

Industrial Property

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INTERNATIONAL UNIONS

Lisbon Agreement for the Protection of Appellations of Origin and their International Registration

Ratification by Portugal and Entry into Force of the Lisbon Act

According to a communication received from the Swiss Federal Political Department, the following note has been 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 August 25, 1966, the Swiss Embassy has the honour to inform the Ministry of Foreign Affairs that the Portuguese Embassy in Berne deposited with the Political Department on June 9, 1966, the instrument of ratification of the Portuguese Republic to the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration, signed on October 31, 1958.

"Five instruments of ratification having now been deposited in respect of the said Agreement, this Agreement will come into force, in conformity with its Article 13 (2), on September 25, 1966.

"The Embassy further states that in addition to the five countries whose instruments of ratification have so far been deposited (France, Czechoslovakia, Israel, Cuba, Portugal), two other countries will also become bound by the Agreement, as from September 25, 1966, in application of Article 16 of the Paris Convention to which Article 11 (1) of the Agreement refers. These countries are the Republic of Haiti and the United States of Mexico, whose declarations of adhesion were received by the Political Department on January 17, 1961, and February 21, 1964, respectively, and were not notified at the time because they did not in themselves contribute to the entry into force of this Agreement."

Paris Union Change of Class

AUSTRIA

According to a communication received from the Swiss Federal Political Department, the Austrian Embassy in Berne has notified the Swiss Government that Austria wishes to be placed, as from 1966, in Class IV instead of Class VI for the purposes of its annual contributions towards the expenses of the International Bureau of the Paris Union.

The Proposed Administrative and Structural Reform of BIRPI *)

Synopsis

The Stockholm Revision Conference of 1967 is expected to effectuate administrative and structural reforms in the Paris, Berne and other Unions administered by BIRPI.

The main administrative changes proposed would:

- *create a separate assembly for each Union, consisting of all its member States;*
- *transfer the supervision of the International Bureau from the Government of one country (Switzerland) to the Assemblies of the Unions;*
- *do the same with respect to the approval of the program and budget, the control of the accounts, and the appointment of the head of the International Bureau;*
- *provide for a system in which financial contributions would be voted once every three years rather than written into the treaties and modifiable only by unanimous consent.*

The main structural change would be the establishment of a new Organization which would:

- *be a framework for administrative coordination among the various Unions since they are served by the same International Bureau;*
- *be a world-wide forum for propagating the principles of intellectual property mainly for the benefit of developing countries.*

The new Organization would have full members (States members of any of the Unions) and associate members (States not members of any Union).

The existing International Bureau (BIRPI) would continue as the International Bureau of the Unions and would also be the executive organ of the new Organization.

The new Organization would not interfere with the independence and sovereignty of the Unions.

While UNESCO's present role in the administration of the Universal Copyright Convention would be left untouched, the new Organization is expected to be the center of all new world-wide efforts for maintaining, improving, and adapting, the rules of international protection in the field of industrial property and copyright. This is regarded as essential if one wishes to entrust the safeguarding of such protection to a specialized organization which can devote all its attention to it.

Background

The Revision Conference of Stockholm, scheduled for June 12 to July 14, 1967, has three major items on its agenda:

- (a) the revision of the substantive clauses of the Berne Convention, that is, its provisions dealing with the substance of copyright protection;

*) The present item is merely intended to provide general information. The official proposals are contained in documents which will be released during the last four months of 1966 and may be ordered from BIRPI.

- (b) the inclusion of inventors' certificates in Article 4 of the Paris Convention, that is, the Article which deals with the right of priority in the field of patents;
- (c) the administrative and structural reform of the Berne Copyright Union, the Paris Industrial Property Union, and the four special Unions which exist under the Paris Union. These four special Unions deal with the international registration of trademarks and service marks, industrial designs, and appellations of origin, and with the classification of goods and services for the purposes of the registration of trademarks and service marks. The administrative and structural reforms would extend also to the International Bureau of all these Unions, presently known under the name of BIRPI, with headquarters at Geneva.

Both the administrative and the structural reforms proposed are intended to serve the same objective, which is to improve the existing machinery of cooperation among nations in the field of intellectual property.

The term "intellectual property" is to be understood in the sense in which it includes both industrial property — patents, trademarks, etc. — and copyright.

The basic elements of the existing machinery date from 1883 and 1886. No substantive changes have been made in them since those dates, that is, for more than eighty years.

Administrative Reforms

Subject to minor variations due to the differences existing in the nature of the various Unions, the proposed administrative reforms would be the same for each of the six Unions administered by the International Bureau.

The reforms would introduce for these six Unions those principles of international administration which today are generally regarded as the best for promoting efficient international cooperation and efficient inter-action between member States and Secretariat.

In the present situation, the Unions have no organ in and through which the member States could formulate policy and exercise control over administration. It is proposed that such organs be created in the form of an assembly of all member States which would normally meet once every three years, and, in the case of the Paris and Berne Unions, also in the form of executive committees which would normally meet once a year.

In the present situation, the International Bureau is supervised by *one* country, Switzerland, to which all powers of supervision were delegated by the member States. In the last century, such delegation of powers was not unusual. Today, it is an anachronism.

