

Industrial Property

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

6th Year

No. 11

November 1967

Contents

	Pages
INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967	
Additional Act of Stockholm, of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods	290
Madrid Agreement Concerning the International Registration of Marks: Stockholm Act, signed on July 14, 1967	291
Complementary Act of Stockholm, of July 14, 1967, to the Hague Agreement Concerning the International Deposit of Industrial Designs	298
INTERNATIONAL UNIONS	
Committee of Experts on the BIRPI Plan for Facilitating the Filing and Examination of Applications for the Protection of the Same Invention in a Number of Countries (BIRPI Plan for a Patent Cooperation Treaty (PCT)) (Geneva, October 2 to 10, 1967). Note	301
LEGISLATION	
Federal Republic of Germany. Law for the Amendment of the Patent Law, Trade-mark Law and Other Laws (of September 4, 1967)	305
NEW PLANT VARIETIES	
International Convention for the Protection of New Varieties of Plants. Ratification. Netherlands	313
CORRESPONDENCE	
Letter from France (P. Mathély), <i>Second Part</i>	313
Letter from Scandinavia (Berndt Godenhielm)	317
GENERAL STUDIES	
Invention and Nonobviousness in United States Patent Law (Jeanne Boucourechliev), <i>Second Part</i>	322
CONGRESSES AND MEETINGS	
International Federation of Patent Agents (FICPI). Cannes Congress (September 26 to 29, 1967)	330
NEWS ITEMS	
Malta. Appointment of New Director of Industrial Property Office	331
Federal Republic of Germany. Inauguration of the New Headquarters of the Max-Planck Institute for Foreign and International Law of Patents, Copyright and Competition, Munich	331
CALENDAR	
BIRPI Meetings	331
Meetings of Other International Organizations Concerned with Intellectual Property	332

INTELLECTUAL PROPERTY CONFERENCE OF STOCKHOLM, 1967

Additional Act of Stockholm, of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

of April 14, 1891,

as revised

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 *)

Article 1

[Transfer of Depositary Functions in Respect of the Madrid Agreement]

Instruments of accession to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods, of April 14, 1891 (hereinafter designated as "the Madrid Agreement"), as revised 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 (hereinafter designated as "the Lisbon Act"), shall be deposited with the Director General of the World Intellectual Property Organization (hereinafter designated as "the Director General"), who shall notify such deposits to the countries party to the Agreement.

Article 2

[Adaptation of References in the Madrid Agreement to Certain Provisions of the Paris Convention]

References in Articles 5 and 6(2) of the Lisbon Act to Articles 16, 16^{bis}, and 17^{bis}, of the General Convention shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which correspond to the said Articles.

Article 3

[Signature and Ratification of, and Accession to, the Additional Act]

(1) This Additional Act may be signed by any country party to the Madrid Agreement and may be ratified or acceded to by any country which has ratified or acceded to the Lisbon Act.

(2) Instruments of ratification or accession shall be deposited with the Director General.

Article 4

[Automatic Acceptance of Articles 1 and 2 by Countries Acceding to the Lisbon Act]

Any country which has not ratified or acceded to the Lisbon Act shall become bound also by Articles 1 and 2 of this Additional Act from the date on which its accession to the Lisbon Act enters into force, provided, however, that, if on the said date this Additional Act has not yet entered into

force pursuant to Article 5(1), then, such country shall become bound by Articles 1 and 2 of this Additional Act only from the date of entry into force of this Additional Act pursuant to Article 5(1).

Article 5

[Entry Into Force of the Additional Act]

(1) This Additional Act shall enter into force on the date on which the Stockholm Convention of July 14, 1967, establishing the World Intellectual Property Organization has entered into force, provided, however, that, if by that date at least two ratifications or accessions to this Additional Act have not been deposited, then, this Additional Act shall enter into force on the date on which two ratifications or accessions to this Additional Act have been deposited.

(2) With respect to any country which deposits its instrument of ratification or accession after the date on which this Additional Act has entered into force pursuant to the foregoing paragraph, this Additional Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General.

Article 6

[Signature, etc., of the Additional Act]

(1) This Additional Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(2) This Additional Act shall remain open for signature at Stockholm until the date of its entry into force pursuant to Article 5(1).

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Additional Act to the Governments of all countries party to the Madrid Agreement and, on request, to the Government of any other country.

(4) The Director General shall register this Additional Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries party to the Madrid Agreement of signatures, deposits of instruments of ratification or accession, entry into force, and other relevant notifications.

Article 7

[Transitional Provision]

Until the first Director General assumes office, references in this Additional Act to him shall be construed as references to the Director of the United International Bureaux for the Protection of Intellectual Property.

*) Translation by BIRPI.

Madrid Agreement Concerning the International Registration of Marks

of 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,
at NICE on June 15, 1957,

and at STOCKHOLM on July 14, 1967¹⁾

Article 1

[Establishment of a Special Union. Filing of Marks at International Bureau. Definition of Country of Origin]²⁾

(1) The countries to which this Agreement applies constitute a Special Union for the international registration of marks.

(2) Nationals of any of the contracting countries may, in all the other countries party to this Agreement, secure protection for their marks applicable to goods or services, registered in the country of origin, by filing the said marks at the International Bureau of Intellectual Property (hereinafter designated as "the International Bureau") referred to in the Convention establishing the World Intellectual Property Organization (hereinafter designated as "the Organization"), through the intermediary of the Office of the said country of origin.

(3) Shall be considered the country of origin the country of the Special Union where the applicant has a real and effective industrial or commercial establishment; if he has no such establishment in a country of the Special Union, the country of the Special Union where he has his domicile; if he has no domicile within the Special Union but is a national of a country of the Special Union, the country of which he is a national.

Article 2

[Reference to Article 3 of Paris Convention (Same Treatment for Certain Categories of Persons as for Nationals of Countries of the Union)]

Nationals of countries not having acceded to this Agreement who, within the territory of the Special Union constituted by the said Agreement, satisfy the conditions specified in Article 3 of the Paris Convention for the Protection of Industrial Property shall be treated in the same manner as nationals of the contracting countries.

Article 3

[Contents of Application for International Registration]

(1) Every application for international registration must be presented on the form prescribed by the Regulations; the Office of the country of origin of the mark shall certify that the particulars appearing in such application correspond to the particulars in the national register, and shall mention the dates and numbers of the filing and registration of the mark in the country of origin and also the date of the application for international registration.

(2) The applicant must indicate the goods or services in respect of which protection of the mark is claimed and also,

if possible, the corresponding class or classes according to the classification established by the Nice Agreement concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks. If the applicant does not give such indication, the International Bureau shall classify the goods or services in the appropriate classes of the said classification. The indication of classes given by the applicant shall be subject to control by the International Bureau, which shall exercise the said control in association with the national Office. In the event of disagreement between the national Office and the International Bureau, the opinion of the latter shall prevail.

(3) If the applicant claims color as a distinctive feature of his mark, he shall be required:

1. to state the fact, and to file with his application a notice specifying the color or the combination of colors claimed;
2. to append to his application copies in color of the said mark, which shall be attached to the notification given by the International Bureau. The number of such copies shall be fixed by the Regulations.

(4) The International Bureau shall register immediately the marks filed in accordance with Article 1. The registration shall bear the date of the application for international registration in the country of origin, provided that the application has been received by the International Bureau within a period of two months from that date. If the application has not been received within that period, the International Bureau shall record it as at the date on which it received the said application. The International Bureau shall notify such registration without delay to the Offices concerned. Registered marks shall be published in a periodical journal issued by the International Bureau, on the basis of the particulars contained in the application for registration. In the case of marks comprising a figurative element or a special form of writing, the Regulations shall determine whether a printing block must be supplied by the applicant.

(5) With a view to the publicity to be given in the contracting countries to registered marks, each Office shall receive from the International Bureau a number of copies of the said publication free of charge and a number of copies at a reduced price, in proportion to the number of units mentioned in Article 16(4)(a) of the Paris Convention for the Protection of Industrial Property, under the conditions fixed by the Regulations. Such publicity shall be deemed in all the contracting countries to be sufficient, and no other publicity may be required of the applicant.

Article 3^{bis}

[“Territorial Limitation”]

(1) Any contracting country may, at any time, notify the Director General of the Organization (hereinafter designated as “the Director General”) in writing that the protection resulting from the international registration shall extend to that country only at the express request of the proprietor of the mark.

