technology in general to developing countries, including the financing of the procurement of licences and related technology on favourable terms.*
2. *Developing countries should undertake appropriate legislative and administrative measures in the field of industrial technology.*
3. *Competent international bodies should explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries, including the possibility of concluding appropriate international agreements in this field.*
4. *Facilities for information on, and for the transfer of, technical documentation and know-how should be organized within the framework of the United Nations in consultation with the appropriate international organizations. This function may be entrusted to the United Nations Centre for Industrial Development or to the United Nations industrialization agency when established.*

*valuable report of the Secretary-General of the United Nations (E/3861 - E/C.5/52/Rev.1 - E/CONF.46/69), which discussed the problem thoroughly and comprehensively in the broader context of the transfer of technology to developing countries, pointed out that in actual practice it was not possible to dissociate patented from non-patented technology. The report showed unequivocally that there were various obstacles which rendered transfer difficult and contained suggestions for overcoming those obstacles in the field of patented technology where action was needed because of the shortcomings of the present system (excessive royalties, restrictive clauses which limited marketing and export of non-patented products). Those obstacles could not be overcome through action by the developing countries only, particularly because the prevailing system of industrial property had, to a certain extent, unfavourable effects in that it placed the holders of exclusive rights in a strong position which was further enhanced by the fact that unpatented technology could as a rule only be used in conjunction with patented technology.*

*That was why the draft recommendation, intentionally couched in general terms, envisaged four lines of national and international activity. In paragraph 1, it invited the developed industrial countries to provide inducements to their nationals and national enterprises to facilitate the transfer of technology to developing countries. It was sometimes stated that Western industrial countries had only limited possibilities of influencing their national enterprises. Such possibilities did, however, exist and new ones might be created.*

*Paragraph 2 was phrased in rather laconic terms because the sponsors felt that each country should introduce the type of legislation and administrative measures appropriate to its specific political and economic outlook. A large number of developing countries had already adopted the patent system and might wish to introduce legislation and administrative measures to remedy the shortcomings of that system. It seemed, however, more important that developing countries should introduce procedures for control of agreements on industrial property, and that those procedures should deal not only with patents but also with technical knowledge. It was logical that the procedures adopted should also deal with excessive royalties and control the agreements with respect to limitations on marketing and exports. The control of foreign patents should be in accordance with the criteria given in the report of the United Nations Secretary-General (E/3861 - E/C.5/52/Rev.1 - E/CONF.46/69).*

*Paragraph 3 was designed to encourage international bodies to study the legislation on industrial property with a view to re-adapting it to the needs of developing countries. Research was already being done by various international bodies, particularly the United Nations and the Bureau of the International Union for the Protection of Industrial Property. But the sponsors of the draft recommendation did not think that the time was ripe for convening an international conference to revise the existing international conventions.*

*Paragraph 4 dealt with the assistance which international organizations could provide in the transmission to the developing countries of more information on the new technology. It was to be hoped that the United Nations industrialization*

agency would become an important clearing house for the transmission of information and might play an active role in facilitating the transfer of technology, without interfering with the present activities of the United Nations and the Bureau of the International Union.

Mr. Bodenhausen (International Union for the Protection of Industrial Property) speaking at the invitation of the Chairman, recalled that the International Union was an intergovernmental organization comprising sixty-four<sup>1)</sup> member States, more than half of them developing countries.

Patents had an influence on trade and development, especially on the transfer of technical know-how. When a country granted patents to foreigners it might wish certain conditions to be fulfilled which became the subject of an agreement. Even if a particular country did not grant patents the existence of patents abroad was likely to influence its imports and exports.

That system was analysed most clearly in the Secretary-General's report on "The Role of Patents in the Transfer of Technology to Under-Developed Countries" (E/3861 - E.C.5/52/Rev.1, and E/CONF.46/69). As was illustrated by the industrialized countries — whatever their economic systems — patents encouraged economic development by stimulating the inventiveness of inventors and by facilitating investment. The system must now be used in order to meet the particular needs of the developing countries.

Those needs were two-fold and partly contradictory: the developing countries wished their industries to be able to use inventions and processes patented abroad, but at the same time they did not wish royalty payments to constitute too heavy a burden on their economies.