Thus, under the proposed reform, it would be the totality of the member States which would adopt the program and the budget of the various Unions, which would supervise the accounts of the International Bureau, and which would elect its chief officer. In the present situation, all this is done by the Government of Switzerland alone: it is the Swiss Government which approves the budget, examines the accounts, and appoints the Director of BIRPI.

Another aspect of the proposed administrative reform relates to the contributions of member States. In the present situation, the total amount of the contributions of member States of the Paris and Berne Unions is written into the texts themselves of the Paris and Berne Conventions. There must be a unanimous decision by the member States on the amount of this sum. In the Paris Union, the last time that unanimity was achieved was forty-one years ago. The amount is \$ 28,000 per annum for the totality of the member States, which means that each country would have to contribute an average of some \$ 360 per annum. This is less than one U. S. dollar per day. The situation is roughly similar in the Berne Union.

Of course, BIRPI does not — as, indeed, it could not — operate with such an amount. *De facto*, countries contribute more, but they do so on a voluntary basis. Thus, for example, each of the six countries which contribute the most now pays approximately \$ 10,000 per year in the Paris Union. The six countries are: France, Germany, Italy, the Soviet Union, the United Kingdom, and the United States of America.

It is proposed that the Stockholm Conference do away with this wholly unsatisfactory system and provide that the budgets and, consequently, the ceiling of the contributions be fixed by the Assemblies: by a qualified majority if it involves a raise, by a simple majority otherwise.

It is to be noted in this as in all other respects that each Union would act wholly independently, in the separate Assembly of its own in which no other State could vote than those which are members of the Union.

In connection with the preparation of revision conferences, which is a mixed (administrative and procedural) matter, it is proposed that such preparations be no longer entrusted to the Government of one member State — namely, that of the host country of the Conference — with the assistance of BIRPI, but to organs of the Union, namely, the International Bureau, under the guidance of all the member States acting through the Assembly and the Executive Committee of the Union. Of course, in preparing for revisions, these organs would continue to draw inspiration from whatever source they consider appropriate.

In the present situation, what the texts mean is that member States have nothing to say on the question whether there should be a revision conference, what points of their Convention or Agreement should be revised, and what should be the proposals for revision. All these questions, today, are left to the discretion of the Government of the country on whose territory the revision conference is to meet.

Such a system is most unsatisfactory as the interest of each country is equal and should receive equal opportunity for expression, not only at the conference itself but also in the preparatory stages.

Structural Reforms

Some of the administrative reforms referred to above also constitute organizational or structural innovations, particularly the creation of new organs: the Assemblies and the Executive Committees.

However, what in the preparatory work for the Stockholm Conference is usually referred to as the "structural" reform

is the proposal to establish a new intergovernmental agency or organization which, in the course of the preparatory work, was variously called the World Intellectual Property Organization (WIPO) or the International Intellectual Property Organization (IPO).

The proposed new Organization would serve two purposes. One of them is to constitute the framework of a coordinated administration for the various Unions; the other is to constitute a framework for the general promotion of the protection of intellectual property throughout the world, even in countries which are not yet members of the Paris or Berne Unions.

This duality of objectives would be reflected in respect to membership both in the Organization and in the assemblies of the member States.

The Organization would have two kinds of members: "full" and "associate." States members of at least one of the Unions would be full members; States not members of any of the Unions would be associate members.

There would be two assemblies, one called the "General Assembly," the other the "Conference." The first would be an assembly of full members only; the other of both full members and associate members.

The General Assembly would, together with a restricted committee called the Coordination Committee, be the organ for administrative coordination among the Unions. Such coordination is needed because the administrative organ of the Unions would be—as it is today—a common one, namely, the International Bureau at Geneva. Continuing a Bureau which is *common* is justified by obvious reasons of economy and efficiency. Its usefulness has been proved by the experience of 73 years, as it was in 1893 that the Bureau of the Paris Union and the Bureau of the Berne Union were united by decision of the Swiss Government. But both the common Bureau and the administrative cooperation among the Unions have, in the present situation, no legal basis in the treaties. The present arrangements are more or less justified by the texts. Their clarification and institutionalization are desirable in order to guarantee the independence of the Unions, regulate their relations when they inevitably come into contact with each other, and give to their common Bureau a legal basis which is comparable to that of other intergovernmental agencies and which gives it a legal capacity indispensable in its dealings with the United Nations and other international organizations.

This clarified legal capacity of the Organization would also allow the institutionalization of relations with non-governmental organizations—such as the International Association for the Protection of Industrial Property and the International Literary and Artistic Association—relations which are of paramount importance in a field which concerns the protection of private property interests.

The Conference would be a forum for discussion, open to both full and associate members. It would be called upon to ascertain the needs and desiderata of developing countries in respect to legal-technical assistance in the field of intellectual property. Such assistance would take the form of fellowships, seminars, expert missions, and advice in the framing of intel-

lectual property laws and the establishment of industrial property offices.

The Conference would be also a forum in which, and through which, States not yet members of the Unions could examine more closely the desirability of their adherence to such Unions. It is, in fact, expected that the contacts which States outside the Unions would have with the International Bureau and with States members of the Unions would sooner or later convince them that, by becoming members of the Unions, they could promote their industrialization, improve their commercial and cultural relations, and, in general, speed up the rate of their development.

Such contacts, to be close and permanent, require an appropriate form. Associate membership would provide that form.