(2) Such notification shall not take effect until six months after the date of the communication thereof by the Director General to the other contracting countries.

¹⁾ This is a provisional English translation prepared by BIRPI.

²⁾ Articles have been given titles to facilitate their identification. There are no titles in the signed, French text.

Article 3^{ter}

[Request for "Territorial Extension"]

(1) Any request for extension of the protection resulting from the international registration to a country which has availed itself of the right provided for in Article 3^{bis} must be specially mentioned in the application referred to in Article 3(1).

(2) Any request for territorial extension made subsequently to the international registration must be presented through the intermediary of the Office of the country of origin on a form prescribed by the Regulations. It shall be immediately registered by the International Bureau, which shall notify it without delay to the Office or Offices concerned. It shall be published in the periodical journal issued by the International Bureau. Such territorial extension shall be effective from the date on which it has been recorded in the International Register; it shall cease to be valid on the expiration of the international registration of the mark to which it relates.

Article 4

[Effects of International Registration]

(1) From the date of the registration so effected at the International Bureau in accordance with the provisions of Articles 3 and 3^{ter}, the protection of the mark in each of the contracting countries concerned shall be the same as if the mark had been filed therein direct. The indication of classes of goods or services provided for in Article 3 shall not bind the contracting countries with regard to the determination of the scope of the protection of the mark.

(2) Every mark which has been the subject of an international registration shall enjoy the right of priority provided for by Article 4 of the Paris Convention for the Protection of Industrial Property, without requiring compliance with the formalities prescribed in Section D of that Article.

Article 4^{bis}

[Substitution of International Registration for Earlier National Registrations]

(1) When a mark already filed in one or more of the contracting countries is later registered by the International Bureau in the name of the same proprietor or his successor in title, the international registration shall be deemed to have replaced the earlier national registrations, without prejudice to any rights acquired by reason of such earlier registrations.

(2) The national Office shall, upon request, be required to take note in its registers of the international registration.

Article 5

[Refusal by National Offices]

(1) In countries where the legislation so authorizes, Offices notified by the International Bureau of the registration of a mark or of a request for extension of protection made in accordance with Article 3^{ter} shall have the right to declare that protection cannot be granted to such mark in their territory. Any such refusal can be based only on the grounds which would apply, under the Paris Convention for the Protection of Industrial Property, in the case of a mark filed for national

registration. However, protection may not be refused, even partially, by reason only that national legislation would not permit registration except in a limited number of classes or for a limited number of goods or services.

(2) Offices wishing to exercise such right must give notice of their refusal to the International Bureau, together with a statement of all grounds, within the period prescribed by their domestic law and, at the latest, before the expiration of one year from the date of the international registration of the mark or of the request for extension of protection made in accordance with Article 3^{ter}.

(3) The International Bureau shall, without delay, transmit to the Office of the country of origin and to the proprietor of the mark, or to his agent if an agent has been mentioned to the Bureau by the said Office, one of the copies of the declaration of refusal so notified. The interested party shall have the same remedies as if the mark had been filed by him direct in the country where protection is refused.

(4) The grounds for refusing a mark shall be communicated by the International Bureau to any interested party who may so request.

(5) Offices which, within the aforesaid maximum period of one year, have not communicated to the International Bureau any provisional or final decision of refusal with regard to the registration of a mark or a request for extension of protection shall lose the benefit of the right provided for in paragraph (1) of this Article with respect to the mark in question.

(6) Invalidation of an international mark may not be pronounced by the competent authorities without the proprietor of the mark having, in good time, been afforded the opportunity of defending his rights. Invalidation shall be notified to the International Bureau.

Article 5^{bis}

[Documentary Evidence of Legitimacy of Use of Certain Elements of Mark]

Documentary evidence of the legitimacy of the use of certain elements incorporated in a mark, such as armorial bearings, escutcheons, portraits, honorary distinctions, titles, trade names, names of persons other than the name of the applicant, or other like inscriptions, which might be required by the Offices of the contracting countries shall be exempt from any legalization or certification other than that of the Office of the country of origin.

Article 5^{ter}

[Copies of Entries in International Register. Searches for Anticipation. Extracts from International Register]

(1) The International Bureau shall issue to any person applying therefor, subject to a fee fixed by the Regulations, a copy of the entries in the Register relating to a specific mark.

(2) The International Bureau may also, upon payment, undertake searches for anticipation among international marks.

(3) Extracts from the International Register requested with a view to their production in one of the contracting countries shall be exempt from all legalization.

Article 6

[Period of Validity of International Registration. Independence of International Registration. Termination of Protection in Country of Origin]

(1) Registration of a mark at the International Bureau is effected for twenty years, with the possibility of renewal under the conditions specified in Article 7.

(2) Upon expiration of a period of five years from the date of the international registration, such registration shall become independent of the national mark registered earlier in the country of origin, subject to the following provisions.

(3) The protection resulting from the international registration, whether or not it has been the subject of a transfer, may no longer be invoked, in whole or in part, if, within five years from the date of the international registration, the national mark, registered earlier in the country of origin in accordance with Article 1, no longer enjoys, in whole or in part, legal protection in that country. This provision shall also apply when legal protection has later ceased as the result of an action begun before the expiration of the period of five years.

(4) In the case of voluntary or ex officio cancellation, the Office of the country of origin shall request the cancellation of the mark at the International Bureau, and the latter shall effect the cancellation. In the case of judicial action, the said Office shall send to the International Bureau, ex officio or at the request of the plaintiff, a copy of the complaint or any other documentary evidence that an action has begun, and also of the final decision of the court; the Bureau shall enter notice thereof in the International Register.

Article 7

[Renewal of International Registration]

(1) Any registration may be renewed for a period of twenty years from the expiration of the preceding period, by payment only of the basic fee and, where necessary, of the supplementary and complementary fees provided for in Article 8(2).

(2) Renewal may not include any change in relation to the previous registration in its latest form.

(3) The first renewal effected under the provisions of the Nice Act of June 15, 1957, or of this Act, shall include an indication of the classes of the International Classification to which the registration relates.

(4) Six months before the expiration of the term of protection, the International Bureau shall, by sending an unofficial notice, remind the proprietor of the mark and his agent of the exact date of expiration.

(5) Subject to the payment of a surcharge fixed by the Regulations, a period of grace of six months shall be granted for renewal of the international registration.

Article 8

[National Fee. International Fee. Division of Excess Receipts, Supplementary Fees, and Complementary Fees]

(1) The Office of the country of origin may fix, at its own discretion, and collect, for its own benefit, a national fee which it may require from the proprietor of the mark in re-

spect of which international registration or renewal is applied for.

(2) Registration of a mark at the International Bureau shall be subject to the advance payment of an international fee which shall include:

- (a) a basic fee;
- (b) a supplementary fee for each class of the International Classification, beyond three, into which the goods or services to which the mark is applied will fall;
- (c) a complementary fee for any request for extension of protection under Article 3^{ter}.

(3) However, the supplementary fee specified in paragraph (2)(b) may, without prejudice to the date of registration, be paid within a period fixed by the Regulations if the number of classes of goods or services has been fixed or disputed by the International Bureau. If, upon expiration of the said period, the supplementary fee has not been paid or the list of goods or services has not been reduced to the required extent by the applicant, the application for international registration shall be deemed to have been abandoned.

(4) The annual returns from the various receipts from international registration, with the exception of those provided for under (b) and (c) of paragraph (2), shall be divided equally among the countries party to this Act by the International Bureau, after deduction of the expenses and charges necessitated by the implementation of the said Act. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effective, to a share of the excess receipts calculated on the basis of that earlier Act which is applicable to it.

(5) The amounts derived from the supplementary fees provided for in paragraph (2)(b) shall be divided at the expiration of each year among the countries party to this Act or to the Nice Act of June 15, 1957, in proportion to the number of marks for which protection has been applied for in each of them during that year, this number being multiplied, in the case of countries which make a preliminary examination, by a coefficient which shall be determined by the Regulations. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effective, to a share of the amounts calculated on the basis of the Nice Act.

(6) The amounts derived from the complementary fees provided for in paragraph (2)(c) shall be divided according to the requirements of paragraph (5) among the countries availing themselves of the right provided for in Article 3^{bis}. If, at the time this Act enters into force, a country has not yet ratified or acceded to the said Act, it shall be entitled, until the date on which its ratification or accession becomes effective, to a share of the amounts calculated on the basis of the Nice Act.