As the report in question suggested, those problems could to a great extent be dealt with through appropriate legislation designed, inter alia, to set up a modern system of compulsory licences and to impose proper control of royalty payments to foreign patentees. Some countries had already taken measures of that kind. It should also be possible to assist them in financing licence agreements, but that was only one aspect of a much wider problem which the Committee was called upon to consider.

The International Union had already undertaken in that field a vast programme of assistance to developing countries. It had prepared a draft model law containing special provisions designed to safeguard the interests of the developing countries, covering such points as the control of royalty payments and the prevention of abuse of monopoly. The International Union was organizing seminars, granting fellowships for the training of administrators in national patent offices and was at the disposal of Governments of developing countries to help them, if they so wished, to organize regional offices. Lastly, it had under consideration a centralized international publication of patent applications for which the grant of patents was no longer desired; that would create a valuable source of information for countries in the course of industrial development. Additional information about the pro-

gramme was given in a note circulated by the Secretary-General of the Conference (E/CONF.46/101).

He suggested that after noting the efforts made by the International Union in that field, the Committee might wish to recommend the continuance of that work in consultation with the Secretary-General of the United Nations. In that connexion he welcomed the measures proposed in the draft recommendation under discussion (E/CONF.46/C.3/L.69); but he wondered whether those measures could not be linked up more closely with the efforts of the International Union, which was the only intergovernmental organization specializing in that field.

Mr. Moreira (Brazil) observed that his country firmly believed that the transfer of technical know-how was as important as the transfer of capital and had always taken an interest in ways and means of encouraging the transfer of technical and scientific know-how to the developing countries. He felt that the patent system could play an important part in that process and that steps should be taken to make it still more effective. Admittedly the system sometimes ran counter to the interests of the developing countries when it limited the marketing and especially the export of products manufactured in developing countries under contracts based on licences held by industrial countries and when the use of certain processes was prevented by the maintenance of a patent even after it had expired in the country of origin.

He did not propose the addition of any special provisions to the draft recommendation, for he felt it was preferable to adopt a more general text and leave the particular aspects to be studied subsequently.

Mr. Ionascu (Rumania) said that at a time when the Conference was seeking means of hastening economic development, the transfer of patents and technology assumed great importance. The United Nations Conference on the Application of Science and Technology had shown how such transfers could be employed in the interests of the developing countries and had set up a committee of which Rumania was a member. At its previous session, the Economic Commission for Europe (ECE) had adopted a draft resolution, presented by Rumania, on the assistance that the regional economic commissions, and especially ECE, should give in organizing the future international symposium on industrialization. In that connexion, the draft recommendation under discussion was of particular interest. Rumania supported it and would even like to be one of its sponsors, since the country itself was in the throes of economic development and understood the difficulties of countries seeking to adopt new technology with a view to making the most of their national resources.

Mr. Pratt (Sierra Leone) supported the draft recommendation, but would like to see two ideas added to it. Firstly, it was, of course, right to stipulate that technology should be transferred to the developing countries; but it should be given to the nationals of those countries and not to the nationals of developed countries. Thus, a phrase such as "by training or by other methods" could be added in paragraph 1 after the word "facilitate".

Secondly, there should be some restriction on the transfer of technology. Many under-developed countries of a single

<sup>1)</sup> On August 1, 1964, membership of the Union was brought to 65 countries.

region all had the same agricultural or mineral resources. If all had access to the same know-how and technology, if all could obtain the same patents and licences, the result would be disastrous for the intra-regional trade the promotion of which was being pursued at present. It was therefore essential, in the interests of the new division of labour, to control the transfer of technology. The addition of a paragraph 5 to the draft recommendation might be considered, entrusting the task to an appropriate international institution which, naturally without infringing the sovereignty of the various countries, would endeavour to supervise the transfer.

Mr. Moreira (Brazil) fully shared the opinion of the representative of Sierra Leone. He recalled, however, that the Yugoslav representative had emphasized the advantages of a recommendation drafted in general terms. The first proposal of the representative of Sierra Leone would involve taking into consideration details that were fairly complicated from the legal point of view, particularly since patents were usually granted to corporations and not to individuals. The second proposal was extremely important, and he had already referred to the problem involved when he mentioned the practice of granting certain licences only on condition that the products manufactured under them should not be exported. Nevertheless, if that proposal were to be incorporated in the draft recommendation, the drafting of the new paragraph would involve much trouble and probably long negotiations. He therefore asked the representative of Sierra Leone not to press his proposals.