The expenses of the Organization would consist essentially of two items: the cost of the meetings of its representative bodies, and the cost of the legal-technical assistance program. These would be covered by the contributions of the Unions and by the contributions of the associate members. Full members would pay no direct contributions to the Organization since they would participate in the expenses through the contributions of the Unions to which they belong.

The proposed new Organization would, also have an administrative organ. It would be a simple continuation of BIRPI, even in its designation, which would remain "the International Bureau."

* * *

The independence of the various Unions would not be affected by the existence of the new Organization or its organs. The General Assembly's role would be mainly advisory and limited to matters of coordination. Revisions of the texts of the Convention of each Union would be prepared by the interested Union itself and decided by the separate revision conference of that Union. Development of the Unions, by means other than revisions, would also be a matter for the Unions themselves. In none of these respects could the proposed new Organization play any role. Nor is there any danger that the Organization could, in the future, trespass on the jurisdiction of the Unions since any amendments to the Convention establishing the new Organization would have to be first and separately adopted by the Assembly of the Paris Union and the Assembly of the Berne Union.

* * *

The charter and structure of the proposed new Organization would be similar to those of modern intergovernmental organizations. The creation and the existence of such an Organization are indispensable for keeping the protection of industrial property and copyright in a specialized organization in which all attention can be devoted to the safeguarding of the international agreements in this field, and to their development and adaptation to changing circumstances.

As long as the International Bureau serves only the Unions and their member States, countries outside the Unions tend to turn, with their problems in the field of intellectual prop-

erty, to other intergovernmental organizations which having to deal mainly with a great number of entirely different problems, are unable to provide the desirable expertise and experience.

The Universal Copyright Convention is an exception, as the proposed reform would not affect its continued administration by UNESCO. Neither would the proposed reform affect the continuation or further development of regional cooperation, since the new Organization would be world-wide in scope.

LEGISLATION

AFRICAN AND MALAGASY INDUSTRIAL PROPERTY OFFICE (OAMPI)

Regulations Concerning Trademarks *)

The Governing Body of the African and Malagasy Industrial Property Office,

Considering the *Accord* relating to the creation of the above-mentioned Office, signed at Libreville on September 13, 1962, and in particular Article 13 which stipulates that the Governing Body "shall draw up the regulations necessary for the application of the present *Accord* and its Annexes";

Considering Article 24 which empowers the Office to determine the date of coming into force of the Annexes;

Considering Annex II of the *Accord* relating to Trademarks;

Considering Annex IV relating to miscellaneous provisions;
Adopts the following Regulations:

Article 1

The application of Annex II of the *Accord* referred to above, relating to trademarks, shall be governed by the following provisions:

TITLE I

Application for Registration

Article 2

(1) The application provided for in Article 8 of Annex II referred to above, for the registration of a trademark by the African and Malagasy Industrial Property Office, shall be drawn up on the form prescribed by the Office.

(2) Four copies of the application shall be filed, one of which shall be marked "Original."

Article 3

(1) The application for registration shall state:

(a) the name, given names and domicile of the applicant or, in the case of a legal entity, its name and headquarters;

- (b) where applicable, the name and address of the agent authorized to make the application and the date of the power of attorney referred to in Article 5 below;
- (c) where appropriate, information as to any claim for priority in respect of an earlier application, in accordance with the provisions of Article 6 below;
- (d) in the case of an application for the renewal of an earlier registration, the place, date and number of the earlier registration;
- (e) where applicable, the combination or arrangement of colours, the characteristic form of the product or of its get-up, claimed as distinctive elements of the mark;
- (f) a list of the goods to which the mark applies and the corresponding classes of the classification specified in Article 20.

However, when the application is in respect of all the goods in one or several classes of the said classification, the applicant shall be entitled to indicate the numbers of the classes, without reproducing their wording. In such cases, the numbers should preferably be written out in full;

- (g) the amount transferred to the Office in respect of the application fee and the fee in respect of each class of goods, and the method of transfer, as well as the date and number of the document certifying payment;
 - (h) information concerning the ultimate return of the printing block to the applicant after publication of the mark, in accordance with the provisions of Article 8 hereunder.
- (2) The application shall be accompanied by:
- (a) the printing block of the mark;
 - (b) where applicable, the power of attorney of the agent, together with the priority documents specified in Article 6 hereunder;
 - (c) where appropriate, the document certifying payment of the required fees.

(3) The application shall be dated and signed by the applicant or, if there is an agent, by the latter. The signature shall be preceded by a note indicating the status of the applicant or his agent and, in the case of a legal entity, by a note indicating the functions of the signatory.

Article 4

(1) Any application filed by a woman who is married, widowed or divorced, shall indicate the maiden name and the given names of such woman, after the name of the husband, in the following form: "Mrs. X..., born Y..."

(2) Where the application is made by several persons jointly, the indications provided for in Article 3, paragraph (1) (a), shall be furnished in respect of each of them.

If no agent has been appointed, all official communications shall, unless otherwise stated, be sent to the person first indicated.

Article 5

The power of attorney of the agent, referred to in Articles 3, 16 and 22 of the present Regulations, shall indicate the name, given names and address of the applicant or, in the

*) BIRPI translation.

case of a legal entity, its name and headquarters, as well as the name of the agent.

The power of attorney shall be dated and signed by the applicant. In the case of a legal entity, it shall indicate the functions of the signatory.