Article 8^{bis}

[Renunciation in Respect of One or More Countries]

The person in whose name the international registration stands may at any time renounce protection in one or more

of the contracting countries by means of a declaration filed with the Office of his own country, for communication to the International Bureau, which shall notify accordingly the countries in respect of which renunciation has been made. Renunciation shall not be subject to any fee.

Article 9

[Changes in National Registers also Affecting International Registration. Reduction of List of Goods and Services Mentioned in International Registration. Additions to that List. Substitutions in that List]

(1) The Office of the country of the person in whose name the international registration stands shall likewise notify the International Bureau of all annulments, cancellations, renunciations, transfers, and other changes made in the entry of the mark in the national register, if such changes also affect the international registration.

(2) The Bureau shall record those changes in the International Register, shall notify them in turn to the Offices of the contracting countries, and shall publish them in its journal.

(3) A similar procedure shall be followed when the person in whose name the international registration stands requests a reduction of the list of goods or services to which the registration applies.

(4) Such transactions may be subject to a fee, which shall be fixed by the Regulations.

(5) The subsequent addition of new goods or services to the said list can be obtained only by filing a new application as prescribed in Article 3.

(6) The substitution of one of the goods or services for another shall be treated as an addition.

Article 9^{bis}

[Transfer of International Mark Entailing Change in Country of Proprietor]

(1) When a mark registered in the International Register is transferred to a person established in a contracting country other than the country of the person in whose name the international registration stands, the transfer shall be notified to the International Bureau by the Office of the latter country. The International Bureau shall record the transfer, shall notify the other Offices thereof, and shall publish it in its journal. If the transfer has been effected before the expiration of a period of five years from the international registration, the International Bureau shall seek the consent of the Office of the country of the new proprietor, and shall publish, if possible, the date and registration number of the mark in the country of the new proprietor.

(2) No transfer of a mark registered in the International Register for the benefit of a person who is not entitled to file an international mark shall be recorded.

(3) When it has not been possible to record a transfer in the International Register, either because the country of the new proprietor has refused its consent or because the said transfer has been made for the benefit of a person who is not entitled to apply for international registration, the Office of the country of the former proprietor shall have the right to

demand that the International Bureau cancel the mark in its Register.

Article 9^{ter}

[Assignment of International Mark for Part Only of Registered Goods or Services or for Certain Contracting Countries. Reference to Article 6^{quater} of Paris Convention (Assignment of Mark)]

(1) If the assignment of an international mark for part only of the registered goods or services is notified to the International Bureau, the Bureau shall record it in its Register. Each of the contracting countries shall have the right to refuse to recognize the validity of such assignment if the goods or services included in the part so assigned are similar to those in respect of which the mark remains registered for the benefit of the assignor.

(2) The International Bureau shall likewise record the assignment of an international mark in respect of one or several of the contracting countries only.

(3) If, in the above cases, a change occurs in the country of the proprietor, the Office of the country to which the new proprietor belongs shall, if the international mark has been transferred before the expiration of a period of five years from the international registration, give its consent as required by Article 9^{bis}.

(4) The provisions of the foregoing paragraphs shall apply subject to Article 6^{quater} of the Paris Convention for the Protection of Industrial Property.

Article 9^{quater}

[Common Office for Several Contracting Countries. Request by Several Contracting Countries to be Treated as a Single Country]

(1) If several countries of the Special Union agree to effect the unification of their domestic legislations on marks, they may notify the Director General:

- (a) that a common Office shall be substituted for the national Office of each of them, and
- (b) that the whole of their respective territories shall be deemed to be a single country for the purposes of the application of all or part of the provisions preceding this Article.

(2) Such notification shall not take effect until six months after the date of the communication thereof by the Director General to the other contracting countries.

Article 10

[Assembly of the Special Union]

(1) (a) The Special Union shall have an Assembly consisting of those countries which have ratified or acceded to this Act.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it, except for the travel expenses and the subsistence allowance of one delegate for each member country, which shall be paid from the funds of the Special Union.

- (2) (a) The Assembly shall:
- (i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;
 - (ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Act;
 - (iii) modify the Regulations, including the fixation of the amounts of the fees referred to in Article 8(2) and other fees relating to international registration;
 - (iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;
 - (v) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;
 - (vi) adopt the financial regulations of the Special Union;
 - (vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;
 - (viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
 - (ix) adopt amendments to Articles 10 to 13;
 - (x) take any other appropriate action designed to further the objectives of the Special Union;
 - (xi) perform such other functions as are appropriate under this Agreement.

(2) (b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (a) Each country member of the Assembly shall have one vote.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 13(2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) (a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

(5) The Assembly shall adopt its own rules of procedure.

Article 11

[International Bureau]

(1) (a) International registration and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement other than Articles 10 to 13.

(b) The International Bureau may consult with intergovernmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 12

[Finances]

(1) (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be considered as expenses common to

the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

- (i) international registration fees and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;
- (ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;
- (iii) gifts, bequests, and subventions;
- (iv) rents, interests, and other miscellaneous income.

(4) (a) The amounts of the fees referred to in Article 8(2) and other fees relating to international registration shall be fixed by the Assembly on the proposal of the Director General.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees, other than the supplementary and complementary fees referred to in Article 8(2)(b) and (c), and other sources shall be at least sufficient to cover the expenses of the International Bureau concerning the Special Union.

(c) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) Subject to the provisions of paragraph (4)(a), the amount of fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) (a) The Special Union shall have a working capital fund which shall be constituted by a single payment made by each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(d) As long as the Assembly authorizes the use of the reserve fund of the Special Union as a working capital fund, the Assembly may suspend the application of the provisions of subparagraphs (a), (b), and (c).

(7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 13

[Amendment of Articles 10 to 13]

(1) Proposals for the amendment of Articles 10, 11, 12, and the present Article, may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments to the Articles referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 10, and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment to the Articles referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment to the said Articles thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date.

Article 14

[Ratification and Accession. Entry into Force. Accession to Earlier Acts. Reference to Article 24 of Paris Convention (Territories)]

(1) Any country of the Special Union which has signed this Act may ratify it, and, if it has not signed it, may accede to it.

(2) (a) Any country outside the Special Union which is party to the Paris Convention for the Protection of Industrial Property may accede to this Act and thereby become a member of the Special Union.

(b) As soon as the International Bureau is informed that such a country has acceded to this Act, it shall address to the Office of that country, in accordance with Article 3, a collective notification of the marks which, at that time, enjoy international protection.

(c) Such notification shall, of itself, ensure to the said marks the benefits of the foregoing provisions in the territory of the said country, and shall mark the commencement of the period of one year during which the Office concerned may make the declaration provided for in Article 5.

(d) However, any such country may, in acceding to this Act, declare that, except in the case of international marks which have already been the subject in that country of an

earlier identical national registration still in force, and which shall be immediately recognized upon the request of the interested parties, application of this Act shall be limited to marks registered from the date on which its accession enters into force.

(e) Such declaration shall dispense the International Bureau from making the collective notification referred to above. The International Bureau shall notify only those marks in respect of which it receives, within a period of one year from the accession of the new country, a request, with the necessary particulars, to take advantage of the exception provided for in subparagraph (d).

(f) The International Bureau shall not make the collective notification to such countries as declare, in acceding to this Act, that they are availing themselves of the right provided for in Article 3^{bis}. The said countries may also declare at the same time that the application of this Act shall be limited to marks registered from the day on which their accessions enter into force; however, such limitation shall not affect international marks which have already been the subject of an earlier identical national registration in those countries, and which could give rise to requests for extension of protection made and notified in accordance with Articles 3^{ter} and 8(2)(c).

(g) Registrations of marks which have been the subject of one of the notifications provided for in this paragraph shall be regarded as replacing registrations effected direct in the new contracting country before the date of entry into force of its accession.

(3) Instruments of ratification and accession shall be deposited with the Director General.

(4) (a) With respect to the first five countries which have deposited their instruments of ratification or accession, this Act shall enter into force three months after the deposit of the fifth such instrument.

(b) With respect to any other country, this Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Act shall enter into force with respect to that country on the date thus indicated.

