

# Industrial Property

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## INTERNATIONAL UNIONS

### Paris Union Adhesion

#### UNION OF SOVIET SOCIALIST REPUBLICS

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 Federal Political Department dated April 10, 1965, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Embassy of the Union of Soviet Socialist Republics in Berne, in a note dated March 16, 1965, informed the Political Department of the adhesion of its country to the Paris Convention for the Protection of Industrial Property of March 20, 1883, revised at Brussels on December 14, 1900, at Washington on June 2, 1911, at The Hague on November 6, 1925, at London on June 2, 1934, and at Lisbon on October 31, 1958.

"In accordance with Article 16 (3) of the said Convention and at the express request of the Soviet Government, this adhesion will take effect on July 1, 1965.

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

\* \* \*

This adhesion brings the membership of the Union to 68 countries with effect from July 1, 1965.

### Paris Union Adhesion to the Lisbon Text

#### YUGOSLAVIA SOUTH AFRICA

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

*Yugoslavia (Translation)*

"In compliance with the instructions dated March 11, 1965, of the Federal Political Department, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Embassy of the Socialist Federal Republic of Yugoslavia at Berne has sent to the Swiss Government on December 22,

1965, the instrument of adhesion by Yugoslavia to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Lisbon on October 31, 1958.

"In conformity with Article 16 (3) of the said Convention, this adhesion will take effect on April 11, 1965."

*South Africa (Translation)*

"In compliance with the instructions dated March 17, 1965, of the Federal Political Department, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the South African Embassy at Berne has sent to the Swiss Government on January 26, 1965, the instrument of adhesion by the Republic of South Africa to the Paris Convention for the Protection of Industrial Property of March 20, 1883, as last revised at Lisbon on October 31, 1958.

"In conformity with Article 16 (3) of the said Convention, this adhesion will take effect on April 17, 1965."

### International Committee of Novelty-Examining Patent Offices Advisory Group

(Geneva, March 11 and 12, 1965)

#### NOTE

The First Session of the International Committee of Novelty-Examining Patent Offices, when it met in October 1964, decided to leave the further study of two questions (statistics, index of corresponding patents) to an advisory group<sup>1</sup>).

The Advisory Group met at BIRPI's invitation in Geneva on March 11 and 12, 1965. Ten countries were represented: Austria, Canada, Federal Republic of Germany, France, Japan, Poland, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America. The International Patent Institute and ICIREPAT (Committee for International Cooperation in Information Retrieval among Examining Patent Offices) were represented by Observers. The list of participants appears at the end of this Note.

The meetings were presided over by Professor G. H. C. Bodenhausen, Director, BIRPI.

#### Industrial Property Statistics

The Advisory Group examined the form and wording of the draft statistical questionnaire whose contents were discussed by the full Committee last October. These questionnaires will be used for the first time for the statistics for 1964. They will cover patents, utility models, plant varieties, inventors' certificates, industrial designs and trademarks. They will be transmitted to the various Patent Offices of the world in the course of the spring, and the replies, in tabulated form, will be published in the December 1965 issue of this review.

The Advisory Group expressed the opinion that the Committee should study the desirability of gathering statistics on the life span of patents, broken down by categories of inven-

<sup>1</sup>) See *Industrial Property*, 1964, p. 208.

tions according to the International Classification and by the countries of origin of the patentees.

### **Index of Patents and Published Patent Applications Relating to the same Invention**

The Committee expressed the wish last October that the possibilities of establishing an information service as to published patent applications and patents relating to the same invention be explored. The main objective of the service would be to give information, *in respect to a given invention*, on two questions, namely: (i) in which countries of the world it has been the subject of an application for a patent (in so far as national legislations provide for disclosure of this information even if a patent is never granted), (ii) in which countries a patent for the invention has actually been granted. Classification, according to the nature of the inventions, and other relevant data increasing the usefulness of the service to Patent Offices and inventors and users of inventions would also be taken into account.

BIRPI prepared for the Advisory Group a working paper outlining the elements and the estimated cost of such a service.

The Advisory Group expressed the opinion that the exploratory studies should be continued by BIRPI. On the basis of further consultations and possibly experiments as to feasibility and cost, BIRPI would ask for the opinion of the Governments as to the interest which they and the private industrial circles of their countries might have in the service. On the basis of the replies, the matter would then be referred back to the full Committee and other competent bodies of BIRPI.

### **List of Participants**

#### *I. Members of the Advisory Group*

##### *Austria*

Mr. Gottfried Thaler, President, Patent Office, Vienna.  
Mr. Thomas Lorenz, Ratssekretär, Patent Office, Vienna.

##### *Canada*

Mr. J. W. T. Michel, Commissioner of Patents, Ottawa.

##### *France*

Mr. Guillaume Finnis, Inspector-General of Industry and Commerce, Director, National Institute of Industrial Property, Paris.  
Mr. Savignon, Assistant Director, Industrial Property Service, National Institute of Industrial Property, Paris.

##### *Federal Republic of Germany*

Mr. Klaus Pfanner, Regierungsdirektor, Patent Office, Munich.  
Mr. W. E. A. Axhausen, Oberregierungsrat, Patent Office, Munich.

##### *Japan*

Mr. Muneki Date, First Secretary, Permanent Delegation of Japan, Geneva.  
Mr. Yoshiro Hashimoto, Examiner, Patent Office, Tokyo.

##### *Poland*

Mr. Ignacy Czerwinski, President, Polish Patent Office, Warsaw.

Mrs. Natalie Lissowska, Counsellor, Polish Patent Office, Warsaw.

##### *Sweden*

Mr. A. C. von Zweigbergk, Director-General, Patent and Registration Office, Stockholm.  
Mr. T. Gustafson, Head of the Examining Corps, Patent and Registration Office, Stockholm.

##### *Switzerland*

Mr. Walter Stamm, Head of Section, Federal Office of Intellectual Property, Berne.

##### *United Kingdom of Great Britain and Northern Ireland*

Mr. C. Vincent-Smith, Superintending Examiner, Patent Office, London.

##### *United States of America*

Mr. P. J. Federico, Examiner-in-Chief, Member, Board of Appeals, Patent Office, Washington.  
Mr. E. Glaser, Assistant Commissioner, Patent Office, Washington.

### *II. Observers*

#### *International Patent Institute (IIB)*

Mr. P. van Waasbergen, Vice-Director, The Hague.

#### *Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)*

Mr. Harold Pfeffer, General Secretary, ICIREPAT, Office of Research and Development, Patent Office, Washington.  
Mr. W. E. A. Axhausen, Oberregierungsrat, Patent Office, Munich.  
Mr. T. Gustafson, Head of the Examining Corps, Patent and Registration Office, Stockholm.

### *III. BIRPI*

Prof. G. H. C. Bodenhausen, Director.  
Dr. A. Bogsch, Deputy Director.  
Mr. R. Woodley, Counsellor, Head, Industrial Property Division.

## **Committee of Experts on Inventors' Certificates**

(Geneva, March 15 to 19, 1965)

### **NOTE**

Following the Meeting of a Study Group on Certificates of Authorship which met in Geneva in January 1964, the Director of BIRPI invited a Committee of Experts on Inventors' Certificates to meet in Geneva from March 15 to 19, 1965.

Invitations were issued to all the Member States of the Paris Union for the Protection of Industrial Property and twenty-seven States accepted together with three non-Member States and three non-Governmental Organizations as set out in the Report published below.

After an Opening Address by Professor G. H. C. Bodenhausen, Director of BIRPI, Mr. Ion Anghel (Rumania) was elected Chairman, Mr. J. W. T. Michel (Canada), Vice-Chair-

man and Mr. W. Wallace, C. M. G. (United Kingdom), Rapporteur.