In the case of an application which includes a claim for priority in respect of an earlier application, the details specified in Article 6 hereunder shall be indicated in the authorization.

Article 6

Any person who wishes to avail himself of the priority of an earlier application shall indicate the place, date and number of such earlier application in his application for registration, or in a declaration which must reach the Office under the conditions and within the period prescribed by Article 8 of Annex II referred to above.

He shall further, within a period of three months from the date of application, furnish the Office with a copy of the earlier application, certified as accurate by the Office which received it.

TITLE II

Replica and Printing Block

Article 7

The replica of the mark shall consist of a clear representation thereof, printed in black, and obtained by means of the printing block accompanying the application.

The replica shall be reproduced upon the form prescribed by Article 2 above.

The applicant is entitled to attach four replicas of the mark in colour.

Article 8

(1) The printing block specified in Article 8 of Annex II referred to above must be of a kind usually employed in typographical printing.

It shall not be less than 15 millimetres nor more than 9 centimetres in length and in breadth. It shall have a thickness of 23 millimetres.

(2) The applicant must write his name and address on one side of the base of the block.

(3) If the applicant so requests, the block shall be returned to him, at his expense, after publication of the mark.

Any block which is unclaimed at the end of the second year after the said publication shall be destroyed.

TITLE III

Filing of Applications

Article 9

(1) When an application for registration of a mark is filed according to Article 3 of the *Accord* referred to above, with the Clerk (*greffier*) of the Civil Court of a Member State, the Clerk shall verify:

- that the application for registration and the replica of the mark are made on the prescribed form;
- that the application states the name and domicile of the applicant and the goods to which the mark applies.

The Clerk shall draw up the minute of the application only if the above-mentioned requirements have been complied with.

(1) The minute of the application shall be noted on each copy of the application, in the manner indicated in Article 10 of Annex II referred to above.

The Clerk shall indicate the day and hour of the application, as well as the serial number of the minute, and shall affix his signature and seal.

(3) One copy shall be sent to the applicant or to his agent, if any, to serve as evidence of the application; a second copy shall remain in the archives of the Clerk; the two others shall be transmitted to the Office by registered post, at the expense of the applicant, together with the printing block and the power of attorney of the agent, if any, and the certificate of payment of the necessary fees, within five days following the date of the minute.

Article 10

(1) When application for the registration of a mark is made to the Office direct, in accordance with Article 3 of the *Accord* referred to above, the Office shall proceed with the examination specified in Article 9 above.

The Office shall not prepare the minute relating to the application unless the requirements specified in the said Article are observed.

(2) The minute, drawn up in accordance with the conditions specified in Article 2 of Annex IV referred to above, shall be noted on each copy of the application.

The Office shall indicate the date and hour of the deposit, as well as the number of the minute, and shall affix its signature and seal.

(3) One copy shall be banded or sent to the applicant or to his agent, if any, as evidence of the application.

Article 11

The amount of the fees provided for in Article 9 of Annex II referred to above shall be transferred by the applicant to the Office not later than the time of the application, in accordance with the procedure provided for in the Regulations concerning fees.

TITLE IV

Registration and Publication of Marks

Article 12

(1) The Office shall proceed to the examination provided for by Article 11 of Annex II of the *Accord* referred to above.

(2) When the deposit is found to be in order, or has been put in order by the applicant in conformity with Article 12 of the said Annex, the mark shall be registered as of the date of application.

A registration number, the Office seal, and the signature of the Director or his representative, shall be affixed to each of the copies of the application.

One copy shall be handed or sent to the applicant, or his agent, if any, as evidence of registration.

Article 13

Marks registered will be published in the "Bulletin officiel" of the Office.

Article 14

The original copies of applications will be entered in the Special Register of Marks, in order of their registration numbers.

TITLE V

Special Register of Marks

Article 15

(1) The Special Register of Marks, set up under Article 18 of Annex II referred to above, shall mention the declarations, agreements and legal decisions, the inscription of which is provided for by Articles 14, 18 and 19 of the said Annex and, in a general manner, all notifications relating to ownership of the mark.

(2) It shall equally contain reference to any changes which may have been notified to the Office in the address of owners, assignees or licensees of marks.

Article 16

Requests for entries or for cancellation shall be left at the Office, or sent by registered post, with a request for acknowledgment of receipt. They shall indicate the name, given names or title and domicile or headquarters of the applicant, or the agent, if any, authorized to prosecute the application, as well as the amount of the fees transferred to the Office, the method of transfer and the date and number of the document certifying payment. These details shall be accompanied by the items specified in Articles 17 and 18 hereunder and, where applicable, by the document certifying payment of the required fees.

Article 17

(1) Each entry concerning any of the agreements mentioned in Article 17 of Annex II referred to above shall be effected once an original, duly registered, copy of the agreement has been deposited, if the agreement was signed by the parties under seal or an official copy (*expédition*) if it has been legalized, and, where a transfer has occurred by way of succession, an affidavit or title.

(2) Entries relating to mortgaged marks shall be cancelled following the deposit of an original copy, duly registered, of the agreement discharging the mortgage, or of an official copy of the relevant Court decision.