The Draft Recommendation, as slightly amended, was again presented to the Committee at a later Meeting.

Mr. Flère (Yugoslavia), introducing the revised draft recommendation, said that the substance remained the same as in the original (E/CONF.46/C.3/L.69). The main purpose was that facilities should be made available in the framework of the United Nations, and perhaps in a United Nations industrialization agency, for information on, and for the transfer of, technical documentation and knowledge. The four paragraphs provided general guide-lines for the transfer of technology. He hoped that the revised draft recommendation would receive unanimous approval.

Mr. Zagorin (United States of America) proposed that the word "organized" in paragraph 4 should be replaced by "available". His delegation saw no need for a new organization for that purpose. He did not agree with the Yugoslav interpretation of paragraph 4 that the provision of information should be entrusted to a United Nations industrialization agency.

Mr. Marzouk (United Arab Republic), said that, as one of the sponsors of the revised draft recommendation, he would prefer the word "organized" to be retained.

Mr. Wright (United Kingdom) welcomed the efforts made by the sponsors to make paragraph 4 more generally acceptable. He hoped that the United States amendment would be accepted.

The Secretary-General's report on the role of patents in the transfer of technology to under-developed countries (E/

CONF.46/69, page 23) expressed the view that there was no need at present to call a Conference to examine the problems regarding the granting, protection and use of patents. He was sure that the sponsors of the draft recommendation did not wish to imply any disagreement with that conclusion by calling for a re-negotiation of existing conventions. He had therefore proposed at the 47<sup>th</sup> meeting that the last phrase of paragraph 3 beginning with the words "including the possibility", should be replaced by the words "including the possibility of appropriate international arrangements in this field". As there had been no comment on that suggestion he invited the sponsors to consider it.

Mr. Flère (Yugoslavia) recalled that in introducing the original draft recommendation (E/CONF.46/C.3/SR.44) he had stated that the sponsors did not think the time was ripe for convening an international conference for the revision of the existing international conventions on patents. It was generally agreed, however, that there were certain shortcomings in the present patents system which might sooner or later be overcome. The sponsors therefore felt that research should be undertaken with a view to improving the present system. Research on those lines was already being undertaken by various international organizations and he felt that paragraph 3 of the draft recommendation might further stimulate that research, to the advantage of the developing countries. He therefore hoped that the United Kingdom representative would accept the paragraph as it stood.

He asked the United States representative not to press his amendment to paragraph 4, for he hoped that all would agree that the present activities of the United Nations in the field of the transfer of technology should be expanded.

Mr. Pratt (Sierra Leone) said that the ideas he had suggested at the forty-fourth meeting for incorporation in the draft recommendation did not appear to have been included. He hoped that paragraphs 1 and 2 could be interpreted as he had suggested: firstly that licences, technical knowledge and so forth should not merely be transferred from developed countries to the companies and corporate bodies which might be established in developing countries, but should be made available to the nationals of the developing countries; and secondly, that whatever steps were taken on the lines suggested in paragraph 1 should be in the interests of regional planning in the developing countries themselves.

Mr. Elson (Federal Republic of Germany) said that his country would welcome any efforts to improve the transfer of technology to the developing countries. The legislation of his country concerning the transfer of licences allowed the owner of the patent to decide on the conditions under which it might be exploited; thus there was little hope of his Government being able to intervene on the lines suggested in paragraph 1. His delegation had doubts, too, about paragraph 3 as it stood and would like it to be amended as proposed by the United Kingdom representative. The studies already being undertaken were undoubtedly useful but the question had complex economic implications and the word "arrangements" was better than "agreements". It would be better to await the results of the present studies before making any further recommendations for improving the situation.

Mr. Wright (*United Kingdom*), referring to the first point raised by the representative of Sierra Leone, said that in the United Kingdom, as in the Federal Republic of Germany, scope for government action on the licensing of patents was small. He thanked the Yugoslav representative for his explanation of paragraph 3 and inquired whether he considered the United Kingdom amendment to be inconsistent with his statement.

Mr. Zagorin (*United States of America*) said that he would replace his amendment to paragraph 4 by an alternative proposal, namely that the word "additional" should be added before the word "facilities" at the beginning of the paragraph.

Mr. Girma (*Ethiopia*) asked what was the exact meaning of the expression "international arrangements" in the United Kingdom amendment. In view of the international character of the transfer of industrial technology to developing countries, he thought that "international agreements" made better sense.