The Committee had before it a working paper (PJ/37/2) which is reproduced in full at the end of this Note.

### Report on the Meeting

by Mr. William Wallace, C. M. G. (United Kingdom),  
Rapporteur

(1) In this Report, I have throughout used the expression "inventors' certificates" as a conveniently short expression for what are called, literally, in the countries which grant them, "certificates of authors of inventions".

(2) This Meeting was convened by the Director of BIRPI. Of the Member countries of the Paris Union, twenty-seven<sup>1)</sup> were represented at the Meeting by Delegates. Although nominated by their Governments, they were there in the capacity of experts and were not called upon at this stage to commit their Governments finally. There were in addition observers from three non-Member countries, namely Algeria, Pakistan and the Union of Soviet Socialist Republics (USSR), and from three non-Governmental organizations interested in the field of industrial property (International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents).

(3) The purpose of the Meeting was to examine the desirability of and possible solutions for amending the Paris Convention for the Protection of Industrial Property at the Stockholm Conference in 1967, or on some other appropriate occasion, so that the text of that Convention will contain express provisions on inventors' certificates. On a proposal of the Netherlands Delegate, supported by the Delegate of Poland, Mr. Ion Anghel of Rumania was appointed Chairman, Mr. J. W. T. Michel of Canada, Vice-Chairman, and I was appointed Rapporteur.

(4) The working paper for the Meeting was a paper numbered PJ/37/2 to which was annexed a booklet published by BIRPI entitled "Study Group on Certificates of Authorship" (Geneva, January 27 to 30, 1964) containing the history of the matter, explanations of the system of inventors' certificates by a number of countries and the results of the 1964 Meeting. I have not thought it necessary in this Report to repeat the information contained therein.

(5) Early in the Meeting the Observer from the USSR announced the intention of his country to become a Member of the Paris Union and said that the formal documents would be forwarded to the Swiss Government in the very near future. This important announcement was received with the acclamation of all present. The Meeting offered its congratulations not only to him but also to the Director of BIRPI for the part he had played in bringing this about. (The declaration made by the Delegation of the USSR is annexed to this Report.) At the closing Meeting the Director of BIRPI announced that the Swiss Government had received the instru-

ments of accession of the USSR the previous day. This will take effect on July 1, 1965.

(6) It was clear from the outset of the Meeting that all experts present were prepared to recommend, to the Swedish Government and the Director of BIRPI, that there should be submitted to the Diplomatic Conference to be held in Stockholm in 1967 a proposal to amend Article 4 of the Paris Convention for the Protection of Industrial Property so as to ensure that a right of priority within the meaning of that Article could be claimed on an application for an inventor's certificate just as it can now be claimed on a patent application. The working paper PJ/37/2 already contained (at paragraph 29) a proposal to this effect drafted by BIRPI in cooperation with experts appointed by the Swedish Government. On this point therefore it was simply a question of finding the best form of words.

(7) Certain Delegations, however, notably those of Bulgaria, Czechoslovakia, Hungary, Poland and Rumania, wished to go further and assimilate fully inventors' certificates to patents throughout the Convention.

(8) This could have been achieved either by a general article saying that applications for inventors' certificates and the certificates themselves should be considered for all the purposes of the Convention as if they were patent applications or patents respectively; or it could have been achieved by adding the words "inventors' certificates" in each of the Articles of the Convention where the word "patents" appears. A number of proposals, both written (see documents PJ/37/5, 6 and 8) and oral, were made by the above Delegations in this sense.

(9) The majority of the Meeting had hesitations, however, about going so far. It was pointed out, for example, that it was not appropriate that inventors' certificates should be included in Article 5, and Delegates were reluctant to accept amendments the effect of which they had not had time to consider before the Meeting. The Swedish Delegate pointed out that the Stockholm Conference, which was primarily designed to consider changes in the Berne Copyright Convention, was not the place at which to make any sweeping revisions of the Paris Convention on Industrial Property.

(10) There appeared, however, to be a fair measure of support for a proposal to make some mention of inventors' certificates in the definition of "industrial property" in Article 1 (2) of the Convention — thus ensuring that the national treatment obligations of Article 2 applied also to inventors' certificates.

(11) In the event, it was agreed not to draft at this Meeting any amendments other than to Article 4, on the understanding that the Swedish Government and BIRPI would give consideration to what, if any, further amendments in other Articles it would be appropriate to propose for Stockholm. The Director of BIRPI pointed out that it was always open to countries attending the Stockholm Conference to propose their own amendments if they were not satisfied with those proposed by the Inviting Power with the assistance of BIRPI.

(12) The Meeting then turned to consider what should be the text proposed for the amendment of Article 4. There was

<sup>1)</sup> Australia, Austria, Brazil, Bulgaria, Canada, Czechoslovakia, Denmark, Finland, France, Germany (Fed. Rep.), Greece, Hungary, Indonesia, Iran, Israel, Italy, Japan, Lebanon, Netherlands, Poland, Rumania, Sweden, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia.

some discussion of whether to use the words "inventors' certificates" as in the working paper, or the words "certificates of authors of inventions". Some Delegates preferred not to use the word "authors" at all, since this was liable to create confusion with authors of literary and artistic works protected by the Berne Convention. But after hearing the preferences of those countries, notably the USSR, which now grant this form of protection, and the difficulties which the use of different wording in the Convention would create for them, it was agreed, at least in the French (authentic) text to use the words "*certificats d'auteur d'inventions*".

(13) There were basically three proposals for texts to be inserted in Article 4:

- (a) The BIRPI/Swedish draft set out in paragraph 29 of the working paper (PJ/37/2), with certain changes therein proposed by the U. S. Delegate (PJ/37/4);
- (b) a redraft proposed by the Observers of the non-Governmental Organizations (PJ/37/9);
- (c) a different redraft proposed by the Delegate of Israel (PJ/37/10) (with a U. S. amendment) which in no way changed the substance of the BIRPI/Swedish draft.

(14) Of these, the Meeting chose the last, i. e., that proposed by the Israeli/U. S. Delegates, as being the clearest from the drafting point of view. This draft then read:

"Article 4 J. — (1) Applications for inventors' certificates filed in a country in which applicants have a right to apply at their own discretion either for a patent or for an inventors' certificate shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents."

(15) The U. S. Delegation had proposed a further amendment whereby, after the words "at their own discretion" there should be inserted the words "and under substantially the same conditions (requirements)". This was intended to ensure that countries granting both inventors' certificates and patents would maintain the same requirements as to description and filing of the invention and the same tests for novelty and inventive step on both. Although this proposal received some support in principle, a number of Delegates felt that to include these words would lead to too much uncertainty in the operation of the mutual right to priority and this view was shared by the Director of BIRPI. It was therefore decided not to include it in the recommended text.

(16) It was, however, agreed that since the above proposal could be interpreted as only taking care of the obligation to grant priority when an application for a patent was founded upon an application for an inventor's certificate, but not *vice versa*, it should be completed by a second paragraph in the sense of paragraph (2) of the draft on page 29 of PJ/37/2. It was also noted that utility models should be taken into account.

(17) The final text proposed by the Meeting therefore read as follows:

"Article 4, Section J (new)

(1) Applications for [*certificats d'auteur d'invention*] inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a

patent or for a [*certificat d'auteur d'invention*] inventor's certificate, shall be treated in the same manner and have the same effects, for the purpose of the right of priority under this Article, as applications for patents.

(2) In a country in which applicants have the above option, the right of priority provided for under this Article shall be recognized also where the applicant seeks a [*certificat d'auteur d'invention*] inventor's certificate irrespective of whether the first application (Section A, paragraph [2]) was an application for a patent or a utility model, or for a [*certificat d'auteur d'invention*] inventor's certificate."