(5) Ratification or accession shall automatically entail acceptance of all the clauses and admission to all the advantages of this Act.

(6) After the entry into force of this Act, a country may accede to the Nice Act of June 15, 1957, only in conjunction with ratification of, or accession to, this Act. Accession to Acts earlier than the Nice Act shall not be permitted, not even in conjunction with ratification of, or accession to, this Act.

(7) The provisions of Article 24 of the Paris Convention for the Protection of Industrial Property shall apply to this Agreement.

Article 15

[Denunciation]

(1) This Agreement shall remain in force without limitation as to time.

(2) Any country may denounce this Act by notification addressed to the Director General. Such denunciation shall constitute also denunciation of all earlier Acts and shall affect only the country making it, the Agreement remaining in full force and effect as regards the other countries of the Special Union.

(3) Denunciation shall take effect one year after the day on which the Director General has received the notification.

(4) The right of denunciation provided for by this Article shall not be exercised by any country before the expiration of five years from the date upon which it becomes a member of the Special Union.

(5) International marks registered up to the date on which denunciation becomes effective, and not refused within the period of one year provided for in Article 5, shall continue, throughout the period of international protection, to enjoy the same protection as if they had been filed direct in the denouncing country.

Article 16

[Application of Earlier Acts]

(1) (a) This Act shall, as regards the relations between the countries of the Special Union by which it has been ratified or acceded to, replace, as from the day on which it enters into force with respect to them, the Madrid Agreement of 1891, in its texts earlier than this Act.

(b) However, any country of the Special Union which has ratified or acceded to this Act shall remain bound by the earlier texts which it has not previously denounced by virtue of Article 12(4) of the Nice Act of June 15, 1957, as regards its relations with countries which have not ratified or acceded to this Act.

(2) Countries outside the Special Union which become party to this Act shall apply it to international registrations effected at the International Bureau through the intermediary of the national Office of any country of the Special Union not party to this Act, provided that such registrations satisfy, with respect to the said countries, the requirements of this Act. With regard to international registrations effected at the International Bureau through the intermediary of the national Offices of the said countries outside the Special Union which become party to this Act, such countries recognize that the aforesaid country of the Special Union may demand compliance with the requirements of the most recent Act to which it is party.

Article 17

[Signature, Languages, Depositary Functions]

(1) (a) This Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) This Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this

Act to the Governments of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession and any declarations included in such instruments, entry into force of any provisions of this Act, notifications of denunciation, and notifications pursuant to Articles 3^{bis}, 9^{quater}, 13, 14(7), and 15(2).

Article 18

[Transitional Provisions]

(1) Until the first Director General assumes office, references in this Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

(2) Countries of the Special Union not having ratified or acceded to this Act may, until five years after the entry into force of the Convention establishing the Organization, exercise, if they so desire, the rights provided for under Articles 10 to 13 of this Act as if they were bound by those Articles. Any country desiring to exercise such rights shall give written notification to that effect to the Director General; such notification shall be effective from the date of its receipt. Such countries shall be deemed to be members of the Assembly until the expiration of the said period.

Complementary Act of Stockholm, of July 14, 1967, to the Hague Agreement Concerning the International Deposit of Industrial Designs

of November 6, 1925,
as revised

at LONDON on June 2, 1934, and at THE HAGUE on November 28, 1960,
and completed by the

Additional Act of MONACO on November 18, 1961¹⁾

Article 1

[Definitions]

For the purposes of this Complementary Act:

“1934 Act” shall mean the Act signed at London on June 2, 1934, of the Hague Agreement concerning the International Deposit of Industrial Designs;

“1960 Act” shall mean the Act signed at The Hague on November 28, 1960, of the Hague Agreement concerning the International Deposit of Industrial Designs;

“1961 Additional Act” shall mean the Act signed at Monaco on November 18, 1961, additional to the 1934 Act;

“Organization” shall mean the World Intellectual Property Organization;

“International Bureau” shall mean the International Bureau of Intellectual Property;

“Director General” shall mean the Director General of the Organization;

“Special Union” shall mean the Hague Union established by the Hague Agreement of November 6, 1925, concerning the International Deposit of Industrial Designs, and maintained by the 1934 and 1960 Acts, by the 1961 Additional Act, and by this Complementary Act.

Article 2

[Assembly]

(1) (a) The Special Union shall have an Assembly consisting of those countries of the Union which have ratified or acceded to this Complementary Act.

(b) The Government of each country shall be represented by one delegate, who may be assisted by alternate delegates, advisors, and experts.

(c) The expenses of each delegation shall be borne by the Government which has appointed it.

(2) (a) The Assembly shall:

- (i) deal with all matters concerning the maintenance and development of the Special Union and the implementation of this Agreement;
- (ii) give directions to the International Bureau concerning the preparation for conferences of revision, due account being taken of any comments made by those countries of the Special Union which have not ratified or acceded to this Complementary Act;
- (iii) modify the Regulations, including the fixation of the amounts of the fees relating to the international deposit of industrial designs;
- (iv) review and approve the reports and activities of the Director General concerning the Special Union, and give him all necessary instructions concerning matters within the competence of the Special Union;
- (v) determine the program and adopt the triennial budget of the Special Union, and approve its final accounts;
- (vi) adopt the financial regulations of the Special Union;
- (vii) establish such committees of experts and working groups as it may deem necessary to achieve the objectives of the Special Union;
- (viii) determine which countries not members of the Special Union and which intergovernmental and international non-governmental organizations shall be admitted to its meetings as observers;
- (ix) adopt amendments to Articles 2 to 5;
- (x) take any other appropriate action designed to further the objectives of the Special Union;
- (xi) perform such other functions as are appropriate under this Complementary Act.

(b) With respect to matters which are of interest also to other Unions administered by the Organization, the Assembly shall make its decisions after having heard the advice of the Coordination Committee of the Organization.

(3) (a) Each country member of the Assembly shall have one vote.

¹⁾ This is a provisional English translation prepared by BIRPI.

(b) One-half of the countries members of the Assembly shall constitute a quorum.

(c) Notwithstanding the provisions of subparagraph (b), if, in any session, the number of countries represented is less than one-half but equal to or more than one-third of the countries members of the Assembly, the Assembly may make decisions but, with the exception of decisions concerning its own procedure, all such decisions shall take effect only if the conditions set forth hereinafter are fulfilled. The International Bureau shall communicate the said decisions to the countries members of the Assembly which were not represented and shall invite them to express in writing their vote or abstention within a period of three months from the date of the communication. If, at the expiration of this period, the number of countries having thus expressed their vote or abstention attains the number of countries which was lacking for attaining the quorum in the session itself, such decisions shall take effect provided that at the same time the required majority still obtains.

(d) Subject to the provisions of Article 5 (2), the decisions of the Assembly shall require two-thirds of the votes cast.

(e) Abstentions shall not be considered as votes.

(f) A delegate may represent, and vote in the name of, one country only.

(g) Countries of the Special Union not members of the Assembly shall be admitted to the meetings of the latter as observers.

(4) (a) The Assembly shall meet once in every third calendar year in ordinary session upon convocation by the Director General and, in the absence of exceptional circumstances, during the same period and at the same place as the General Assembly of the Organization.

(b) The Assembly shall meet in extraordinary session upon convocation by the Director General, at the request of one-fourth of the countries members of the Assembly.

(c) The agenda of each session shall be prepared by the Director General.

(5) The Assembly shall adopt its own rules of procedure.

Article 3

[International Bureau]

(1) (a) International deposit of industrial designs and related duties, as well as all other administrative tasks concerning the Special Union, shall be performed by the International Bureau.

(b) In particular, the International Bureau shall prepare the meetings and provide the secretariat of the Assembly and of such committees of experts and working groups as may have been established by the Assembly.

(c) The Director General shall be the chief executive of the Special Union and shall represent the Special Union.

(2) The Director General and any staff member designated by him shall participate, without the right to vote, in all meetings of the Assembly and of such committees of experts or working groups as may have been established by the Assembly. The Director General, or a staff member designated by him, shall be ex officio secretary of those bodies.

(3) (a) The International Bureau shall, in accordance with the directions of the Assembly, make the preparations for the conferences of revision of the provisions of the Agreement.

(b) The International Bureau may consult with inter-governmental and international non-governmental organizations concerning preparations for conferences of revision.