Article 18

Every application for an entry or cancellation shall be accompanied by two completed copies of the form prescribed by the Office. These shall contain:

- (a) the name, given names and domicile of the assignor, *de cujus*, or creditor, and of the assignee, licensee, successor or debtor;
- (b) the number and date of the registration of the mark;
- (c) the nature and extent of the transferred or licensed right and its duration;

- (d) the date and nature of the agreement effecting the transfer of ownership, licence or the termination of the right, or the date of the death resulting in the change of ownership;
- (e) when applicable, the amount of the debt indicated in the agreement and the conditions concerning interest and the date of payment of the debt.

The particulars contained in the completed forms shall be certified by the parties as being in conformity with the contents of the agreement in question.

The entry or cancellation shall be effected in the Special Register of Marks, in accordance with the particulars contained in the completed forms.

One of the completed forms and a copy of the agreement shall be kept in the archives of the Office. The registration shall be indicated on the other completed copy of the form which shall then be returned to the applicant.

Article 19

The Office shall issue to any person so requesting, either a copy of the entries appearing in the Special Register of Marks or a copy of the subsisting entries concerning marks which have been mortgaged, or a certificate that no such entry exists.

The Office shall likewise issue extracts concerning the addresses of owners of marks, of assignees or licensees, and certificates reproducing the characteristics of the original copy of the replica of the mark.

TITLE VI

Classification of Marks

Article 20

For the purpose of the application for registration and registration of marks and, in particular, of the application of Articles 8 and 9 of Annex II referred to above, goods are classified in accordance with the classification annexed to the present Regulations¹⁾.

TITLE VII

Miscellaneous and Transitional Provisions

Article 21

The periods provided for in Annex II referred to above, and in the present decree, shall run from the first day of the period to the last.

When the last day of a period is an official holiday or a day on which the Office is not open, the term shall be extended to the next-following working day.

Article 22

(1) Four copies of the declaration maintaining marks in force, as provided for in Article 35 of Annex II referred to above, shall be left at the Office, or sent to it by registered post, with a request for acknowledgment of receipt.

¹⁾ The classification referred to is the International Classification of Goods and Services to which Trademarks are Applied.

(2) The declaration shall be drawn up on the form prescribed by the Office. It shall be signed by the applicant or his successor at law, or by his agent, if any.

It shall mention:

- (a) the name, given names and domicile of the owner of the mark or, in the case of a legal entity, its name and headquarters;
 - (b) where applicable, the name and address of the agent authorized to request the maintenance in force;
 - (c) the place, date and number of the application for the mark;
 - (d) the number of the registration of the mark, as well as the date and number of the "*Bulletin officiel*" in which the mark was published;
 - (e) a list of the goods and classes of goods to which the mark applies.
- However, when the application is in respect of all the goods included in the classification referred to, the applicant shall be entitled to indicate this without reproducing the wording of the classes;
- (f) the amount of the maintenance fee paid to the Office, the mode of transfer, and the number and date of the document certifying payment.

(3) A replica of the mark shall be included in the form bearing the declaration.

(4) Where appropriate, the declaration shall be accompanied by the certificate of payment of the maintenance fee, the power of attorney of the agent and, in the case of transfer, by a copy of the entry in respect of the said transfer appearing in the Special Register of Marks kept by the Office which effected the registration.

Article 23

(1) The Office shall register the declaration, after having satisfied itself that it is in order as far as form is concerned, and that the required fee has been paid, and shall publish a report thereof in the "*Bulletin officiel*".

(2) It shall return to the declarant a copy of the declaration, bearing an indication of its registration.

Article 24

If the formalities have not been complied with, or if all or part of the fees have not been paid, a period of two months shall be granted to the declarant in which to take the necessary action. This period may be prolonged on request, if justified. If the application is not put in order within the specified period, the declaration will be rejected.

Article 25

When an entry in the Special Register of Marks is applied for by an owner of rights exempt, in accordance with paragraph (2) of Article 35 of Annex II, from the formalities and fees prescribed by paragraph (1) of the said Article, the Office may require him to furnish a copy of the mark, duly certified by the Office which received the application or effected the registration.

Article 26

The Administrations which hold the applications for registration of marks referred to in Article 35 of Annex II referred to above shall transmit them to the Office in the form in which they were lodged by virtue of the legislation in force at the date when such application were made.

The Office shall register and publish the marks after regularization of the applications in accordance with the requirements of Article 12 of the said Annex, and the payment of the required fees.

Article 27

The date of the entry into force of the present regulations, and of Annex II of the *Accord* referred to above, shall be fixed by a decision of the Governing Body of the Office, represented by its President.

The period of one year specified in Articles 35, 36 and 37 of the said Annex shall be calculated from that date.

ITALY

Decrees

concerning the Temporary Protection of Industrial Property Rights at Two Exhibitions
(Of July 1 and 15, 1966) ¹⁾

Single Article

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

XIX^a *Fiera di Bolzano — Campionaria internazionale* (Bolzano, September 16-26, 1966);

XXI^a *Mostra internazionale delle industrie per le conserve alimentari* (Parma, September 24-October 2, 1966)

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

¹⁾ Official communication from the Italian Administration.

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

³⁾ *Ibid.*, 1940, p. 196.

⁴⁾ *Ibid.*, 1942, p. 168.

⁵⁾ *Ibid.*, 1960, p. 23.

