

Industrial Property

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INTERNATIONAL UNIONS

BIRPI Plan

for Facilitating the Filing and Examination of Applications
for the Protection of the Same Invention
in a Number of Countries

(Plan for a Patent Cooperation Treaty [PCT])¹⁾

1. Pursuant to a recommendation of the Executive Committee of the International (Paris) Union for the Protection of Industrial Property, BIRPI is currently engaged in studying means designed to simplify the patenting of any given invention in a number of countries. By patenting is meant also the obtainment of inventors' certificates in countries in which this form of protection of inventions is also available.

* * *

2. Under present circumstances, not only is patenting in each country a wholly independent affair but the national laws of most countries take virtually no account of the fact that the same invention might seek protection also in other countries.

3. This fact results in much duplication of effort and a considerable waste of talent, time, and money, both for the applicant and the national Patent Offices, because:

— *the applicant* must draft his application and prepare the drawings accompanying it according to prescriptions differing as to form, most of these differences not resulting from different needs but merely from a lack of coordination;

— *each national Patent Office* considers the form and contents of the application alone, in almost complete isolation; in other words, the Offices of all countries repeat more or less the same work.

4. It is in the reduction of the repetition of essentially the same efforts by the applicant and the national Patent Offices that BIRPI is looking for possible solutions.

* * *

5. As to the phase of application, it is contemplated that, within the circle of the participating countries, any applicant would be allowed to file — normally through his own national Patent Office — an *international application* with BIRPI, the effect of such application extending to the countries designated by the applicant. The fact that a single application suffices would mean that the form of the application could no longer vary from country to country, except that translation into the national language of each designated country would later have to be filed as well.

6. The international application would have to be accompanied or followed shortly afterwards by a so-called *search*

report. A search report would be a report on the state of the art which seems most likely to affect the novelty and non-obviousness of the invention the patenting of which is applied for. Such reports would be established by a national Patent Office or the International Patent Institute, using strictly the same documentation and strictly the same methods for searching. Both would be prescribed in detail, and constant working relations would strive to ensure the maximum possible degree of uniformity.

7. The applicant could then go a step further — he probably would only do so if the search report was favorable — and ask for what is tentatively called a *certificate of patentability*. This would be a paper delivered under the name and authority of BIRPI but actually established by one of the national Patent Offices or by the International Patent Institute. The criteria of patentability would be strictly defined. Absolute novelty on a world-wide basis, inventive step or non-obviousness, industrial applicability or usefulness, would be the main requirements. Machinery would be set up to secure the maximum uniformity in the application of these criteria. A review panel organized by BIRPI could consider to what extent refusals of certificates, based on the advice of any cooperating Office, were well founded.

8. All countries members of the Paris Union could, if they so desired, participate in the plan. BIRPI would make special arrangements with the International Patent Institute and certain national Patent Offices able and willing to cooperate in the establishment, according to the internationally prescribed criteria, of search reports and certificates of patentability. Probably not more than half a dozen national Offices and the International Patent Institute would be sufficiently equipped so that they would be available for this purpose.

9. It is to be noted that the BIRPI plan does not provide for the issuance of an international patent. It does not provide for the issuance of any patent. The issuance of patents would, as at the present time, be a matter for each country, solely and sovereignly within the jurisdiction of the national Patent Offices.

10. The plan would merely facilitate the acquisition of national patents in the countries designated by the applicant in his international application, and would facilitate decision by the national Patent Offices whether to grant a patent or not. *Such a decision would be taken separately by each national Office as far as patenting in its own country is concerned.* The decision would be sovereign: a patent could be granted even when the search report looks unfavorable or the certificate of patentability is denied, and the grant of a patent could be refused even when the search report looks favorable and the application is supported by a certificate of patentability. It is, however, to be expected that the national Offices would spend considerably less time on any phase of the granting procedure in the case of inventions to which the proposed international procedure has already been applied.