(c) The Director General and persons designated by him shall take part, without the right to vote, in the discussions at those conferences.

(4) The International Bureau shall carry out any other tasks assigned to it.

Article 4

[Finances]

(1) (a) The Special Union shall have a budget.

(b) The budget of the Special Union shall include the income and expenses proper to the Special Union, its contribution to the budget of expenses common to the Unions, and, where applicable, the sum made available to the budget of the Conference of the Organization.

(c) Expenses not attributable exclusively to the Special Union but also to one or more other Unions administered by the Organization shall be deemed to be expenses common to the Unions. The share of the Special Union in such common expenses shall be in proportion to the interest the Special Union has in them.

(2) The budget of the Special Union shall be established with due regard to the requirements of coordination with the budgets of the other Unions administered by the Organization.

(3) The budget of the Special Union shall be financed from the following sources:

- (i) international deposit fees and other fees and charges due for other services rendered by the International Bureau in relation to the Special Union;
- (ii) sale of, or royalties on, the publications of the International Bureau concerning the Special Union;
- (iii) gifts, bequests, and subventions;
- (iv) rents, interests, and other miscellaneous income.

(4) (a) The amounts of the fees referred to in paragraph (3)(i) shall be fixed by the Assembly on the proposal of the Director General.

(b) The amounts of such fees shall be so fixed that the revenues of the Special Union from fees and other sources shall be at least sufficient to cover the expenses of the International Bureau concerning the Special Union.

(c) If the budget is not adopted before the beginning of a new financial period, it shall be at the same level as the budget of the previous year, as provided in the financial regulations.

(5) Subject to the provisions of paragraph (4)(a), the amount of the fees and charges due for other services rendered by the International Bureau in relation to the Special Union shall be established, and shall be reported to the Assembly, by the Director General.

(6) (a) The Special Union shall have a working capital fund which shall be constituted by the excess receipts and, if such excess does not suffice, by a single payment made by

each country of the Special Union. If the fund becomes insufficient, the Assembly shall decide to increase it.

(b) The amount of the initial payment of each country to the said fund or of its participation in the increase thereof shall be a proportion of the contribution of that country as a member of the Paris Union for the Protection of Industrial Property to the budget of the said Union for the year in which the fund is established or the decision to increase it is made.

(c) The proportion and the terms of payment shall be fixed by the Assembly on the proposal of the Director General and after it has heard the advice of the Coordination Committee of the Organization.

(7) (a) In the headquarters agreement concluded with the country on the territory of which the Organization has its headquarters, it shall be provided that, whenever the working capital fund is insufficient, such country shall grant advances. The amount of those advances and the conditions on which they are granted shall be the subject of separate agreements, in each case, between such country and the Organization.

(b) The country referred to in subparagraph (a) and the Organization shall each have the right to denounce the obligation to grant advances, by written notification. Denunciation shall take effect three years after the end of the year in which it has been notified.

(8) The auditing of the accounts shall be effected by one or more of the countries of the Special Union or by external auditors, as provided in the financial regulations. They shall be designated, with their agreement, by the Assembly.

Article 5

[Amendment of Articles 2 to 5]

(1) Proposals for the amendment of this Complementary Act may be initiated by any country member of the Assembly, or by the Director General. Such proposals shall be communicated by the Director General to the member countries of the Assembly at least six months in advance of their consideration by the Assembly.

(2) Amendments referred to in paragraph (1) shall be adopted by the Assembly. Adoption shall require three-fourths of the votes cast, provided that any amendment to Article 2 and to the present paragraph, shall require four-fifths of the votes cast.

(3) Any amendment referred to in paragraph (1) shall enter into force one month after written notifications of acceptance, effected in accordance with their respective constitutional processes, have been received by the Director General from three-fourths of the countries members of the Assembly at the time it adopted the amendment. Any amendment thus accepted shall bind all the countries which are members of the Assembly at the time the amendment enters into force, or which become members thereof at a subsequent date.

Article 6

[Amendment of the 1934 Act and the 1961 Additional Act]

(1) (a) References in the 1934 Act to “the International Bureau of Industrial Property at Berne,” to “the Berne

International Bureau,” or to “the International Bureau,” shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(b) Article 15 of the 1934 Act is repealed.

(c) Any amendment of the Regulations referred to in Article 20 of the 1934 Act shall be effected in accordance with the procedure prescribed under Article 2(2)(a)(iii) and (3)(d).

(d) In Article 21 of the 1934 Act, for the words “revised in 1928” there shall be substituted the words “for the Protection of Literary and Artistic Works.”

(e) References in Article 22 of the 1934 Act to Articles 16, 16^{bis}, and 17^{bis}, of “the General Convention” shall be construed as references to those provisions of the Stockholm Act of the Paris Convention for the Protection of Industrial Property which, in the said Stockholm Act, correspond to Articles 16, 16^{bis}, and 17^{bis}, of the earlier Acts of the Paris Convention.

(2) (a) Any modification of the fees referred to in Article 3 of the 1961 Additional Act shall be effected in accordance with the procedure prescribed under Article 2(2)(a)(iii) and (3)(d).

(b) Paragraph (1) of Article 4 of the 1961 Additional Act, and the words “When the reserve fund has reached this amount” in paragraph (2), are repealed.

(c) References in Article 6(2) of the 1961 Additional Act to Articles 16 and 16^{bis} of the Paris Convention for the Protection of Industrial Property shall be construed as references to those provisions of the Stockholm Act of the said Convention which, in the Stockholm Act, correspond to Articles 16 and 16^{bis} of the earlier Acts of the Paris Convention.

(d) References in paragraphs (1) and (3) of Article 7 of the 1961 Additional Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

Article 7

[Amendment of the 1960 Act]

(1) References in the 1960 Act to “the Bureau of the International Union for the Protection of Industrial Property” or to “the International Bureau” shall be construed as references to the International Bureau as defined in Article 1 of this Complementary Act.

(2) Articles 19, 20, 21, and 22, of the 1960 Act are repealed.

(3) References in the 1960 Act to the Government of the Swiss Confederation shall be construed as references to the Director General.

(4) In Article 29 of the 1960 Act, the words “periodical” (paragraph (1)) and “of the International Design Committee or” (paragraph (2)) are deleted.

Article 8

[Ratification of, and Accession to, the Complementary Act]

(1)(a) Countries which, before January 13, 1968, have ratified the 1934 Act or the 1960 Act, and countries which have acceded to at least one of those Acts, may sign this Complementary Act and ratify it, or may accede to it.

(b) Ratification of, or accession to, this Complementary Act by a country which is bound by the 1934 Act without being bound also by the 1961 Additional Act shall automatically entail ratification of, or accession to, the 1961 Additional Act.

(2) Instruments of ratification and accession shall be deposited with the Director General.

Article 9

[Entry Into Force of the Complementary Act]

(1) With respect to the first five countries which have deposited their instruments of ratification or accession, this Complementary Act shall enter into force three months after the deposit of the fifth such instrument of ratification or accession.

(2) With respect to any other country, this Complementary Act shall enter into force three months after the date on which its ratification or accession has been notified by the Director General, unless a subsequent date has been indicated in the instrument of ratification or accession. In the latter case, this Complementary Act shall enter into force with respect to that country on the date thus indicated.

Article 10

[Automatic Acceptance of Certain Provisions by Certain Countries]

(1) Subject to the provisions of Article 8 and the following paragraph, any country which has not ratified or acceded to the 1934 Act shall become bound by the 1961 Additional Act and by Articles 1 to 6 of this Complementary Act from the date on which its accession to the 1934 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

(2) Subject to the provisions of Article 8 and the foregoing paragraph, any country which has not ratified or acceded to the 1960 Act shall become bound by Articles 1 to 7 of this Complementary Act from the date on which its ratification of, or accession to, the 1960 Act enters into force, provided that, if on the said date this Complementary Act has not yet entered into force pursuant to Article 9(1), then, such country shall become bound by the said Articles of this Complementary Act only from the date of entry into force of the Complementary Act pursuant to Article 9(1).

Article 11

[Signature, etc., of the Complementary Act]

(1) (a) This Complementary Act shall be signed in a single copy in the French language and shall be deposited with the Government of Sweden.

(b) Official texts shall be established by the Director General, after consultation with the interested Governments, in such other languages as the Assembly may designate.

(2) This Complementary Act shall remain open for signature at Stockholm until January 13, 1968.