With regard to the Sierra Leonean representative's idea that technical knowledge should be transferred to the nationals of developing countries, it seemed to him that the Mongolian recommendation (E/CONF.46/C.3/L.40/Rev.1) which the Committee had approved provided for that. The question of regional organization might usefully be included in the draft recommendation; he wondered if the Sierra Leonean representative could make a specific suggestion.

Mr. Pratt (*Sierra Leone*) said that he was not submitting a formal amendment but merely indicating that his interpretation of paragraph 2 was that developing countries might take appropriate administrative measures in the interests of regional development.

Mr. Marzouk (*United Arab Republic*) said that the sponsors of the revised draft recommendation accepted the United States amendment for the addition of the word "additional" at the beginning of paragraph 4. They were not, however, prepared to accept the United Kingdom amendment to paragraph 3.

Mr. Wright (*United Kingdom*) said that he would not press for a vote on his amendment but would interpret paragraph 3 as not recommending a conference to re-negotiate existing conventions concerning patents. With regard to paragraph 1, his delegation thought there was little possibility of action being taken along those lines.

The revised draft recommendation (E/CONF.46/C.3/L.69/Rev.1), as amended, was adopted by 83 votes to none, with 4 abstentions.

Mr. Matsui (*Japan*), explaining his vote, said that his delegation had abstained because it had reservations concerning paragraph 1. The holders of patents were generally private individuals and the influence of the Government upon them was limited.

Mr. Pratt (*Sierra Leone*) said that he had voted in favour of the revised draft recommendation because the word "encourage" in paragraph 1 seemed to answer his doubts.

Mr. Elson (*Federal Republic of Germany*) said that his delegation had abstained because it did not think the time had come to envisage the conclusion of the international agreements referred to in paragraph 3.

The Recommendation as adopted by the Committee and then by the Conference itself was as follows:

#### Transfer of technology<sup>1)</sup>

The Conference recommends that:

1. Developed countries should encourage the holders of patented and non-patented technology to facilitate the transfer of licences, know-how, technical documentation and new technology in general to developing countries, including the financing of the procurement of licences and related technology on favourable terms.
2. Developing countries should undertake appropriate legislative and administrative measures in the field of industrial technology.
3. Competent international bodies, including United Nations bodies and the Bureau of the International Union for the Protection of Industrial Property, should explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries, including the possibility of concluding appropriate international agreements in this field.
4. Additional facilities for information on, and for the transfer of, technical documentation and know-how should be organized within the framework of the United Nations in consultation with the appropriate international organizations.

(Document E/CONF.46/L.28, Annex A.IV.26)

This Recommendation was approved by the Conference without opposition.

#### ANNEX

##### The Role of Patents in the Transfer of Technology to Under-Developed Countries

Note by the Bureau of the International Union for the Protection of Industrial Property

#### I

1. This note is presented by the Bureau of the International Union for the Protection of Industrial Property ("Paris Union"), and relates principally to the Report of the Secretary-General of the United Nations on the role of patents in the transfer of technology to under-developed countries (Docs. E/CONF.46/69; E/C.5/52/Rev.1).

#### II

2. The International Union was established by the Paris Convention of 1883 and at present comprises the following sixty-three<sup>2)</sup> Member States:

<sup>1)</sup> Changes from the first draft are in ordinary type. The last sentence was omitted. (Ed.)

<sup>2)</sup> The adhesions of Niger and Trinidad and Tobago brought the membership of the Union to 65 countries with effect from August 1, 1964.

Australia	Liechtenstein
Austria	Luxemburg
Belgium	Madagascar
Brazil	Mexico
Bulgaria	Monaco
Cameroon	Morocco
Canada	Senegal
Central African Republic	Netherlands
Ceylon	New Zealand
Chad	Nigeria
Congo (Brazzaville)	Norway
Cuba	Poland
Czechoslovakia	Portugal
Denmark	Rhodesia and Nyasaland
Dominican Republic	Rumania
Finland	San Marino
France	South Africa
Gabon	Spain
Germany	Sweden
Greece	Switzerland
Haiti	Syrian Arab Republic
Holy See	Tanganyika
Hungary	Tunisia
Iceland	Turkey
Indonesia	United Arab Republic
Iran	United Kingdom
Ireland	of Great Britain
Israel	and Northern Ireland
Italy	United States of America
Ivory Coast	Upper Volta
Japan	Viet-Nam
Laos	Yugoslavia
Lebanon	

3. The Convention was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934 and at Lisbon in 1958. The Union is open to all countries which may adhere at their request by a notification through diplomatic channels to the Government of the Swiss Confederation, the Supervisory Authority under the Convention.