11. The plan might also provide that if a national Patent Office does not, within a year or so after the communication of the search report or, depending on the country, the certi-

¹⁾ This item is a copy of BIRPI document PCT/INF/1, dated February 28, 1967.

ficate of patentability, at least provisionally deny a grant, protection would, for that country, ensue by default. This would be a feature designed to stimulate action by the national Patent Offices. Provisional denial could be based on lack of conformity with any requirement of the national law. In each national Office communicating denial, the applicant would be given an opportunity to pursue his case and the international application would be merely regarded as if it had been a national application.

12. It is to be noted also that the plan is far less ambitious than the plan for a "European Patent" developed by the six members of the European Economic Community. The BIRPI plan would not only not call for an international patent but it would also contain no prescriptions as to the situations *after* grant, that is, rules on duration, nullity, compulsory and other licenses, and on infringement and its repression. These matters, as well as the granting itself, would remain under the sole jurisdiction of each country.

13. In other words, the BIRPI plan would be compatible with the EEC plan. It would also be compatible with the plan for a Nordic Patent. It would also permit the conclusion of possible other agreements for closer cooperation.

14. BIRPI is at present working on a detailed proposal along the above lines. It is expected that the draft proposal will issue late in the spring. It will first be discussed at a small Committee of Experts to which representatives of governments and international intergovernmental and non-governmental organizations will be invited. This Committee is scheduled to meet in the fall of 1967. If its results are encouraging, further and larger meetings will follow in order to prepare the conclusion of an international treaty.

The Industrial Property Unions in 1966

Corrigendum

In the January 1967 issue of *Industrial Property*, on page 5, right-hand column, under the title *Lisbon Union*, the list of countries should read as follows: "States: Cuba, Czechoslovakia, France, Haiti, Israel, Mexico, Portugal."

LEGISLATION

BELGIUM

Royal Order

Concerning Applications for International Registration or Renewal of International Registration of Trademarks
(Of December 20, 1966)¹⁾

We, BAUDOUIN, King of the Belgians,
To all present and to come, greeting!

Considering the Act of April 1, 1879, concerning trademarks, as amended by Royal Order No. 89 of January 29, 1935;

Considering the Act of February 14, 1962, approving the Agreement of Madrid for the International Registration of Trademarks dated April 14, 1891, as 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 Nice on June 15, 1957;

Considering the Act of December 23, 1946, establishing a Council of State, and in particular Article 2, paragraph 2;

In view of the urgency of the matter;

Upon the proposal of Our Minister of Economic Affairs,
Have decided as follows:

Article 1

Any person owning a mark duly filed in Belgium and satisfying the conditions laid down by the Agreement of Madrid of April 14, 1891, for the International Registration of Trademarks, either as revised at London on June 2, 1934, or as revised at Nice on June 15, 1957, and wishing to ensure protection of the said mark in the other States which are party to the Agreement of Madrid shall submit to the Industrial Property Service an application for international registration or renewal of such registration, on a form conforming to the model annexed to this Order²⁾, as issued by the said Service, accompanied, if appropriate, by the documents, reproductions and block mentioned on the said form.

Article 2

The date of an application satisfying the requirements stated in Article 1 above shall be that of its receipt by the Industrial Property Service. However, if the application is not entirely in accordance with the requirements, the original date of application shall remain valid provided that the applicant makes the necessary correction within one month.

Article 3

Immediately following acceptance by the competent Service, applications for international registration or renewal of registration shall be transmitted to the International Bureau for the Protection of Industrial Property at Geneva.

¹⁾ See *Moniteur belge*, December 28, 1966. — BIRPI translation.

²⁾ Annex omitted.

Article 4

As soon as the Bureau mentioned in Article 3 above informs the Belgian Industrial Property Service of the international registration of a Belgian mark a certificate of registration signed by the said Bureau shall be handed to the applicant.

Article 5

Upon request, the International Bureau shall be informed of annulments, cancellations, renunciations, transfers or any other changes affecting entry of the mark in the national register if such changes also affect international registration. However, the said Bureau shall be automatically informed of any case of total annulment or cancellation of a national mark by judicial order having force of law, as well as of total renunciation of such a mark occurring within five years following the date of international registration.

Article 6

An application for renewal of international registration may not contain any amendment to either the national registration or the international registration to be renewed.