(This Report was unanimously adopted by the Committee on March 18, 1965)

## ANNEX

### Declaration of the Delegation of the Union of Soviet Socialist Republics

Mr. Chairman, (Translation from Russian)  
Mr. Director,  
Ladies and Gentlemen,

I have been assigned by the State Committee on Inventions and Discoveries of the USSR to declare that the Soviet Government has taken the decision concerning the Soviet Union's adherence to the Paris Convention.

The official note and the appropriate documents will be forwarded to the Swiss Government in the near future.

In joining the Paris Convention, the USSR is sure that the problem of authors' certificates will be solved appropriately and correctly.

The Delegation of the USSR thanks the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) and other organizers of the present meeting, as well as the experts appointed by the Government of Sweden, for the work carried out by them. At the present meeting of the Committee of Experts, the representatives of the People's Republic of Bulgaria as well as other Socialist countries have dwelt in detail upon the legal nature of the author's certificate and its practical application.

In the USSR either an author's certificate or a patent may be granted at the discretion of the author. The author's certificate is the main form of legal protection of inventions in the USSR. The right to the use of inventions for which authors' certificates are granted belongs to the State, which undertakes to exploit the inventions taking into account their suitability. An application for the granting of an author's certificate is filed by the author himself or by his heirs or by an enterprise empowered to do so by the author. An application for the granting of a patent may be filed by the inventor himself or by his successor-at-law, whereas the *bona fide* author should be named in the application.

In so far as applications for the granting of an author's certificate as well as of a patent are concerned, the basic requirements of an application coincide. The priority dates are fixed at the day of the filing of the application with the Soviet Patent Office — the State Committee on Inventions and Discoveries of the USSR.

A comparison of the requirements of the applications for the granting of authors' certificates in the USSR with the

requirements of the applications for the granting of patents in other countries testifies to their identity.

The applications for the granting of an author's certificate in the USSR contain all necessary data for the fixing of the conventional priority.

According to the Soviet legislation, the same requirements apply in the case of the granting of authors' certificates and patents. Thus the approach towards the recognition of the rights in an invention is the same both in the case of authors' certificates and in the case of patents.

The main difference concerns the consequences of the issuance of the documents.

If a patent is issued, the exclusive right in the invention is granted to the patentee, and if an author's certificate is issued, the right to use the invention is acquired by the State. At the same time the inventor who has received the certificate has the right of remuneration and a number of other rights according to Soviet legislation.

In the Statute on discoveries, inventions and rationalization proposals of 1959, it is provided that foreigners — authors of discoveries, inventions and rationalization proposals — enjoy the rights provided by this Statute on an equal footing with the citizens of the USSR on the basis of reciprocity (Article 14). Thus, subject to the condition of keeping to the principle of reciprocity, foreigners are granted national treatment in the field of inventions. A foreigner as well as a Soviet citizen may acquire at his discretion either an author's certificate or a patent in the USSR.

The scope of the rights of the foreigner who has acquired a patent or an author's certificate is determined by the Soviet Law. In the case of the grant of an author's certificate, he has the right to receive remuneration, the amount of which is determined as a rule depending on the economy resulting from the introduction of the invention into practice.

Neither in the case of the filing of an application for the granting of an author's certificate nor thereafter are fees charged. If a foreigner asks for the granting of an author's certificate, it means that the right to use the invention in the USSR is acquired by the State. The Soviet State does not acquire the right to obtain patents abroad on the inventions for which authors' certificates have been granted to foreigners. Such a right is limited to the territory of the USSR.

In the case of the granting of a patent, the foreigner acquires the exclusive right in the invention. The patentee may grant a license to use the invention or transfer the patent in full. The patent is granted for the period of fifteen years from the day of the filing of the application. At the granting of a patent as well as during the period of its validity fees are charged.

The author's certificate as a form of protection of industrial property has gained the recognition of inventors in quite a number of countries, including not only Socialist countries. It is sufficient to say that, in 1963 and 1964, applications for the granting of authors' certificates were filed from Great Britain, France, Federal Republic of Germany, U. S. A., Sweden, Israel, Canada, Austria, Australia, Finland.

As specific examples of the granted authors' certificates one may point out the invention by a group of authors from

England and the Federal Republic of Germany (Werner Hugo, Wilhelm Schuller [Great Britain], Heinz Keib [Federal Republic of Germany]), "The appliance for the spinning of fibre from glass or similar inorganic rod substance" (Author's certificate No. 155913), two authors' certificates granted to Lucien Victor Gueviss, a French citizen, "Centrifugal air filter" (Author's certificate No. 123835) and "Method of the forming of the unrolling chevronne structures from flexible sheet substance and appliance for the realization of the method" (Author's certificate No. 133745). Thus, the applicants from these and other States actually use the right to choose between the obtaining of an author's certificate or the obtaining of a patent, the said right being granted to them in the USSR. It is however of no importance that, for the same invention, which is the subject of an application in the USSR, applications are filed for the granting of a patent in other countries.

When Soviet inventions are patented abroad, applications for the granting of patents are filed for the same inventions for which Soviet citizen authors usually obtain authors' certificates. The number of such applications is constantly increasing.

By granting an author's certificate or a patent to a foreigner, the Soviet State guarantees at the same time the protection of his rights.

The protection of the rights of the foreign citizen, who has obtained an author's certificate, and of a foreign patentee is ensured in the same way as the protection of the corresponding rights of Soviet citizens. In the USSR, foreigners have the right to apply to USSR courts and enjoy civil lawsuit rights.

The protection of every civil right in the USSR is ensured in accordance with Article 6 of the Principles of Civil Legislation of the USSR and Union Republics, particularly by way of a reconstitution of the situation which had existed before the right was infringed, by the suppression of actions infringing another's rights, and by compelling the infringer of another's rights to compensate the damages caused by the infringement.

The infringement of the exclusive right of the patentee may entail the compensation of the losses caused by such an infringement. The patentee may also demand that the court should compel the infringer of a patent to stop the unlawful use of the invention. The right of remuneration of a foreigner who has obtained an author's certificate may also be protected by submitting a plea to court.

In conclusion, we should like to point out that every State has the right to establish such forms of the protection of industrial property as correspond to the social and economic conditions existing in that particular State. This contention corresponds to the spirit of the Paris Convention, which is based upon the principle of the sovereign equality of States and the recognition of the peculiarities of their legal systems.

Thus, there are differences between an author's certificate and a patent as far as the use of inventions is concerned. From the point of view of the Paris Convention, however, as well as regarding the problems which it regulates, an author's certificate as a document of legal protection of industrial property gives rise to the same consequences as does a patent.

The international impacts of both the patent and the author's certificate fully coincide; both a patent and an author's certificate granted abroad interfere with the novelty of the invention in the countries whose legislation demands world novelty. The international impact of an author's certificate consists in the application for its grant establishing the same basis for conventional priority as does the application for the grant of a patent.

The recognition of the international impact of an author's certificate is an unavoidable consequence of keeping to the principles of the peaceful coexistence of States, which furnishes the basis of the business relations of countries with differing social and economic structures.

Thank you for your attention.

### List of Participants

#### *I. Members of the Committee*

##### *Australia*

Mr. K. B. Petersson, Commissioner of Patents, Patent Office, Canberra A. C. T.

##### *Austria*

Mr. Gottfried Thaler, President, Patent Office, Vienna.  
Mr. Thomas Lorenz, Ratssekretär, Patent Office, Vienna.

##### *Brazil*

Mr. Fanor Cumplido Jr., Minister, Permanent Delegation of Brazil, Geneva.  
Mr. Joao Cabral de Melo Neto, Counsellor of Embassy, Permanent Delegation of Brazil, Geneva.