4. The Convention applies to industrial property in the widest sense and covers patents for inventions, utility models, industrial designs, trademarks, trade names, indications of source, appellations of origin and the prevention of unfair competition.

5. The International Bureau of the Union for the Protection of Industrial Property forms part of the United International Bureaux for the Protection of Intellectual Property (BIRPI) which also includes the Bureau of the International Union for the Protection of Literary and Artistic Works which deals with copyright on the international level.

6. Stemming from the Paris Union there are also several Separate Unions and Agreements open to Members of the Paris Union and which deal with the international registration of trademarks, the international deposit of designs, the prevention of false indications of source on goods, and the international classification of goods and services to which trademarks apply.

### III

7. The direct interest of the International Bureau in the present Conference flows in part from Resolution 1713 (XVI) adopted at the instance of Brazil at the General Assembly of the United Nations in 1961. This Resolution is quoted in extenso in Annex A to Document E/CONF.46/52/Rev.1. That Resolution called upon the Secretary-General of the United Nations to prepare a report on the Role of Patents in the Transfer of Technology to Under-Developed Countries and in the course of that preparation, the Secretary-General requested the International Bureau to establish the material for a survey of patent legislation in selected developed and under-developed countries with primary emphasis on the treatment given to foreign patents.

8. The patent legislation of some forty developed and less developed countries, both members and non-members of the Paris Union, was examined and the results are to be found in the form of the Synoptic Table in Annex D to the Secretary-General's Report (Document E/CONF.46/52/Rev.1).

9. This Report has already been submitted to the Committee for Industrial Development at its fourth Meeting in New York from March 2 to 20, 1964, and is now submitted to the United Nations Conference on Trade and Development. It will also be submitted to the Thirty-Seventh Session of the Economic and Social Council and subsequently to the XIX<sup>th</sup> General Assembly of the United Nations.

10. At its Thirty-Sixth Session, the Economic and Social Council invited the International Union for the Protection of Industrial Property to be represented as observers at the present Conference.

### IV

11. The International Bureau has the following initial observations to make on the United Nations Report, though these may be amplified when the Report is discussed in the Third Committee of the present Conference.

(a) The United Nations Report states that the issue of patents to nationals is one of the methods at the disposal of under-developed countries for encouraging technical progress, but, in establishing patent systems, such countries possibly need "technical assistance or pooling arrangements in administering such systems" (pp. 22 and 23 of the Report).

The International Bureau wishes to call to the attention of the Conference that it has an important programme of such technical assistance.

- (i) It offers training grants for officials or prospective officials selected by their Governments for the administration of their patent systems;
- (ii) The International Bureau is at the disposal, with a model law and other materials, of under-developed countries wishing to adopt patent legislation consistent with their needs;
- (iii) The International Bureau is at the disposal of the Governments of such countries for advice on and assistance in the establishment of regional patent offices if several countries wish to pool their resources to administer their patent systems.

(b) *The United Nations Report calls attention to the fact that the possible abuse of patents by foreign patentees to the detriment of the economy of under-developed countries may be prevented by certain measures. Among others, the Report mentions compulsory working and licensing and the screening and control of licence agreements and royalties paid thereunder (p. 23 of the Report).*

*The International Bureau wishes to underline that the model patent law established by it includes provisions on the matters mentioned above.*

(c) *The United Nations Report expresses the opinion that the special interests of under-developed countries could be better served "through the adoption at the national level of appropriate legislative and administrative measures" along the lines indicated above rather than by an international conference (p. 24 of the Report).*

*The International Bureau agrees with this opinion and wishes to call the attention of the Conference to the fact that the technical assistance offered by it consists mainly of assistance in the establishment of measures for each country to take on the national level.*

(d) *The United Nations Report refers to the question raised in General Assembly Resolution 1713 (XVI) as to the "advisability of holding an international conference in order to examine the problems regarding the granting, protection and use of patents". The Report adds that no views on this question have been expressed in the replies of Governments to the Secretary-General's enquiry and that such a conference "could only deal with part of the issues" (p. 24 of the Report).*