(3) The Director General shall transmit two copies, certified by the Government of Sweden, of the signed text of this Complementary Act to the Government of all countries of the Special Union and, on request, to the Government of any other country.

(4) The Director General shall register this Complementary Act with the Secretariat of the United Nations.

(5) The Director General shall notify the Governments of all countries of the Special Union of signatures, deposits of instruments of ratification or accession, entry into force, and all other relevant notifications.

Article 12

[Transitional Provision]

(1) Until the first Director General assumes office, references in this Complementary Act to the International Bureau of the Organization or to the Director General shall be construed as references to the Bureau of the Union established by the Paris Convention for the Protection of Industrial Property or its Director, respectively.

INTERNATIONAL UNIONS

Committee of Experts on the BIRPI Plan for Facilitating the Filing and Examination of Applications for the Protection of the Same Invention in a Number of Countries (BIRPI Plan for a Patent Cooperation Treaty (PCT))

(Geneva, October 2 to 10, 1967)

Note ¹⁾

Introduction

On the invitation of the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), the First Committee of Experts on a Patent Cooperation Treaty ("PCT") met in Geneva from October 2 to 10, 1967, in order to examine BIRPI's plan for facilitating the filing and examination of applications for the protection of the same invention in a number of countries.

Those 23 countries in which, according to the latest available yearly statistics, more than 5,000 applications are filed were invited to attend as members of the Committee. They all accepted the invitation and were represented. They were the following: Argentina, Australia, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Federal Republic), Italy, Japan, Mexico, Netherlands, Norway, Poland, South Africa, Soviet Union, Spain, Sweden,

¹⁾ Note prepared by the Secretariat of BIRPI on the basis of the Report of the Committee.

Switzerland, United Kingdom, United States of America. Two countries — India and Hungary — were represented by observers.

The following seven intergovernmental organizations were represented: United Nations, International Patent Institute, Organization of American States, Council of Europe, European Communities, European Free Trade Association, African and Malagasy Industrial Property Office.

Ten non-governmental organizations, representing inventors, industrialists, patent lawyers, and patent agents, were invited and were represented. They were the following: Committee of National Institutes of Patent Agents, Council of European Industrial Federations, European Industrial Research Management Association, Inter-American Association of Industrial Property, International Association for the Protection of Industrial Property, International Chamber of Commerce, International Federation of Patent Agents, National Association of Manufacturers (USA), Union of European Patent Agents, Union of Industries of the European Economic Community.

Observers had the same opportunities for participating in the discussions as full members of the Committee.

The Director of BIRPI, Professor G. H. C. Bodenhausen, participated in all the discussions.

The Committee unanimously elected as Chairman Mr. J. Voyame, Director of the Swiss Federal Office of Intellectual Property, and, as Vice-Chairmen, Mr. E. I. Artemiev, Deputy Chairman of the Committee for Inventions and Discoveries attached to the Council of Ministers of the Union of Soviet Socialist Republics, and Mr. E. M. Braderman, US Deputy Assistant Secretary of State for Commercial Affairs and Business Activities.

Dr. Arpad Bogsch, Deputy Director, BIRPI, acted as Secretary of the Committee.

The list of participants appears at the end of this Note. The number present was around one hundred.

Discussions of the Committee

Reference is made to the document, entitled "Explanatory Memorandum," which was published in the July 1967 issue of this periodical (page 161). That document described the aim of the proposed agreement (the "PCT") and briefly summarized its main features. The present Note generally does not repeat what has been said in that document but merely tries to outline the main reactions as reflected by the discussions of the Committee. The full text of the report on the meeting (BIRPI document PCT/I/11) may be obtained from BIRPI on request. It exists in English and French.

In general, the experts expressed the view that the PCT draft was highly worth while examining further and, after appropriate changes, completing within the shortest possible time.

The idea of international filing and international search was generally very favorably received.

As to the question whether the possibility of filing international applications should be limited to nationals of countries party to the PCT or open also to nationals of other Paris Union countries, opinions seemed to be fairly divided.

An international search to be carried out by one central institution, of a kind such as the International Patent Institute (IIB), seemed an ideal solution to a number of participants. It was generally recognized, however, that, at least for the foreseeable future, the only workable solution was a decentralized international search system making use of the existing facilities of the IIB and of the best equipped national Offices.

The uniform high quality of the international search reports was recognized as the most important single factor for the success of the PCT. Numerous suggestions were made on the question how to achieve such quality. A thorough exploration of the possibilities of the prospective searching Authorities and a careful study of all the problems connected with the proposed system of international search will be one of the main tasks of the coming months.

Whereas the draft presented to the Committee provided that international filing must always *precede* international search, the additional possibility, suggested by the Committee, of filing *after* the search results are known to the applicant will also be explored. Should the international application differ from the first national application forming the basis of the search, a complementary international search report would probably become necessary.

Examination as to form of the international applications should generally not be effected by the International Bureau but by the national Patent Offices or the searching Authorities.

The need for regulating the formalities of international applications, including the structure of the description and the claims, was generally recognized.

All unnecessary transmittal of documents between national Offices, searching Authorities, and the International Bureau, should be avoided.

The majority of the experts favored the rule of publishing international applications promptly after 18 months from the date of the first application. Some participants suggested that, if an applicant designates a country whose national law provides for publication promptly after 18 months, the deadline for international publication should be the same, whereas it could be extended until the expiration of the 24th month, if no such country is designated.

It was generally agreed that applicants may adjust their claims to the requirements of each national law once the international application reaches the various national Offices.

The procedure concerning certificates of examination (rather than "certificates of patentability") should be streamlined. Some proposed that the procedures for a search report and a certificate of examination should be telescoped and the failure to obtain a certificate kept a secret between the applicant and examining Authority. Others suggested that any elected country should have the right to ask for an international certificate. Some experts wondered whether the whole procedure concerning certificates should not be delayed until the procedure concerning central international filing and search reports had been tested in practice, while others expressed doubts as to the usefulness of the whole PCT Plan if only the international filing and international search procedure were to be put into effect without, at the same time, bringing

into operation also the procedure concerning certificates of examination.

The proposal according to which failure to act, within a year, by a national Office which has received an international application or an international certificate of examination could have the effect of a national patent will not be maintained.

To sum up, the main tendency manifested by the Committee was that the proposed system should be simplified to the maximum extent and should require as little change as possible in the substantive patent laws of the participating countries.

As to the continuation of the preparatory work on the plan, the Director of BIRPI declared that he would report to the competent organs of the Paris Union, and, subject to their approval, he planned to convene working parties and a second Committee of Experts, in the course of the year 1968, to which interested intergovernmental and non-governmental organizations would also be invited as observers.

List of Participants

I. States

Argentina

Mr. L. M. Laurelli, Third Secretary, Permanent Mission of the Republic of Argentina, Geneva.

Australia

Mr. G. Henshilwood, Deputy Commissioner of Patents, Patents, Trade Marks, Designs and Copyright Offices, Canberra.

Austria

Mr. H. G. Thaler, President, Austrian Patent Office, Vienna.
Mr. T. Lorenz, Ratssekretär, Austrian Patent Office, Vienna.

Belgium

Mr. L. Hermans, Counsellor, Head of Service, Ministry for Economic Affairs, Brussels.
Mr. J. D. P. Degavre, Belgian Industrial Property Service, Brussels.

Brazil

Mr. J. C. Ribeiro, Second Secretary, Permanent Delegation of Brazil, Geneva.
Mr. E. Massarani, Embassy Attaché, Permanent Delegation of Brazil, Geneva.

Canada

Mr. F. W. Simons, Assistant Commissioner of Patents, Patent and Copyright Office, Ottawa.

Czechoslovakia

Mr. F. Křístek, Chairman, Office for Patents and Inventions, Prague.
Mr. M. Všecká, Head of Legal and International Department, Office for Patents and Inventions, Prague.
Mr. L. Lacina, Engineer, Office for Patents and Inventions, Prague.

Denmark

Mr. E. Tuxen, Director, Patent and Trademark Office, Copenhagen.
Mrs. D. Simonsen, Head of Department, Patent and Trademark Office, Copenhagen.

France

Mr. F. Savignon, Director, National Institute of Industrial Property, Paris.
Mr. R. Labry, Counsellor of Embassy, Directorate of Economic and Financial Affairs, Ministry for Foreign Affairs, Paris.
Mr. P. Fressonnet, Deputy Director, National Institute of Industrial Property, Paris.