##### *Bulgaria*

Mr. Penko Penev, Director, Rationalization Institute, Sofia.  
Mr. Vesselin Izmirliiev, First Secretary of Legation, Permanent Delegation of Bulgaria, Geneva.

##### *Canada*

Mr. J. W. T. Michel, Commissioner of Patents, Patent Office, Ottawa.

##### *Czechoslovakia*

Mr. Jaroslav Němeček, President, Office for Patents and Inventions, Prague.  
Mr. Radko Fajfr, First Secretary, Ministry of Foreign Affairs, Prague.  
Mr. Otto Kunz, Chief of Research, Czechoslovak Academy of Science, Prague.

##### *Denmark*

Mrs. Dagmar Simonsen, Chief of Section, Patent Office, Copenhagen.

##### *Finland*

Mr. Erkki Tuuli, Director-General, National Board of Patents and Registration of Trademarks, Helsinki.  
Professor Berndt Godenhjelm, Faculty of Law, University of Helsinki, Helsinki.

##### *France*

Mr. Roger Gajac, Legal Adviser, National Institute of Industrial Property, Paris.

##### *Germany (Fed. Rep.)*

Mr. Heribert Mast, Oberregierungsrat, Federal Ministry of Justice, Bonn.

Mr. Klaus Pfanner, Regierungsdirektor, Patent Office, Munich.

Mr. H.-L. Donle, Regierungsrat, Patent Office, Munich.

Mr. Peter Schönfeld, First Secretary of Embassy, Permanent Delegation of the Federal Republic of Germany, Geneva.

##### *Greece*

Mr. Georges Papoulias, Deputy Permanent Delegate, Permanent Delegation of Greece, Geneva.

##### *Hungary*

Mr. Emil Tasnadi, President, National Office of Inventions, Budapest.

Mr. Gyula Pusztai, Chief, Legal Section, National Office of Inventions, Budapest.

##### *Indonesia*

Mr. Alwi Sutan Osman, Senior Official of the Department of Justice, Head of the Minister's Bureau, Department of Justice, Djakarta.

Mr. Sugondo Sumodiredjo, Senior Official of the Department of Justice, Assistant Minister for Legislative and Legal Affairs, Department of Justice, Djakarta.

##### *Iran*

Mr. Mehdi Naraghi, Director, Industrial Property Registration Office, Teheran.

Mr. Gholam-Reza Salahshoor, Director-General, Office of Registration of Acts and Property, Teheran.

##### *Israel*

Mr. Ze'ev Sher, Registrar of Patents, Designs and Trademarks, Ministry of Justice, Jerusalem.

Mr. Reinhold Cohn, Patent Attorney, Tel Aviv.

##### *Italy*

Mr. Paolo Marchetti, Ministry of Industry and Commerce, Rome.

##### *Japan*

Mr. Muneoki Date, First Secretary, Permanent Delegation of Japan, Geneva.

##### *Lebanon*

Mr. Michel Farah, Chargé d'Affaires, Embassy of the Lebanon, Berne.

##### *Netherlands*

Mr. C. J. De Haan, President, Patent Council, The Hague.

Mr. W. M. J. C. Phaf, Director, Legal Section of the Ministry of Economic Affairs, The Hague.

##### *Poland*

Mr. Ignacy Czerwinski, President, Polish Patent Office, Warsaw.

Mr. Ian Dalewski, Head of the Legal Section, Polish Patent Office, Warsaw.

Mrs. Natalie Lissowska, Counsellor, Polish Patent Office, Warsaw.

##### *Rumania*

Mr. Ion Anghel, Chief Legal Adviser, Ministry of Foreign Affairs, Bucharest.

Mr. Lucian Marinete, Technical Director, State Office for Inventions, Bucharest.



Mr. Aurel Sanislav, Third Secretary, Permanent Mission, Geneva.

#### Sweden

Mr. Ake von Zweighergk, Director-General, Patent and Registration Office, Stockholm.

Mr. Torwald Hesser, Judge at the Court of Appeal, Ministry of Justice, Stockholm.

Mr. Claës Ugglä, Legal Adviser, Board of Appeals, Patent and Registration Office, Stockholm.

#### Spain

Mr. Antonio Fernandez-Mazarambroz, Chief, Industrial Property Registration Office, Madrid.

#### Switzerland

Mr. Hans Morf, Former Director, Federal Office of Intellectual Property, Berne.

Mr. Walter Stamm, Head of Section, Federal Office of Intellectual Property, Berne.

#### United Kingdom of Great Britain and Northern Ireland

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

#### United States of America

Mr. Edward J. Brenner, Commissioner, Patent Office, Department of Commerce, Washington, D. C.

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Mr. P. J. Federico, Examiner-in-Chief, Member, Board of Appeals, Patent Office, Washington, D. C.

Mr. Warren E. Hewitt, Legal Attaché, United States Mission, Geneva.

#### Yugoslavia

Mr. Vladimir Savić, Director, Patent Office, Belgrade.

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Chairman: Mr. Ion Anghel.

Vice-Chairman: Mr. J. W. T. Michel.

Rapporteur: Mr. W. Wallace, C. M. G.

#### IV. BIRPI

Professor G. H. C. Bodenhause, Director.

Dr. Arpad Bogsch, Deputy Director.

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

Mr. Vladimir Dolezil, Legal Adviser, Industrial Property Division.

\* \* \*

#### Working Paper

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#### Introduction

1. This paper is destined for a committee of experts convened by BIRPI under the title "Committee of Experts on Inventors' Certificates" to meet at Geneva, Switzerland, from March 15 to 19, 1965. It was prepared by BIRPI and Experts appointed by the Government of Sweden as host of a diplomatic conference of the International Union for the Protection of Industrial Property (hereafter designated as "the Union") scheduled for 1967.

2. All States members of the Union have been invited to participate in the Committee of Experts on Inventors' Certificates. The Union of Soviet Socialist Republics is invited to participate in the Committee as an observer. The United Nations and several other international organizations are invited in the capacity of observers.

3. The purpose of the meeting is to examine the desirability of, and possible solutions for, amending the Paris Convention for the Protection of Industrial Property (hereinafter designated as "the Convention") at the Stockholm Conference of 1967 or on some other appropriate occasion, so that the text of that Convention will contain express provisions on inventors' certificates.

#### Notion of Inventors' Certificates

4. The following is a general description of the typical features of inventors' certificates. This description does not



necessarily correspond in every detail to the provisions of the domestic law in every country in which inventors' certificates are known.

5. In the Soviet Union and some other socialist countries of Eastern Europe, an inventor has the choice of applying either for a patent or for an inventor's certificate. The contents of the application for either are the same, and application for either must be addressed to the same government office. The application must sufficiently describe the invention, with drawings if necessary, to enable others to carry it out. The government office notes on the application the date on which it received it.

6. If the invention satisfies the conditions of the domestic law of the country, the government office grants to the applicant either a patent or a certificate, depending on which of these two the applicant has applied for.

7. The legal effects of a patent are different from those of a certificate. In the case of a patent, the patentee has a monopoly or proprietary right: the patented invention may be exploited only with his permission. The patentee may transfer his rights to another person or may fix by contract the conditions under which he allows other persons to exploit his patent (license contracts).

8. In the case of a certificate, the right of exploitation belongs to the State. The inventor has a right to a reward by the State. The amount of the reward is based on the use made of the invention, the resultant saving to the economy, and other factors. The inventor has no rights which he could transfer to third parties, and may not license third parties to exploit the invention.

9. Roughly speaking then, a patent confers an exclusive right of exploitation (a monopoly) on the patentee, whereas an inventor's certificate creates a right to remuneration by the State.

10. It should perhaps be emphasized once more that the above description of both patents and inventors' certificates is extremely sketchy. A more accurate picture may be obtained from the BIRPI brochure referred to in paragraph 15, below.