*In these circumstances it seems reasonable to suggest that an international conference on the subject would not seem to serve any useful purpose. If the convocation of such a conference should nevertheless be considered, it should be borne in mind that, as stated in the last paragraph of Resolution 1713 (XVI), such conference should utilize "the existing machinery of the International Union for the Protection of Industrial Property".*

## V

12. *From the Report it would seem to follow that the problems of under-developed countries in connexion with patents for inventions are mainly problems which can be solved by appropriate legislative and administrative measures. Since these measures are of a special technical nature, under-developed countries may wish to draw on the experience of the International Bureau, the only intergovernmental body specialized in and dealing exclusively with patent questions which, for 80 years, has served Governments in this field.*

13. *Consequently, one, and probably the best, practical measure that the United Nations Conference on Trade and Development could and may wish to take in the interests of under-developed countries in the field of patents for inventions would be the following, namely, to invite the International Union for the Protection of Industrial Property and its Secretariat to continue their programme of technical assistance to under-developed countries in consultation with the Secretary-General of the United Nations and with regard to his Report, particularly in:*

- (a) *helping to prepare draft patent legislation taking into account the special economic needs of under-developed countries;*
- (b) *helping to set up national or regional patent offices to administer the patent laws efficiently and at low cost;*
- (c) *helping in the training of personnel appointed to staff such patent offices.*

(Document E/CONF.46/101)

## CONGRESSES AND MEETINGS

### Inter-American Association of Industrial Property (ASIPI)

#### First General Assembly

(Acapulco and Mexico City, April 11 to 16, 1964)

After more than a year of preparatory work, a new association for promoting industrial property objectives saw the light when the *Inter-American Association of Industrial Property* was formally founded in a constitutive assembly held from April 11 to 16, 1964, in Acapulco and Mexico City, Mexico.

The meeting was attended by some 120 lawyers and patent agents from Argentina, Brazil, Canada, Colombia, Costa Rica, Chile, Ecuador, El Salvador, Guatemala, Mexico, Nicaragua, Panama, Peru, the United States of America, Uruguay and Venezuela.

BIRPI was represented by an observer in the person of Dr. Arpad Bogsch, Deputy Director.

The new Association, which will doubtless be primarily known by its initials, "ASIPI", is an association "formed with the main purpose of promoting a better development of and coordinating the industrial property laws, rules and procedures throughout the American countries" (Constitution, Article 1).

The General Assembly of ASIPI adopted the Constitution of the Association.

The Constitution makes two express references to the Paris Union:

— Article 2, paragraph 3, of the Constitution states that one of the main objectives of ASIPI shall be "to cooperate with the Bureau of the Paris Union . . . in an effort to create a greater world-wide uniformity in industrial property matters";

— Article 2, paragraph 5, of the Constitution provides that one of the main objectives of ASIPI is "to prepare proposals to improve international, particularly inter-American relations and agreements relating to industrial property . . . and to see to it that protection [of industrial property in the Western Hemisphere] be effective in each country and harmonize with the Paris Convention . . .".

Some of the immediate objectives of the Association result from Resolutions which were adopted by the General As-

sembly, the full text of which is reproduced further below.

The Assembly elected the following officers:

President: Dr. José Barrera Moller, Lima (Peru);  
 Vice-Presidents: Dr. Bernardo Gómez Vega, Mexico City (Mexico), and Dr. Peter Dirk Siemsen, Rio de Janeiro (Brazil);  
 Secretary: Dr. Ernesto D. Aracama Zorraquin, Buenos Aires (Argentina);  
 Treasurer: Mr. Jeremiah D. McAuliffe, Chicago (USA).

Dr. Ernesto R. Viteri (Guatemala) was elected Executive Secretary.

The General Assembly of the new Association adopted the following nine Resolutions:

#### *Resolution No. 1*

“(1) The following are the immediate objectives of the Association:

- (a) to institute a campaign designed to inform governments, industrial and commercial circles, and the general public, about the importance of industrial property for the rapid development of national economies;
- (b) to establish an inventory of the legal questions with which ASIPI should deal and a list of priorities in which it should deal with them, in the field of patents, trademarks, industrial designs, unfair competition, know-how, and other industrial property matters.