Article 7

The Royal Order of May 23, 1893, governing the formalities to be completed for international registration of trademarks deposited in Belgium, as amended by Royal Order of November 28, 1902, is hereby repealed.

Article 8

This Order is effective as from December 15, 1966.

Article 9

Our Minister of Economic Affairs is responsible for the execution of this Order.

Done at Brussels on December 20, 1966.

GENERAL STUDIES

The Role of Industrial Property in the Economic Development of States *)

Professor P. J. POINTET, Zurich

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
April 10 to 12, 1967 Geneva (Headquarters of ILO)	Intergovernmental Committee (Neighbouring Rights). Meeting convened jointly by BIRPI, ILO and UNESCO (First Session)	Adoption of the rules of procedure; election of officers; various questions	Congo (Brazzaville), Czechoslovakia, Ecuador, Mexico, Sweden, United Kingdom of Great Britain and Northern Ireland	—
April 18 to 21, 1967 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	—
June 12 to July 14, 1967 Stockholm	Intellectual Property Conference of Stockholm, 1967	<p>(a) General Revision of the Berne Convention (Copyright)</p> <p>(b) Revision of the Paris Convention (Industrial Property) on the question of inventors' certificates</p> <p>(c) Revision of the administrative and final clauses of the Berne and Paris Conventions and of the Special Agreements concluded under the latter</p> <p>(d) Establishment of a new Organization</p>	<p>For (a), (b) and (c): Member States of the various Unions</p> <p>For (d): States Members of the United Nations or any of the UN Specialized Agencies</p>	<p>States: States not members of the Unions [for (a), (b) and (c)]</p> <p><i>Intergovernmental Organizations:</i> United Nations; International Labour Organization; World Health Organization; United Nations Educational, Scientific and Cultural Organization; General Agreement of Tariffs and Trade; United Nations Conference on Trade and Development; United Nations Industrial Development Organization; International Institute for the Unification of Private Law; International Patent Institute; International Vine and Wine Office; International Olive Oil Council; Organization of American States; Council of Europe; European Economic Community; European Free Trade Association; Latin American Free Trade Association; African and Malagasy Industrial Property Office</p> <p><i>Interested International Non-Governmental Organizations</i></p>
October 2 to 10, 1967 Geneva	Committee of Experts on a Patent Cooperation Treaty (PCT)	Examination of the proposed BIRPI plan for facilitating the filing and examination of applications for the protection of the same invention in a number of countries	To be announced later	To be announced later
December 12 to 15, 1967 Geneva	Permanent Committee of the Berne Union (13 th Session)	Consideration of various questions concerning copyright	Belgium, Brazil, Denmark, France, Germany (Fed. Rep.), India, Italy, Portugal, Rumania, Spain, Switzerland, United Kingdom of Great Britain and Northern Ireland	All other Member States of the Berne Union; interested international intergovernmental and non-governmental organizations

Date and Place	Title	Object	Invitations to Participate	Observers Invited
December 18 to 19, 1967 Geneva	Interunion Coordination Committee (5 th Session)	Program and Budget of BIRPI	Belgium, Brazil, Ceylon, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Mexico, 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
December 18 to 21, 1967 Geneva	Conference of Representatives of the International Union for the Protection of Industrial Property (2 nd Session)	Program and Budget for the next three-year period	All Member States of the Paris Union	—
December 18 to 21, 1967 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (3 rd Session)	Program and Budget (Paris Union)	Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, 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
December 18 to 21, 1967 Geneva	Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (2 nd Session)	Annual Meeting	All Member States of the Lisbon Union	All other Member States of the Paris Union

Meetings of Other International Organizations concerned with Intellectual Property

Place	Date	Organization	Title
Montreal	May 13 to 20, 1967	International Chamber of Commerce (ICC)	21 st Congress
Guatemala	May 25 to 28, 1967	Inter-American Association of Industrial Property (ASIPI)	Executive Committee
Helsinki	August 28 to September 1, 1967	International Association for the Protection of Industrial Property (IAPIP)	Executive Committee
Stockholm	September 18 to 29, 1967	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	7 th Annual Meeting