#### *Terminology*

11. A literal translation of the name of the certificates in question from the Russian or from the languages of the other countries which know such certificates, would give "authors' certificates". In view of the possibility of confusion with copyright, this paper uses the expression "inventors' certificates". Earlier documents and publications of BIRPI frequently used the expression "authors' certificates" or "certificates of authorship". Quotations taken from such documents and publications in this paper will preserve the old terminology. It should, however, be kept in mind that all these expressions refer to the same thing, and are interchangeable.

#### *History of the Question of Inventors' Certificates in the Union*

12. It is not for the first time that the question of inventors' certificates is going to be discussed in an international meeting.

13. This question was first discussed at the Lisbon Revision Conference of the Union in 1958. The basis of the discussion was a proposal of the Delegation of the Rumanian People's Republic to introduce the notion of "certificates of authorship" in the text of the Convention. The proposal was not accepted by the Lisbon Conference. A detailed description of these discussions is contained in the *Actes de la Conférence de Lisbonne*, pages 496 to 500, and 533 to 534.

14. The same question was discussed a second time in the "Study Group on Certificates of Authorship" which met in Geneva in January 1964 (hereafter referred to as the "Study Group"). This Study Group was convened by the Director of BIRPI on his own initiative. It was composed of experts appointed by the Governments of the following ten States: People's Republic of Bulgaria, Czechoslovak Socialist Republic, Hungarian People's Republic, Israel, Netherlands, Polish People's Republic, Rumanian People's Republic, United Kingdom of Great Britain and Northern Ireland, United States of America, Socialist Federal Republic of Yugoslavia. Experts appointed by the Government of the Soviet Union participated in the Study Group as observers.

15. A bilingual (English and French) brochure, published by BIRPI under the title "Groupe d'étude sur le certificat d'auteur - Study Group on Certificates of Authorship" (hereinafter referred to as "the Brochure")<sup>1)</sup>, contains full information on the work of the Study Group. In this Brochure are published: (1) the introductory report prepared by BIRPI for the Study Group; (2) a summary of the legislation on inventors' certificates in Bulgaria, Czechoslovakia, Hungary, Poland, Rumania, USSR and Yugoslavia, prepared by BIRPI after consultation with the Governments of these countries; (3) the full text of the basic statements made by the representatives of Bulgaria, Czechoslovakia, Poland, Rumania, USSR and Yugoslavia in the Study Group; (4) the list of participants of the Study Group and (5) the report on the work accomplished by the Study Group.

16. This paper makes no attempt at reproducing or summarizing all the information contained in the Brochure. For the full understanding of the background of the question it is indispensable to take cognizance of the contents of the Brochure.

#### *Recommendations of the Study Group of 1964 as to Future Action*

17. When the Study Group of 1964 considered what action should be taken in the future, "the Experts from Czechoslovakia and Hungary, supported by others, suggested that the meeting should declare: (a) that authors' certificates enter into the sphere of industrial property, (b) that authors' certificates offer a protection as required by the Convention, and (c) that the objects of authors' certificates and patents are identical as far as priority is concerned". (Report of the Rapporteur of the Study Group, Brochure, p. 85.)

18. "There was, however, no unanimity on this suggestion. Moreover, several Experts felt that to go so far might seem to be interpreting the Convention itself which the Meet-

<sup>1)</sup> Published in full in *Industrial Property*, 1964, pp. 66 et seq.

ing clearly had no power to do. Its conclusions could not bind the countries of the Union, and countries not represented by Experts at the Meeting might resent any appearance of its coming to binding conclusions." (Report of the Rapporteur of the Study Group, Brochure, p. 85.)

19. The general conclusions on which the Study Group was able to agree are set out in the following terms in the Report of the Rapporteur (see Brochure, p. 87):

- "(1) It was impossible for the Meeting to give an authoritative interpretation of the Convention.
- (2) It was desirable that there should be more certainty than exists at present.
- (3) There was no reason to consider the system of authors' certificates as contrary to the spirit and aims of the Paris Convention.
- (4) Some countries now, in fact, accept authors' certificates for priority purposes in the granting of patents.
- (5) Even the Experts of those countries which do not do so, and who do not believe that the Convention so requires, did not object, in principle, to consideration of the possibility of the Convention providing in clear terms for the obligation to do so."

20. In other words, there was no objection in principle to studying the possibility of revising the Convention so that it should provide in clear terms for the obligation of each Member State to "accept authors' certificates for priority purposes in the granting of patents".

21. In conclusion, the Study Group "invited the Director of BIRPI to take what measures he considers appropriate (preparation of draft texts, summoning of further meetings, etc.) to this effect". (Report of the Rapporteur, Brochure, p. 87.)

22. After these conclusions had been reached by the Study Group, "the Director of BIRPI suggested that it might be advisable to aim at an amendment of the Industrial Property Convention on this point when the countries of the Union meet in Stockholm in 1967". (*loc. cit.*)

#### *Implementation of the Recommendations of the Study Group of 1964*

23. It is on the basis of the foregoing conclusions of the Study Group that the Director of BIRPI: (i) is summoning, for March 1965, the Committee of Experts; (ii) arrived at a tentative agreement with the Swedish Government that the revision of the Convention on this point might be placed on the agenda of the Stockholm Conference, and (iii) prepared, in cooperation with Experts of the Swedish Government, draft amendments to the Paris Convention the main effect of which would be that all Member States of the Union would be obliged to "accept authors' certificates for priority purposes in the granting of patents" (see paragraph 20, above).

24. It is to be noted that neither the Swedish Experts nor BIRPI consider the proposed amendments as the only possible answer to the question under consideration. In submitting concrete texts, they merely wish to constitute a basis for discussion, intended to facilitate the work of the Committee.

25. It is equally to be emphasized that neither the Swedish Government nor BIRPI have reached a final conclusion on whether the question of inventors' certificates should, in fact, be placed on the agenda of the Stockholm Conference. The decision on this point will be influenced by the outcome of the deliberations of the Committee of Experts and of such further meetings as might become necessary for the thorough preparation of the Stockholm Conference.

#### *Proposals for Amending the Convention*

26. It is proposed that the Convention be amended so as to provide that applications for inventors' certificates must be recognized as a basis for priority for patents. For the purposes of the priority right what is important is that the description of the invention in the first application be such that when it is described in subsequent applications it should be possible to recognize the identity of the invention. In view of the fact that applications for inventors' certificates contain the same kind of description, with drawings and charts, where necessary, as patent applications, the two types of applications may be considered equivalent from a technical viewpoint and for the purposes of determining whether the first application relates to the same invention as the subsequent applications.

27. It is also proposed that the new provision should specify that this recognition of inventors' certificates as a basis for priority for patents may be invoked when the application for the inventor's certificate was filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate. Consequently, the provision merely registers the existing situation (see paragraphs 5 and 6, above). However, at the same time, the provision is also a safeguard against the theoretical possibility that a country might offer inventors' certificates only — and no patents — to applicants. In view of the fact that, for foreigners, inventors' certificates usually are, for practical purposes, of less value than patents, the provision is intended to underline the necessity of maintaining the existing situation in which applicants may, if they so wish, apply for patents rather than inventors' certificates.

28. The new provision, recognizing inventors' certificates as a basis for priority for patents, could constitute the first paragraph of a new section (section J) of Article 4 of the Convention dealing with the right of priority. A logical parallel to this provision would be a second paragraph of the same new section which would provide that a patent application must be recognized as a basis for priority for an inventor's certificate. Of course, an application for an inventor's certificate, if that is the first application, would also be a sufficient basis for an application for an inventor's certificate in another country also knowing the system of inventors' certificates.