Germany (Federal Republic)

Mr. K. Haertel, President, German Patent Office, Munich.
Mr. H. Mast, Regierungsdirektor, Federal Ministry of Justice, Bonn.
Mr. R. Singer, Regierungsdirektor, German Patent Office, Munich.
Mr. P. Schönfeld, First Secretary, Permanent Delegation of the Federal Republic of Germany, Geneva.

Italy

Mr. G. Trotta, Counsellor at the Court of Appeal, Ministry for Foreign Affairs, Rome.
Mr. M. Angel Pulsinelli, Inspector General, Patent Office, Rome.
Mr. A. Ferrante, Attorney at Law, Milan.
Mr. R. Messerotti Benvenuti, Attorney at Law, Milan.
Mr. G. Caselli, Engineer, Milan.
Mr. T. Ivaldi, Engineer, Turin.

Japan

Mr. M. Sasaki, Director, General Division, Patent Office, Tokyo.
Mr. K. Otani, Chief, Coordination Section, Patent Office, Tokyo.
Mr. T. Sakai, First Secretary, Permanent Delegation of Japan, Geneva.

Mexico

Mr. R. Palencia Salcido, Director-General, Directorate-General of Industrial Property, Secretariat of Industry and Commerce, Mexico.
Mr. C. E. Mainero, Attorney at Law, Mexico.
Mr. H. Cardenas Rodriguez, Third Secretary, Permanent Delegation of Mexico, Geneva.

Netherlands

Mr. W. M. J. C. Phaf, Head, Division of Legislation and Legal Affairs, Ministry for Economic Affairs, The Hague.
Mr. J. B. van Benthem, Vice-President, Netherlands Patent Office, The Hague.
Mr. M. van Dam, Attorney at Law, Eindhoven.

Norway

Mr. L. Nordstrand, Director, Patent Office, Oslo.

Poland

Mr. M. Flisiak, Polish Patent Office, Warsaw.
Mrs. N. Lissowska, Polish Patent Office, Warsaw.

South Africa

Mr. A. A. F. Keeton, Registrar, Patents, Designs, Trademarks, Companies and Copyright Office, Pretoria.

Spain

Mr. A. F. Mazarambroz, Director, Industrial Property Registry, Madrid.

Sweden

Mr. G. R. Borggård, Director-General, Royal Patent and Registration Office, Stockholm.
Mr. S. Lewin, Head of Division, Royal Patent and Registration Office, Stockholm.

Switzerland

Mr. J. Voyame, Director, Federal Office of Intellectual Property, Berne.
Mr. W. Stamm, Head of Administrative Division, Federal Office of Intellectual Property, Berne.
Mr. W. Winter, Director, F. Hoffmann-La Roche & Co. Ltd., Basle.

Union of Soviet Socialist Republics

Mr. E. I. Artemiev, Deputy Chairman, Committee for Inventions and Discoveries attached to the Council of Ministers of the U. S. S. R., Moscow.

United Kingdom

Mr. G. Grant, C. B., Comptroller-General, Patent Office, London.
Mr. E. E. Armitage, Assistant Comptroller, Patent Office, London.

United States of America

- Mr. E. M. Braderman, Deputy Assistant Secretary of State for Commercial Affairs and Business Activities, Department of State, Washington, D. C.
- Mr. E. J. Brenner, Commissioner of Patents, Patent Office, Washington, D. C.
- Mr. E. F. McKie, Jr., Chairman, Patent, Trademark and Copyright Law Section, American Bar Association, Washington, D. C.
- Mr. G. D. O'Brien, Assistant Commissioner of Patents, Patent Office, Washington, D. C.
- Mr. J. Schulman, Counsellor at Law, New York.
- Mr. H. J. Winter, Assistant Chief, Business Practices Division, Department of State, Washington, D. C.

II. Observers**1. States***Hungary*

- Mr. E. Tasnádi, President, National Office for Inventions, Budapest.
- Mr. G. Ürmösi, Head of Service, Ministry for Foreign Trade, Budapest.
- Mr. G. Pálos, Legal Counsellor, National Office for Inventions, Budapest.
- Mr. O. Somorjai, Patent Agent, Budapest.

India

- Mr. R. Vasudeva Pai, Joint Controller of Patents and Designs, Patent Office, Calcutta.

2. Intergovernmental Organizations*United Nations (UN)*

- Mr. K. E. Lachmann, Chief, Fiscal and Financial Branch, Department of Economic and Social Affairs, New York.
- Mr. H. Cornil, Commission Affairs and Trade Development Division, Economic Commission for Europe, Geneva.

International Patent Institute (IIB)

- Mr. G. Finnis, Director-General, The Hague.
- Mr. P. van Waasbergen, Technical Director, The Hague.
- Mr. R. Weher, Head of Division, The Hague.

Organization of American States (OAS)

- Mr. W. E. Schnyler, Jr., Attorney at Law, Technical Advisor of OAS, Washington, D. C.

Council of Europe

- Mr. R. Muller, Head of Service, Department of Legal Affairs, Secretariat General, Strashourg.
- Mr. P. von Holstein, Administrator, Department of Legal Affairs, Secretariat General, Strashourg.

European Free Trade Association (EFTA)

- Mrs. B. Sellden-Beer, Head of the General and Legal Department, Geneva.
- Mr. A. Gaeta, Deputy Head of the General and Legal Department, Geneva.
- Mr. G. Latzel, Assistant, Geneva.

European Communities

- Mr. J. P. Lauwers, Principal Administrator, Directorate for Unification of Laws, Commission of European Communities, Brussels.
- Mr. B. Schwab, Administrator, Directorate for Unification of Laws, Commission of European Communities, Brussels.

African and Malagasy Industrial Property Office (OAMPI)

- Mr. R. Raparson, Head of the Patent Service, Yaoundé.

3. Non-Governmental Organizations*Committee of National Institutes of Patent Agents (CNIPA)*

- Freiherr E. von Pechmann, Patentanwalt, Patentanwaltskammer, Munich.

- Mr. F. S. Muller, Patent Department, NV Nederlandse Staatsmijnen, Orde van Octrooigemachtigden, Geleen.
- Mr. J. Ellis, Patent Agent, Chartered Institute of Patent Agents, London.

Council of European Industrial Federations (CEIF)

- Mr. M. G. E. Meunier, Industrial Property Counsel, Head of Patent Department, Ateliers de Constructions Electriques de Charleroi, Charleroi.
- Mr. J. M. Auhrey, Patent Department, Courtaulds Ltd., Coventry.
- Mr. S. Finne, Director, Federation of Finnish Industries, Helsinki.

European Industrial Research Management Association (EIRMA)

- Mr. F. L. Picard, Directeur Conseil, Usines Renault, Billancourt.
- Mr. A. van der Auweraer, Vice-President of EIRMA, Industrial Patent Counsel, Gevaert Agfa, NV, Mortsel-Antwerp.
- Mr. F. Panel, Rapporteur of the Working Group "Patents" of EIRMA, Director of Industrial Property Service, Compagnie Générale d'Electricité, Paris.
- Mr. H. H. Schuhert, Head of Patent Department, Dynamit-Nobel AG., Troisdorf/Cologne.

Inter-American Association of Industrial Property (ASIPI)

- Mr. E. H. Waters, Hazeltine, Lake & Co., New York.

International Association for the Protection of Industrial Property (IAPIP)

- Mr. S. P. Ladas, Treasurer General of IAPIP, Attorney at Law, Langner, Parry, Card & Langner, New York.
- Mr. E. H. Waters, Hazeltine, Lake & Co., New York.

International Chamber of Commerce (ICC)

- Mr. S. P. Ladas, Honorary President of ICC, Attorney at Law, Langner, Parry, Card & Langner, New York.
- Mr. P. J. Pointet, Professor, Vice-President, Commission for the International Protection of Industrial Property of ICC, Zurich.
- Mr. L. A. Ellwood, Rapporteur, Commission for the International Protection of Industrial Property of ICC, London.

International Federation of Patent Agents (FICPI)

- Mr. R. Jonrdain, President of FICPI, Patent Agent, Paris.
- Mr. P. O. Langhelle, Honorary President and President of the Study and Working Group of FICPI, Patent Agent, Copenhagen.
- Mr. C. Massalski, Vice-President of FICPI, Patent Agent, Paris.