(2) The following questions should be studied in the nearest future:

- (a) the impact of Latin American common markets on industrial property law;
- (b) the possibility of adopting by each country the uniform international classification of goods and services to which trademarks are applied;
- (c) the legal and economic aspects of confirmation patents;
- (d) the legal and economic aspects of licensing of patents, know-how, and trademarks;
- (e) the desirability of fostering the study of industrial property law in Universities.

(3) The means proposed to carry out these activities shall be the following:

- (a) the competent body of ASIPI shall appoint rapporteurs who shall prepare reports on the points referred to above;
- (b) such reports shall contain studies of the laws of the various countries and of the experience of the countries of the American Continent and other Continents. To this effect, the rapporteurs may request the cooperation of the national groups and the individual members of ASIPI, of the Bureau of the Paris Union, and of other organizations capable of furnishing ASIPI such information;
- (c) the competent body of ASIPI shall screen the working papers thus prepared with a view to their submission to the next general conference of ASIPI.”

#### *Resolution No. 2*

“It is recommended to the American Governments that the requirements of legalization of powers of attorney used

in connection with the filing of application for the grant of patents and the registration of trademarks and designs be simplified without prejudice to the possibility of maintaining the fiscal taxes now in force.”

#### *Resolution No. 3*

“It is recommended that the American Governments not yet members of the Paris Union study the desirability of their adhering to that Union.”

#### *Resolution No. 4*

“It is recommended that there should be appointed in each country a representative who will be in charge of promoting and developing the activities of the Association in that country.”

#### *Resolution No. 5*

“ASIPI shall have a permanent committee which will be responsible for the collection of information regarding proposed legislation introduced in the Congresses of any country of the Hemisphere relating to patents, trademarks, industrial designs, unfair competition, technical assistance and other questions concerning industrial property. The committee shall disseminate such information to the members of ASIPI, and the competent authority of the Association shall appoint an *ad hoc* committee for the study of each bill and the formulation of a recommended position statement by ASIPI with respect thereto.”

#### *Resolution No. 6*

“It is specially recommended that American Governments should participate, through appropriate delegates, in the Latin American Industrial Property Congress which will be held in Bogotá from July 6 to July 11, 1964, and that ASIPI should make the necessary arrangements to be represented in that Congress and should actively cooperate with the United International Bureaux for the Protection of Intellectual Property (BIRPI) in carrying out the objectives of the Congress. It is likewise suggested that the Association participate in other meetings in which industrial property matters are being discussed.”

#### *Resolution No. 7*

“It is recommended that permanent contact with the Organization of American States be maintained, and that ASIPI offer its cooperation in the study of questions concerning industrial property, taking into account the Pan-American Conference which is scheduled to take place in Quito in the near future.”

#### *Resolution No. 8*

“It is recommended that ASIPI participate, through a delegate of its own, in the conferences which the Inter-American Bar Association, the Comparative Law Institute of the University of Ponce, and other similar organizations, convene, if their programs include questions concerning industrial property.”

#### *Resolution No. 9*

“It is recommended that the study of industrial property law should be encouraged by all appropriate means, and that fellowships and other such facilities be offered for this purpose.”

## International Typographic Association

(Cambridge, May 30, 1964)

### Resolution<sup>1)</sup>

The International Typographic Association, meeting in General Assembly on May 30, 1964, at Cambridge (Great Britain), having taken cognizance of the results of discussions with printers and lithographers concerning Article 7, paragraph (5) of the draft special Agreement for the Protection of Type-Face, drawn up by the Fourth Committee of Experts at Geneva in Octobre 1963:

1. suggests, in order to give satisfactory assurances to printers and lithographers, that Article 7, paragraph (5) should be amended as follows:

*in French:*

“ Article 7

(5) Les dispositions du présent article n'empêchent pas l'acquéreur de caractères protégés, sauf stipulation contraire, d'utiliser ces caractères conformément aux usages”;

*in English:*

“ Article 7

(5) The provisions of this article do not prevent the purchaser of a protected type-face, unless stipulated to the contrary, from using the type-face according to trade practice”;

2. requests the President to bring this suggested amendment to the attention of the United International Bureaux for the Protection of Intellectual Property for transmittal to all the Member States of the Union.

<sup>1)</sup> Cf. *Industrial Property*, 1964, pp. 106 and 108.