29. Thus the proposed addition to Article 4 could be worded as follows:

*J. (1) For the purposes of this Article, applications for inventors' certificates filed in a country in which applicants have a right to apply, at their own discretion, either for a patent or for an inventor's certificate, shall be assimilated to applications for patents.*

(2) *In a country in which applicants have the said option, the right of priority provided in this Article shall be recognized also where the applicant seeks an inventor's certificate irrespective of whether the first application (Section A, paragraph [2]) was an application for a patent or for an inventor's certificate.*

30. The following example illustrates the effects of the proposed amendments. In this example, it is assumed that France is a country whose domestic law does not provide for inventors' certificates, and Rumania is a country in which inventors may obtain either patents or inventors' certificates. The effect of the first paragraph would be that France would recognize an application made in Rumania for an inventor's certificate as a basis of priority for a French patent; the main effect of the second paragraph would be that Rumania would recognize a patent application filed in France as a basis of priority for a Rumanian inventor's certificate if the applicant chooses to apply, in Rumania, for an inventor's certificate rather than a patent.

31. The assimilation of applications for inventors' certificates to patent applications would apply to the whole of Article 4 and would mean in particular that:

(i) a person who has duly filed an application for an inventor's certificate in one of the countries of the Paris Union, or his successors in title, would enjoy, for the purpose of filing in other countries of the Union, a right of priority during twelve months (sections A [1] and C [1]);

(ii) the filing of an application for an inventor's certificate would have to be such that the date of the filing of the application may be clearly ascertained; otherwise the filing could not serve as a basis for the right of priority (section A [3]);

(iii) once the right of priority is acquired, it remains acquired, whatever the outcome of the application for the inventor's certificate would be (section A [3]);

(iv) any person desiring to take advantage of the priority of the filing of an application for an inventor's certificate would be required to make a declaration indicating the date and the number of such filing and the country in which it was made (sections D [1] and D [5]);

(v) these particulars (i. e., the date, the number and the country of the first filing) would have to be indicated in the publications issued by the competent authority, and in particular in the patents (or inventors' certificates) and the specifications relating thereto (section D [2]);

(vi) it would be permissible to file a utility model in a country by virtue of a right of priority based on the filing of an application for an inventor's certificate and *vice versa* (section E [2]);

(vii) applications for inventors' certificates would be dealt with in the same way as patent applications in regard to multiple priorities (section F), division of applications (section G), and the contents of the first application in relation to the priority claimed (section H).

# LEGISLATION

## FRANCE

### Law

relating to Trademarks and Service Marks  
(No. 64-1360, of December 31, 1964)

(Translation)

#### PART I

#### Property Rights in Marks

##### Article 1

Family names, pseudonyms, geographical names, arbitrary or fancy names, the characteristic form of a product or of its get-up, labels, envelopes, emblems, prints, stamps, seals, ornamental borders, selvages, edgings, combinations or arrangements of colours, designs, reliefs, letters, figures, devices and, in general, all material signs serving to distinguish products, objects or services of any enterprise, are capable of being considered as trademarks or service marks.

A trademark or service mark is optional. Nevertheless, decrees of the Council of State can, exceptionally, declare a mark to be obligatory in respect of such products or services as they may determine.

##### Article 2

The deposit of a family name as a trademark shall not prevent another person bearing the same name from making use of his own name.

Nevertheless, if such use is prejudicial to the rights of the person who has deposited the name as a trademark, the person who has effected the deposit may make application at law either for the control of such use, or for its prohibition.

##### Article 3

Signs whose use would be contrary to public order or proper conduct, as well as signs excluded by Article 6<sup>ter</sup> of the Paris Convention for the Protection of Industrial Property of March 20, 1883, as revised, shall not be considered as trademarks nor as forming part thereof.

Further, the following shall not be regarded as trademarks:

those which are constituted exclusively by the necessary and generic designation of the product and the service, or which include elements which are liable to deceive the public;

those which are composed exclusively of terms indicating the essential quality of the product or service, or the composition of the product.

##### Article 4

Rights in the mark are acquired by first deposit, validly effected in accordance with the provisions of the present law and decrees enacted for its application, which specify the

formalities and conditions of the said deposit, as well as the acts or payment of fees necessary for its maintenance.

Nevertheless, the proprietor of a mark which is well-known within the meaning of Article 6<sup>bis</sup> of the Paris Convention for the Protection of Industrial Property may claim annulment of the deposit of a mark which is capable of creating confusion with his own mark. Such action cannot be instituted after the expiration of a period of five years, calculated from the date of the deposit, when such deposit has been effected in good faith.

Subject to the transitional provisions contained in Articles 35 and 36, the sole use as a trademark of one of the signs specified in Article 1 does not confer any right upon the user.

#### Article 5

Any person who wishes to deposit a mark must send to the National Institute of Industrial Property, or to the registrar of the commercial tribunal of his domicile, a representation of the mark, and give an enumeration of the products or services to which the mark applies and the corresponding classes.

#### Article 6

A depositor who is domiciled abroad must elect an address in France.

The deposit of his mark shall be compulsorily effected with the National Institute of Industrial Property. The right of priority attached to a prior foreign deposit must, under penalty of loss, be claimed at the time of deposit of the mark. Nevertheless, a claim for priority can be made to the National Institute of Industrial Property, subject to the advance payment of a fee, within six months following the deposit.

#### Article 7

The deposit of a mark gives rise to the payment of a fee to the National Institute of Industrial Property.

#### Article 8

The registration and publication of a mark validly deposited are effected by the National Institute of Industrial Property. The legal date of registration is the date of deposit.

Rejection of the deposit in application of the provisions of Article 3, or for any material irregularity or default in the payment of fees, will be pronounced by the Minister in charge of industrial property.

#### Article 9

The registration of a mark is effective for a period of ten years. Rights in the mark can be maintained indefinitely by successive deposits, subject to the payment of a fee. Payment must be effected before the expiration of the period of earlier protection.

#### Article 10

The proprietor of the registration of a mark may renounce the effects of the registration in respect of all or part of the goods or services to which the mark applies.

#### Article 11

The proprietor of a mark who, in the absence of legitimate excuse, has not exploited his mark, or caused it to be exploited, publicly and unequivocally, during a period of five years preceding an application for its annulment, shall be deprived of his rights.

Exploitation in a single class of a mark forming the subject of a deposit in respect of several classes of products shall be sufficient to prevent annulment which might otherwise affect deposits made in respect of other classes and not followed by exploitation. Nevertheless, this extension of the effects of exploitation relative to the avoidance of annulment shall only be admitted when confusion could exist to the detriment of the mark which was deposited and exploited.

Annulment must be pronounced by way of a Court decision; it may be requested by any person interested.

Proof of exploitation can be furnished by any means, and is the responsibility of the proprietor of the mark in respect of which annulment is sought.

#### Article 12

Nullity of the deposit of a mark or cancellation of the rights of the depositor is pronounced by courts of major instance.

#### Article 13

Assignments or the grant of licences in respect of marks, as well as any other dealings affecting them, must be in writing. They may be made independently of any contract affecting the enterprise exploiting the mark or causing it to be exploited. They may be total or partial. Only licences for exploitation may have territorial limitation.

#### Article 14

No modification of the rights under a mark shall be enforceable against third parties, unless recorded in the National Register of Marks.

#### Article 15

Without prejudice to the application of Articles 2 and 3 of the Paris Convention for the Protection of Industrial Property, foreigners whose domicile or establishment is located outside France shall enjoy the benefit of the present law for marks regularly deposited or registered in the country of domicile or establishment, provided French marks enjoy reciprocity of protection in these countries.

### PART II

#### Certification Marks

#### Article 16

Legal entities, the State, departments, communes and public establishments, as well as syndicates, groups of syndicates, associations, groups or bodies of producers, industrialists and traders, having a legally-constituted administration and legal capacity, may, with the objective of general industrial, commercial or agricultural interest, or in furtherance of the trade or industry of their members, possess trademarks or service marks.