GENERAL STUDIES

Certain Aspects of the Economics of Patents for Inventions*)

By Jean-Michel WAGRET, Paris

Report of the Netherlands Patent Office for the Year 1965

Excerpts from the Introduction)*

First Experiences with the New Netherlands Patents Act

The second year of the application of the new patent granting procedure has supplied important data. Though it is still too early to draw definite conclusions concerning any reduction, which the new Patents Act may bring about in the ultimate burden of work of the Patent Office, these data do indicate that so far the new Act has come up to expectations.

Through the introduction of the new Act, the handling of patent applications can now be divided into three consecutive phases:

1. the novelty search;
2. the preparation of the granting procedure;
3. the granting procedure itself.

The first phase is to be considered as separate, in nature as well as in chronological order of handling, from the two

7) Communication to "Colloque Université—Industrie", held at Lyon, November 19, 1965.

8) *Opera Mundi Europe*, April 26, 1966.

*) English translation furnished by the Netherlands Patent Office.

last phases, which themselves are closely connected and follow directly on each other. The novelty search has become a purely documentary search, through which the state of the art concerning a patent application is objectively determined, i. e., the examiner does not express his opinion on the patentability, but only indicates the legal objections which may be raised against the application during the second and third phases.

In the second phase, the examiner expresses his personal opinion on the patentability of the application and, following discussion with the applicant, formulates his advice to the Patent Office as to whether the patent should be granted or refused.

Finally, in the third phase a decision is taken concerning the aforementioned advice, offered by the examiner.

The following, naturally rough figures may give an indication of the work burden of the Patent Office in these three phases:

1. The Novelty Search

- (a) During 1964 and 1965 a novelty search was requested for almost 12,000 patent applications (to be exact 39,6 %) from the more than 30,000 applications, which were filed under the previous Act, but which had not been handled on January 1, 1964 (date of application of the new Act);
- (b) almost 5,500 requests for a novelty search (to be exact 35,4 %) were received concerning the more than 15,250 applications filed in 1964, whereas
- (c) the number of such requests originating from the more than 17,000 applications filed in 1965, amounted to more than 4,500 (to be exact 27,7 %).

Thus, broadly speaking, more than 22,000 novelty searches had to be completed. During 1964 and 1965 16,500 reports on novelty searches were produced by the division concerned, consequently 5,500 less than the number of requests were received. These figures can be considered satisfactory, if one takes into consideration the period of adjustment to the new Act, which, as was mentioned in the previous annual report, was necessary for the examiners in order to get used to the new procedure for novelty reports, as also the fact that the remaining applications filed under the previous Act and still on hand on January 1, 1964, was greater in number than the applications usually filed in one year. Finally there is the fact that an uninterrupted progress in the examiner's work requires that a certain quantity of work be on hand. Nevertheless, to attain this production the Patent Office has to a large extent called on the services of the "Institut International des Brevets" (I. I. B.) — International Patent Institute.

2. Preparation of the Granting Procedure

The number of applications, filed under the previous Act but transferred to the new Act, for which the examiner had completed his report on the novelty search, but not yet his advice to the Patent Office, before January 1, 1964, amounted to about 17,700. To this number more than 8,100 and almost 7,700 completed results of the novelty search were added during 1964 and 1965 respectively. The following numbers of requests for the granting procedure were filed in 1964 and 1965:

- (a) for the first category almost 7,000 (to be exact 39,4 %);

- (b) re the results of the novelty search, completed in 1964, 3,600 (44,2 %);

- (c) re the results of the novelty search, completed in 1965, more than 1,500 (to be exact 19,6 %);

in total roughly 12,100 requests for the granting procedure.

During the first two years the examiners, who prepare the applications for the granting procedure, completed 4,906 advices relating to publication or non-publication (which number included withdrawal and lapsing of applications during the time of preparation). This figure does indeed appear to be very unsatisfactory. However, one should take into account that very often 1½ to 2 years elapse between filing of the request and completion of the advice, since during the preparation of the granting procedure the applicant has on three separate occasions the right to a term of 6 months duration for the purposes of reply (the first time being after filing of the request, the second time after receipt of the examiner's first letter, and the third time after receipt of the examiner's second letter); in many cases applicants make use of the full, or very nearly the full duration of these terms.

3. The Granting Procedure Itself

In 1964 and 1965 the Application Divisions of the Patent Office completely dealt with 9,051 applications. The applications handled by these divisions were to a great extent applications which, on the strength of the transitory right, still had to be dealt with according to the previous Act (viz. 7,055). It is consequently to be expected that the Application Divisions will, within a period of time to be considered normal, have no trouble in dealing with the advices completed by the examiners. Should it occur that the examiners concerned with the preparation for the granting procedure are unable to keep up with this pace, the members of the Application Divisions will in some cases have to be called on to assist with the preparation as well as the decision taking.

Although the above-mentioned figures indicate that the Patent Office has experienced a great reduction in its work because of the new Act, one should not forget that the ultimate amount of work may increase considerably percentage-wise as the applications get older. If, as suggested in the previous annual report, a request for the granting procedure will only be filed for two-thirds of the filed applications and consequently one-third of these will lapse in the course of seven years after filing, and moreover granting will be requested for also two-thirds of the completed reports on the novelty search, the production of the examiners, or as the case may be the extent of calling on the I. I. B., will nevertheless still have to be increased, if the pace, at which the number of applications filed in the Netherlands are being received, keeps increasing to the same extent as was the case during recent years. If then the recruitment of higher technical staff should still prove to be difficult, the Patent Office will again be confronted with growing arrears, as is the case with most of the examining patent offices in and beyond Europe.