## CORRESPONDENCE

### Letter from Great Britain

By Frederick HONIG, Barrister-at-Law, London

*The Law of Industrial Property in 1963*<sup>1)</sup>



















## BOOK REVIEW

**Marcas de fábrica y nombres comerciales (Trademarks and Trade Names)**, by *German Cavalier*. One volume of 266 pages, 24 × 17 cm. (In Spanish). Editorial Temis, Bogotá, D. E., 1962.

(Translation)

In this profound study, Mr. Cavalier's main object is to show that under Colombia's industrial property legislation, actions can be brought to ensure that a trade name is fully protected. He criticizes the decision of the High Court of Bogotá, in particular in rejecting opposition and revocation actions against trade names without recognizing the legal value of registration.

The author begins by pointing out the difference between a trademark and a trade name; the first is defined by Articles 30 and 32 of Law No. 31 of February 28, 1925<sup>1)</sup>, and the second by Article 15 of Law No. 59 of 1936 and Articles 57 and 60 of Law No. 31 of 1925.

The author reaches significant conclusions through a thorough analysis of the case law and literature on trademarks and trade names, in particular with respect to the legal basis for actions for opposition or revocation. His opinion is that, in Colombian legislation, trade names are assimilated to marks so far as the means of acquiring property rights over them are concerned — namely, adoption and use. He challenges the argument that, on the basis of Article 62 of Law No. 31 of 1925, the trade name cannot be registered, because Article 18 of Law No. 59 of 1936 envisages registration of the trade name and recognizes the right of the holder to bring an action for revocation of any identical or similar name. Furthermore, Article 6 of Decree No. 1707 of September 28, 1931<sup>2)</sup>, establishes a special category, No. 14, for the registration of trade names.

On the basis of the legal situation of the trade name holder and the legal provisions applying to that situation, Mr. Cavalier classifies actions as follows:

- (a) an unregistered trade name is protected, on grounds of prior use, by means of actions for an injunction (against the party desiring to register it); for annulment (against another registered name); for prohibition of use (against another name used but not registered); and actions alleging unfair competition (in cases of confusion between two undertakings, not between the articles produced by them);
- (b) a trade name which is registered and used is protected by means of actions for an injunction, for annulment, and actions alleging unfair competition as well as through administrative channels. An action for prohibition of use can also be brought as an alternative to administrative protection;
- (c) a trade name which is registered without being used can be protected by means of the same actions mentioned in (b) above but, as in the case of marks, it is liable to a cross-action for annulment on grounds of non-use.

Completing Mr. Cavalier's clear and exhaustive study is an appendix which reproduces three very interesting judgments handed down by the High Court of Bogotá in 1961, relating to the protection of trade names and the capacity to sue of foreign firms. G. R.

<sup>1)</sup> Cf. *La Propriété industrielle*, 1925, p. 88 and 1931, p. 197.

<sup>2)</sup> *Ibid.*, 1931, p. 198.

# NEWS ITEMS

## Calendar of BIRPI Meetings

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	September 28 to October 2, 1964	Interunion Coordination Committee	Program and budget of BIRPI	Belgium, Brazil, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Portugal, Rumania, 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 Member States of the Paris Union	—
Geneva	October 5 to 7, 1964	International Committee of Novelty-Examining Patent Offices	Examination of the problem: "Abandonment of inventions to the public 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	Argentina, Chile, India, Pakistan, Philippines, USSR; United Nations, Council of Europe, International Patent Institute, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents
Geneva	October 12 to 16, 1964	Committee of Experts concerning the international classification of industrial designs	Study of an international classification of industrial designs	All Member States of the Paris Union	—
Geneva	October 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, Burundi, Cambodia, Ceylon, Chile, China (Taiwan), Colombia, Congo (Leopoldville), Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Ethiopia, Ghana, Guatemala, Guinea, Haiti, Honduras, India, Indonesia, Iran, Iraq, Israel, Jamaica, Jordan, Kenya, Korea, Kuwait, Laos, Lebanon, Liberia, Libya, Malaysia, Mali, Mexico, Mongolia, Morocco, Nepal, Nicaragua, Nigeria, Pakistan, Panama, Paraguay, Peru, Philippines, Rwanda, Saudi Arabia, Sierra Leone, Somalia, Sudan, Syrian Arab Republic, Tanganyika and Zanzibar, Thailand, Togo, Trinidad and Tobago, Tunisia, Uganda, United Arab Republic, Uruguay, 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