## Article 17

Certification marks are applied, either directly by the legal entity or association by way of control, to certain products or objects, or by their members, under the supervision of such bodies and on conditions determined by them, to products of their own manufacture or industry, or upon objects in which they trade.

## Article 18

The general provisions of the present law and of decrees governing its application apply to certification marks, without prejudice to the special provisions hereinafter contained, and those relating to agricultural markings regulated by law No. 60-608 of August 5, 1960, and to certificates of quality regulated by Articles 7 and 8 of the Finance Amendment Law, No. 63-628, of July 2, 1963, and subsequent texts.

## Article 19

The deposit of a certification mark must be accompanied by regulations specifying the conditions to which employment of the mark must be subjected.

If these regulations contain provisions which are contrary to public order or proper conduct, the application will be rejected in accordance with the provisions of Article 8. Any amendment made to the regulations which are contrary to public order or proper conduct shall be rejected under the same conditions.

## Article 20

A certification mark may not be the subject of an assignment or pledge or forced execution.

## Article 21

The annulment of the registration of a certification mark or the lapsing of the rights of the depositor shall be declared:

- (1) when the legal entity or the association ceases to exist;
- (2) when such body no longer satisfies the requirements of the present Part of this Law;
- (3) when such body has employed the mark or knowingly allowed it to be employed under conditions other than those prescribed in the regulations;
- (4) when the regulations contain provisions contrary to public order or proper conduct.

In the event of annulment or the lapsing of rights, the certification mark may not be appropriated in respect of the same products or services by a new deposit, nor be used in any way. Nevertheless, upon the expiration of a period of ten years, a certification mark can be deposited *de novo* by a legal entity or association of the same nationality.

## Article 22

Persons entitled to use a certification mark may not exercise the other rights attaching to the mark except in the event of bankruptcy of the legal entity owning the mark and for the purpose of its employment.

## Article 23

Without prejudice to the application of Articles 2 and 3 of the Paris Convention for the Protection of Industrial Prop-

erty, foreign legal entities or associations entitled to take legal proceedings in their country of origin, and falling within one of the categories envisaged by Article 16, shall enjoy the benefits of the present law in respect of certification marks regularly deposited or registered in their country of origin, provided French certification marks enjoy reciprocity of protection in such country.

## PART III

## Jurisdiction

## Article 24

Without prejudice to the provisions of Article 384 of the Code of Penal Procedure, civil actions relating to marks shall be taken before the courts of major instance.

## Article 25

The proprietor of a mark is entitled to proceed, by bailiffs of his choice, to a detailed inventory, with or without actual seizure, of products which he alleges to be marked or delivered in a manner prejudicial to him and in violation of the present law.

## Article 26

If such person fails to proceed, either by civil or criminal proceedings, within a period of 15 days, except in cases of delay caused by distance, as provided for by Article 552 of the Code of Penal Procedure, the inventory or seizure shall automatically become void, without prejudice to the indemnity, if any, that might be claimed.

All actions involving the question of deposited marks and related questions of unfair competition shall be taken before courts of major instance, as specified in Article 24.

## PART IV

## Penalties

## Article 27

Article 422 of the Penal Code is re-enacted in the following terms:

"Art. 422. — The following shall be punishable by a fine of 500 francs to 15,000 francs or by imprisonment from three months to three years, or both:

- (1) persons who counterfeit a trademark or who make any use whatever of a mark without the authorisation of the person interested, even with the addition of the words 'form', 'fashion', 'system', 'imitation', 'kind', etc., or of any other indication;
- (2) persons who fraudulently apply to their own products, or to the objects of their trade, a trademark which belongs to another person;
- (3) persons who knowingly sell, or place on sale, one or more products bearing an infringing trademark, or one which is fraudulently applied;
- (4) persons who knowingly deliver a product, other than that requested of them under a registered trademark."

## Article 28

An Article 422-1 is added to the Penal Code, worded as follows:

"*Art. 422-1.* — The following shall be punishable by a fine of from 500 francs to 10,000 francs or by imprisonment of from one month to one year, or both:

- (1) persons who, without counterfeiting a registered trademark, make a fraudulent imitation thereof of such a nature as to deceive the purchaser, or make any use of a mark which has been fraudulently imitated;
- (2) persons who knowingly make any use of a registered mark bearing indications which are liable to deceive the purchaser as to the nature, the material qualities, the composition, the amount of useful elements, the kind or the origin of the product;
- (3) persons who, without lawful cause, detain, sell or place on sale one or more products which they know to bear a fraudulent imitation of a mark."

#### Article 29

An Article 422-2 is added to the Penal Code, worded as follows:

"*Art. 422-2.* — The following shall be punishable by a fine of from 500 francs to 5,000 francs or by imprisonment of from fifteen days to six months, or both:

- (1) persons who fail to apply to their products a mark which has been declared to be obligatory;
- (2) persons who sell or place on sale one or more products which do not bear a mark which has been declared obligatory for this kind of product;
- (3) persons who contravene the provisions of decrees declaring a mark to be obligatory;
- (4) persons who cause signs to appear in their marks, the use of which is prohibited by the legislation relating to trademarks."

#### Article 30

Article 423 of the Penal Code is re-established in the following terms:

"*Art. 423.* — The penalties prescribed by Articles 422, 422-1 and 422-2 may be doubled in cases of recidivism."

#### Article 31

An Article 423-1 is added to the Penal Code, worded as follows:

"*Art. 423-1.* — Offenders may, further, be deprived of the right of participating in the election of tribunals and chambers of commerce and industry, chambers of agriculture and conciliation boards, for a period not exceeding ten years.

"The Court may, in all cases, order that the judgment convicting the accused shall be published, wholly or in part, in all such newspapers as it may designate, or shall be displayed in accordance with the provisions of Article 50-1 of the present Code."

#### Article 32

An Article 423-2 is added to the Penal Code, worded as follows:

"*Art. 423-2.* — The confiscation of products in respect of which the mark constitutes an offence within the terms of Articles 422 and 422-1 may be ordered by the Court, as well as confiscation of instruments and implements which have served to commit it.

"In cases of *nolle prosequi*, the Court may order the seizure of products and objects referred to in the preceding paragraph.

The Court can equally order the confiscated products to be remitted to the proprietor of the mark infringed or fraudulently applied or imitated, without prejudice to any indemnity.

It may equally order the destruction of marks which constitute a breach of the terms of Articles 422 and 422-1, or of paragraph (4) of Article 422-2."

#### Article 33

An Article 423-3 is added to the Penal Code, worded as follows:

"*Art. 423-3.* — In the cases specified in paragraphs 1 and 2 of Article 422-2, the Court shall always require that marks which are declared to be obligatory shall be applied to the products subjected to them.

"The Court may order the confiscation of products if the accused has, within the five preceding years, suffered a conviction for one of the offences specified in paragraphs 1 and 2 of Article 422-2."

#### Article 34

An Article 423-4 is added to the Penal Code, worded as follows:

"*Art. 423-4.* — The penalties prescribed by Articles 422 to 423-3 are applicable as regards certification trademarks. Further, the following shall be punishable by the penalties prescribed by Article 422:

- (1) persons who knowingly make use of a certification mark under conditions other than those prescribed in the regulations governing the use of the mark which accompanied the deposit, as required by the rules governing certification trademarks;
- (2) persons who knowingly sell or place on sale one or more products bearing a certification mark, irregularly employed in relation to the rules governing trademarks;
- (3) persons who, within a period of ten years calculated from the date of annulment of a certification mark, knowingly make use of a mark which reproduces or imitates the said certification mark;
- (4) persons who, within a period of ten years calculated from the date of annulment of a certification mark, have knowingly sell or place on sale one or more products bearing a mark which reproduces or imitates the said certification mark.