International Cooperation

The ever increasing work burden of the Patent Office does not, however only originate from the continually increasing

number of patent applications, but also from the ever increasing extent of documentary material, as again from the subject matter of the applications which is becoming steadily more difficult in an increasing number of sectors, which all leads to an increase in the time needed for studying both the applications and the relevant documentary material. As this is a question of international importance, more and more meetings are taking place between examining countries on this subject. In particular the ICIREPAT (Committee for International Cooperation in Information Retrieval among Examining Patent Offices), which is an international committee established in 1961, performs diligent and dedicated work with the aim of finding possibilities for mechanization of the search. Although the conviction does generally prevail that such mechanization falls within realizable possibilities, it imposes the condition of an international cooperation as intensive as possible; in any case a great number of years will still be necessary before mechanization of the search will have attained reality over a wide technical front.

The difficulties, outlined above, i. e.:

1. the ever increasing number of applications that are becoming steadily more difficult,
2. the ever increasing documentary material, which is also becoming more and more difficult, and
3. the lack of technical staff interested in the patent granting procedure,

which at the present time are being experienced in practically every country which is striving towards a well-considered procedure for the granting of patents, compel one to search for an effective solution. Should this solution not be found then patent protection, which is based on a thorough study of the applications, will be seriously endangered. In that case one would have the choice between patent granting without examination, and total abolition of patent protection. Both solutions are of a completely negative nature and can therefore only be considered as extreme remedies. In many countries to be sure, such as the United States of America and Germany (by the so-called "*Freiburger Schule*"), serious opposition is being raised against the protection by patents. It would seem however, that this battle is not so much directed against patent protection as such, but is based on the shortcomings inherent to present day patent protection. One irrevocably falls into a form of protection, which creates a great measure of legal uncertainty and which differs only in a matter of degrees from protection without novelty search, if, without overcoming the above-mentioned difficulties, one nevertheless wishes to maintain patent protection, though with a then necessarily curtailed granting procedure.

It should be admitted that patent granting with a very thorough examination also cannot be perfect, but with a thorough examination as we know in the Netherlands, the shortcomings do not nevertheless allow one to say that the granted patents give rise to unfounded intimidation. By this is meant, the act of threatening with infringement suits based on patents, when, if one is well documented, one knows or should know that these patents should either not have been granted, or should at least have been granted in a more limit-

ed form. One refers, also in countries, in which examination of patents does not take place, to the relatively few infringement suits that occur, but this seems mainly to be a sophism, as an infringement suit, especially for a defendant in weak financial circumstances, is expensive to such a degree and creates an uncertain situation for such a long period of time, that this defendant will usually prefer either to stop production or to pay a licence to the patentee. On the other hand, a patentee in weak financial circumstances does not usually dispose of sufficient means to effectively combat the unfounded pleas of a financially strong party. Under such circumstances there necessarily arises a lack of balance between the financially strong party and the financially weaker party in matters of patent violation. Even if one leaves the social injustice of this question out of consideration, such a situation may hold a serious menace to the development of smaller industries, which must expand to a position of being able to compete with large industries. Should the uncertainty of patent protection hamper the development of small industries, this would eventually have unfavourable repercussions on the economic development of the country. This represents in no way a failure to appreciate the fact that nowadays very extensive research requires a very large capital investment, which is of fundamental importance for industrial development, and that patent protection stimulates its promotion. Nevertheless this should not lead to the above-mentioned abuses. For the time being the well-considered granting of patents, based on a thorough examination, seems to be the best means to promote research on the one hand and prevent abuse of patents on the other hand. As such patent granting is of the greatest importance to all industrial countries, international concern forces one so to speak into cooperation in this field. Although much initiative has already been shown in this matter, in certain countries abroad sufficient striving towards concentration of the examination and mechanization of the novelty search is still not forthcoming. In this matter the Netherlands took a very important initiative shortly after the war by stimulating the founding of the I. I. B., but it is to be regretted that other countries have not availed themselves of the services of this Institute in the twenty years of its existence to a sufficient degree for it to have developed into an international body for novelty search, that might have completed the national novelty search now done in many countries. Nevertheless, Great Britain's adherence was a very important event, which, it is to be hoped, will induce this country also to avail itself to a large extent of the services of the Institute.

Russia's adherence to the Paris Union was by far the most important event in the international field of industrial property. As a consequence this has reinforced the international position of this treaty and of its executive body, the United International Bureaux for the Protection of Intellectual Property (BIRPI) at Geneva, which, because also of the adherence of a great number of developing countries, has acquired an almost universal character. BIRPI has prepared a complete revision of its statutes, which will be the subject of a conference to be held in Stockholm in 1967.

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NEWS ITEMS

Appointments of New Directors of Industrial Property Offices

Belgium

We have been informed that Mr. A. Schurmans has been appointed Director of the Belgian Industrial Property Office.

Chile

A new Department of Industrial Property has been established in Chile. Mr. Santiago Larraguibel Zavala has been appointed Director.

Peru

In succession to Mr. Tomas Manrique, who has retired for reasons of ill health, Dr. Oscar Holguin Nuñez del Prado has been appointed Director of the Peruvian Industrial Property Office.