"The provisions of the present Article are applicable to the marks or labels referred to in Chapter II of the First Part of Volume III of the Labour Code."

#### PART V

#### General and Transitional Provisions

#### Article 35

Rights acquired prior to the coming into force of the present law are maintained.

Deposits of marks validly effected in application of the law of June 23, 1857, will produce their effects in accordance with the provisions of the present law as from the date of its coming into force. However, the term of the protection of such deposits shall remain fixed at fifteen years.

The owners of rights previously acquired but not derived from a deposit in force at the date specified in the foregoing paragraph shall, under penalty of loss of such rights, make deposit within a period of three years, calculated from this date. The documents constituting this deposit must refer to the existence of the earlier rights. However, such mention may be the subject of a later declaration made before the expiration of this period, subject to the payment of a fee.

#### Article 36

Legal entities or associations who have deposited a mark as a certification mark, or who so utilise a mark without having deposited it, must, in order to benefit from the present law, effect a deposit, in accordance with the provisions of this law, before the expiration of a period of three years from the date of its coming into force.

#### Article 37

Decrees issued by the Conseil of State shall fix the formalities for the application on the present law.

Fees collected for the National Institute of Industrial Property shall be prescribed by decree, under the conditions specified in Article 4 of Ordinance 59-2 of January 2, 1959, relating to the basic financial laws.

#### Article 38

The law of June 23, 1857, and all other provisions contrary to the present law are abrogated.

#### Article 39

The present law will come into force on August 1, 1965. It is applicable to overseas territories.

The present law shall be carried out as a State law.

## ITALY

### Decrees

concerning the temporary protection of industrial property rights at 16 exhibitions

(Of February 5, 16, 24 and 27, 1965) <sup>1)</sup>

#### Single Article

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

*I<sup>a</sup> Mostra delle attrezzature per supermarkets* (Parma, March 6-10, 1965);

*XXIX<sup>a</sup> Fiera di Bologna — Campionaria con settori internazionali specializzati* (Bologna, March 18-23, 1965);

*II<sup>o</sup> Salone internazionale delle arti domestiche* (Turin, March 18-31, 1965);

*XLIII<sup>a</sup> Fiera di Milano — Campionaria internazionale* (Milan, April 14-25, 1965);

*I<sup>o</sup> Salone della profumeria e dei cosmetici* (Turin, April 29 to May 10, 1965);

*V<sup>a</sup> Mostra internazionale delle arti sanitarie* (Turin, June 5-13, 1965);

*XVII<sup>o</sup> Mercato internazionale del tessile per l'abbigliamento* (Milan, June 9-12, 1965);

*XVII<sup>a</sup> Fiera di Trieste — Campionaria internazionale* (Trieste, June 21 to July 5, 1965);

*XXXI<sup>a</sup> Mostra nazionale della radio e televisione* (Milan, September 4-12, 1965);

*III<sup>o</sup> Salone internazionale componenti elettronici* (Milan, September 4-12, 1965);

*II<sup>a</sup> Esposizione europea elettrodomestici* (Milan, September 4-12, 1965);

*Mostra nazionale dell'oreficeria ed argenteria* (Vicenza, September 5-12, 1965);

*IV<sup>a</sup> Biennale internazionale imballaggio e confezionamento — trasporti industriali interni — macchine per l'industria alimentare — IPACK — IMA* (Milan, September 11-17, 1965);

*Salone internazionale della ceramica e del vetro* (Vicenza, September 19-26, 1965);

*II<sup>a</sup> Biennale frutticola EUROFRUT 65* (Ferrara, October 3-10, 1965);

*I<sup>o</sup> Salone internazionale dell'industrializzazione edilizia* (Bologna, October 9-18, 1965)

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

<sup>1)</sup> Official communication from the Italian Administration.

<sup>2)</sup> See *Prop. ind.*, 1939, p. 124; 1940, p. 84.

<sup>3)</sup> *Ibid.*, 1940, p. 196.

<sup>4)</sup> *Ibid.*, 1942, p. 168.

<sup>5)</sup> *Ibid.*, 1960, p. 23.



## CORRESPONDENCE

### Letter from Austria

Dr. Wilhelm KISS-HORVATH, Vienna

*(Second and Last Part) <sup>1)</sup>*

*(Translation)*















## BOOK REVIEW

### *Revista Mexicana de la Propiedad Industrial y Artística*

This is an outstanding new periodical in the Spanish language published twice yearly under the direction of *David Rangel Medina in Mexico*<sup>1)</sup>. Starting in 1963, four issues have been published thus far totalling 453 pages.

Each issue has the following five main sub-divisions: articles, bibliography, news items, court decisions, legislative texts. The last two deal primarily with the law of industrial property in Mexico. The news items cover mainly international meetings. The bibliography, under the responsibility of *Antonio Rangel Medina*, covers the most important publications both in Europe and the Americas.

Among the some forty articles, there are several which deal with the theory of industrial property, as well as international or comparative law problems. Another important series, which is of special interest both to American and European lawyers, deals with the national laws of various Latin American countries. On Argentine law there is an article by Ernesto D. Aracama Zorraquin dealing with patents. On Brazilian patent law, there is an article by Thomas Leonardos. As far as Mexico is concerned, David Rangel Medina writes on trademark licensing, Antonio Correa on patents, Enrique Correa on court decisions in the field of trademarks, and again David Rangel Medina on copyright. As to Venezuela, there is an article by Hildegart Rondón de Sansó on indications of source, and Benito Sansó on patents.

The adjective "Mexican" in the title of the review thus reflects more the place of publication and the nationality of its scholarly and energetic editor, *David Rangel Medina*, than its contents which go far beyond the boundaries of Mexico. This publication is of great interest to all those who want to follow industrial property law developments in Latin America.

A. B.

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1) The Editor's address is: Allende No. 251, Mexico 16, D. F.

# CALENDAR

## Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
May 4 to 7, 1965 Geneva	Committee of Experts for the Classification of Goods and Services	To bring up to date the international classification	All Member States of the Nice Union	
May 18, 1965 Geneva (Headquarters of ILO)	Constitution of the Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly with ILO and Unesco	Application of Article 32 (1), (2) and (3) of the Rome Convention	Czechoslovakia, Congo (Brazzaville), Ecuador, Mexico, Niger, Sweden, United Kingdom of Great Britain and Northern Ireland	
July 5 to 14, 1965 Geneva	Committee of Governmental Experts preparatory to the Revision Conference of Stockholm (Copyright)	Examination of the amendments proposed by the Swedish/BIRPI Study Group for the revision of the Berne Convention	All Member States of the Berne Union	Certain Non-Member States of the Berne Union, Interested international intergovernmental and non-governmental organizations
September 28 to October 1, 1965 Geneva	Interunion Coordination Committee (3rd Session)	Program and budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Nigeria, 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; United Nations
September 29 to October 1, 1965 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (1st Session)	Program and activities of the International Bureau of the Paris Union	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations

## Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Strasbourg	April 5 to 9, 1965	Council of Europe	Committee of Experts on Patents
Caracas	May 4 to 6, 1965	Inter-American Association of Industrial Property (ASIPI)	Administrative Council
Paris	May 7, 1965	International Literary and Artistic Association (ALAI)	International Commission and Executive Committee
Namur	May 23 to 27, 1965	International League Against Unfair Competition	Congress
Stockholm	August 23 to 28, 1965	International Literary and Artistic Association (ALAI)	Congress
London	August 31 to September 10, 1965	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	Fifth Annual Meeting
Tokyo	April 11 to 16, 1966	International Association for the Protection of Industrial Property (IAPIP)	Congress