We take this opportunity of congratulating Messrs. Schurmans and Larraguibel Zavala and Dr. Holguin Nuñez del Prado on their new appointments.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
September 26 to 29, 1966 Geneva	Interunion Coordination Committee	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, Union of Soviet Socialist Republics, 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 26 to 29, 1966 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (2nd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Morocco, Netherlands, Nigeria, Portugal, Spain, Sweden, Switzerland, Union of Soviet Socialist Republics, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Member States of the Paris Union; United Nations
September 29 and 30, 1966 Geneva	Council established by the Agreement of Lisbon for the Protection of Appellations of Origin and their International Registration	Preparatory work in relation to the entry into force of the Agreement	All Member States of the Agreement of Lisbon	
October 30 to November 4, 1966 Budapest	East/West Industrial Property Symposium	Discussion of practical questions of industrial property		Open. Registration required
November 7 to 11, 1966 Geneva	Committee of Experts on a model law for developing countries on marks, trade names, indications of source, and unfair competition	To draft a Model Law on Trademarks for developing countries	<i>Africa:</i> Algeria, Burundi, Congo (Leopoldville), Ethiopia, Gambia, Ghana, Guinea, Kenya, Liberia, Libya, Malawi, Mali, Morocco, Nigeria, Rwanda, Sierra Leone, Somalia, Sudan, Tanzania, Togo, Tunisia, United Arab Republic, Uganda, Zambia <i>America:</i> Argentina, Bolivia, Brazil, Chile, Colombia, Costa Rica, Cuba, Dominican Republic, Ecuador, El Salvador, Guatemala, Guiana, Haiti, Honduras, Jamaica, Mexico, Nicaragua, Panama, Paraguay, Peru, Trinidad and Tobago, Uruguay, Venezuela <i>Asia:</i> Afghanistan, Burma, Cambodia, Ceylon, China (Taiwan), India, Indonesia, Iraq, Iran, Jordan, Korea, Kuwait, Laos, Lebanon, Malaysia, Maldives Islands, Mongolia, Nepal, Pakistan, Philippines, Saudi Arabia, Singapore, Syrian Arab Republic, Thailand, Viet Nam, Yemeu <i>Others:</i> Cyprus, Malta, Western Samoa	United Nations; Council of Europe; European Economic Community; Latin American Free Trade Association; African and Malagasy Industrial Property Office; International Association for the Protection of Industrial Property; International Chamber of Commerce; Inter-American Association of Industrial Property; International Federation of Patent Agents
December 13 to 16, 1966 Geneva	<i>Ad hoc</i> Conference of the Directors of National Industrial Property Offices and Committee of Directors of the Madrid Union	Adoption of the Transitional Regulations of the Madrid Agreement (Trademarks)	All Member States of the Madrid Agreement (Trademarks)	All other Member States of the Paris Union

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1967				
June 12 to July 14, 1967 Stockholm	Intellectual Property Conference of Stockholm, 1967	(a) General Revision of the Berne Convention (Copyright) (b) Revision of the Paris Convention (Industrial Property) on the question of inventors' certificates (c) Revision of the administrative and final clauses of the Berne and Paris Conventions and of the Special Agreements concluded under the latter (d) Establishment of a new Organization	For (a), (b) and (c): Member States of the various Unions For (d): States Members of the United Nations or any of the UN Specialized Agencies	States: States not members of the Unions [for (a), (b) and (c)] Intergovernmental Organizations: United Nations; International Labour Organization; World Health Organization; United Nations Educational, Scientific and Cultural Organization; General Agreement of Tariffs and Trade; International Institute for the Unification of Private Law; International Olive Oil Council; International Patent Institute; International Vine and Wine Office; African and Malagasy Industrial Property Office; Council of Europe; Latin-American Free Trade Association; Organization of American States Interested Non-Governmental Organizations

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
The Hague	October 10 to 21, 1966	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	6 th Annual Meeting
Hollywood	October 11 to 17, 1966	International Writers Guild (IWG)	1 st Congress
Paris	October 27 and 28, 1966	International Chamber of Commerce (ICC)	Commission on the International Protection of Industrial Property
Brussels	November 17 to 19, 1966	International Literary and Artistic Association (ALAI)	Executive Committee

VACANCY FOR A POST IN BIRPI

Applications are invited for the post of Head of the Industrial Property Division in BIRPI which will become vacant in the autumn of 1966.

The person appointed will have responsibility for the implementation of BIRPI's program concerning Industrial Property (other than Registration Services), in particular the Paris Union, including:

- (a) acting as editor of *Industrial Property* and *La Propriété industrielle*;
- (b) drafting of working papers and reports of international meetings;
- (c) writing of legal studies;
- (d) representation of BIRPI at meetings of other international organizations;
- (e) responsibility for compiling a collection of translations of industrial property laws.

Candidates should have a university degree in law or equivalent professional qualification and wide experience in the field of industrial property law, preferably with some experience in its international aspects. An excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other are necessary.

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Preference will be given to candidates who are nationals of States of which no national is on the staff of BIRPI. An age limit of 55 will apply.

Application forms and full particulars regarding the conditions of employment may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, Geneva, Switzerland. Application forms duly completed should reach BIRPI not later than October 17, 1966.