National Association of Manufacturers (NAM), U. S. A.

- Mr. F. O. Hess, Chairman of the Patents Committee of NAM, President, Selas Corporation of America, Dresher, Pennsylvania.
- Mr. R. F. Smith, General Patent Counsel, Eastman Kodak Co., Rochester, N. Y.
- Mr. R. Bennett, Vice-President of NAM, New York.

Union of European Patent Agents

- Mr. C. M. R. Davidson, President of the Union of European Patent Agents, Patent Agent, The Hague.
- Mr. C. Massalski, Rapporteur-General of the Union of European Patent Agents, Patent Agent, Paris.

Union of Industries of the European Economic Community (UNICE)

- Mr. G. Oudemans, President of Patent Group of UNICE, Patent Attorney, Vught, Netherlands.
- Mr. E. Fischer, Rechtsanwalt, Metallgesellschaft AG., Frankfurt a. Main.
- Mr. J. P. Simon, Legal Service, Syndicat Général de la Construction électrique, Paris.
- Mr. K. T. Heimhach, Farnefabriken Bayer, Leverkusen, Germany (Fed. Rep.).

III. United International Bureaux for the Protection of Intellectual Property (BIRPI)

Professor G. H. C. Bodenhausen, Director.
 Dr. Arpad Bogsch, Deputy Director.
 Mr. Klaus Pfanner, Counsellor, Head of the Industrial Property Division.
 Mr. G. R. Wipf, Counsellor, Industrial Property Division.
 Mr. I. Morozov, Industrial Property Division.
 Miss G. Davies, Industrial Property Division.

IV. Officers of the Meeting

Chairman: Mr. J. Voyame (Switzerland).
 Vice-Chairmen: Mr. E. I. Artemiev (Union of Soviet Socialist Republics).
 Mr. E. M. Braderman (United States of America).

LEGISLATION

FEDERAL REPUBLIC OF GERMANY

Law

for the Amendment of the Patent Law, Trademark Law and Other Laws

(Of September 4, 1967)¹⁾

The *Bundestag* has enacted the following law:

Article I

Amendment of the Patent Law

The text of the Patent Law of May 9, 1961 (*Bundesgesetzblatt I*, pp. 549, 550), is amended as follows:

1. Section 1, paragraph (2), shall be worded as follows:
 “(2) Inventions shall be excluded if their utilization would be contrary to laws or public morals, with the exception of laws which merely restrict the sale or marketing of the object of the invention or, if the invention relates to a process, of the article directly produced by that process.”

2. In Section 4, paragraph (1), the parenthesis “(Section 28)” shall be deleted.

3. Section 11, paragraphs (1)-(4), shall be worded as follows:

“ (1) For every application a publication fee (Section 31) is to be paid prior to publication, for every application and for every patent an annual fee, as prescribed in the schedule of fees, shall be due at the beginning of the third year and of each subsequent year after the day following the date of application.

(2) In the case of a patent of addition (Section 10, paragraph (1), sentence 2) no annual fees shall be due. If the patent of addition is converted to an independent patent, fees shall

be due in connection therewith. The due date and the annual amount shall be determined by the date of commencement of the hitherto existing main patent. These provisions shall be applicable to the application for a patent of addition, provided that in cases where an application for a patent of addition is considered as an application for an independent patent, annual fees shall be due as in the case of an originally independent application.

(3) Fees for the third and subsequent years shall be paid within two months from the due date. If this period has elapsed, an additional fee for delayed payment as prescribed in the schedule of fees shall be paid. After expiration of the grace period the Patent Office shall notify the applicant or patentee that the application will be considered withdrawn (Section 35, paragraph (3)) or that the patent will lapse (Section 12) if the fee and the additional fee as prescribed in the schedule of fees is not paid within six months from the due date or within one month from the service of notice if the latter period expires later than six months after the due date.

(4) The Patent Office may postpone the sending of the notice at the request of the applicant or patentee on proof that lack of resources prevent his paying at that time. Postponement may be made conditional upon payment of installments within specified periods. If an installment is not paid in time, the Patent Office shall advise the applicant or patentee that the application will be considered withdrawn or that the patent will lapse if the balance is not paid within one month after service of notice.”

4. Section 11, paragraph (6), sentence 2, shall be worded as follows:

“Installments paid shall not be refunded if the patent lapses (section 12) or if the application is considered withdrawn (section 35, paragraph (3)) because of non-payment of the outstanding balance.”

5. Section 11, paragraph (7), shall be worded as follows:

“ (7) If the applicant or patentee establishes his lack of resources, the publication fee and the fees for the third to the ninth year may be postponed until the commencement of the tenth year, and may be waived if the application is withdrawn or if the patent lapses within the first ten years.”

6. In Section 11, paragraph (9), sentence 2, the following words shall be inserted after the word “withdrawn”:

“or if the application is withdrawn or rejected.”

7. The following paragraph (6) shall be added to Section 14:

“ (6) If the declaration is submitted in connection with an application, the provisions of paragraphs (1)-(5) shall be applicable.”

8. In Section 17, paragraph (3), sentence 1, the words “President of the Patent Office” shall be substituted for “Minister of Justice”.

9. Section 24, paragraphs (3) and (4), shall be worded as follows:

“ (3) The Patent Office shall grant anyone so requesting access to the files and to models and samples relating thereto if, and to the extent that, justified interest has been substantiated. Anyone shall have access to:

¹⁾ *Bundesgesetzblatt I*, No. 56, September 4, 1967, p. 953. — This translation was prepared by the U.S. Patent Office in cooperation with the German Patent Office. — Translations of the consolidated texts of the amended laws will be published as soon as they have been established (see Article 7, Section 4 of this Law).

- (1) The Register,
- (2) The files of unpublished patent applications, if eighteen months have elapsed since the date of filing of the application or since an earlier date, if such a date has been claimed as determinative, and a notice as specified in paragraph (4) has been published,
- (3) The files of published patent applications, and,
- (4) The files of issued patents, including the files relating to restriction procedures (section 36a),

as well as models or samples relating to the said files. If so requested by the inventor designated by the applicant, in connection with the naming of the inventor (Section 26, paragraph (6)), inspection, according to sentence 1 only, shall be authorized; Section 36, paragraph (1), sentences 4 and 5, shall be applicable. Inspection of patent applications and patents which have not been published in accordance with Section 30a shall be permitted by the Patent Office only after hearing the highest proper authority of the Federal Republic, if and to the extent that a special protection-deserving interest of the petitioner appears to warrant the requested inspection without entailing possible risks for the welfare of the Federal Republic of Germany or of one of its several States thereof.

(4) The Patent Office shall publish the specifications and drawings which are the basis for the issue of patents (*Patentschriften*), a review of the entries in the Register at regular intervals, provided they do not relate solely to the normal expiration of patents, and notices of the accessibility of files of still unpublished patent applications [*Patent Gazette (Patentblatt)*]. The Patent Office may also publish the contents of files laid open to public inspection in accordance with paragraph (3), No. 2. Section 30a, paragraph (1), shall remain unaffected."

10. The following paragraph 5 shall be added to section 24:

"(5) From the date of publication of the notice according to paragraph (4), sentence 1, the applicant may claim compensation as determined by the circumstances from anyone who has utilized the invention although he knew or should have known that the invention utilized by him was the object of the application; during the period preceding publication, claims in accordance with Section 47, paragraphs (1) and (2), shall be excluded. The claim does not exist if the object of the application is obviously unpatentable. Section 48, sentence 1, shall be applicable."

11. Former paragraph (5), Section 25, shall become paragraph (6).

12. The following sentence 2 shall be added to Section 26, paragraph (4):

"If the applicant has also filed his invention in another country, he shall, independently of the requirements specified in sentence 1, submit the serial number of the application and the printed references cited in opposition in the procedure before the patent office of the other country."

13. Section 26, paragraph (5), shall be worded as follows:

"(5) Up to the time of the decision to publish the application, amendments to and corrections of the specification shall be permissible, provided that the subject of the applica-

tion is not broadened; however until a petition for examination is filed (Section 28b), only the correction of obvious errors, elimination of deficiencies specified by the Examining Office, or amendments or revisions of claims shall be permissible. No rights may be derived from amendments or revisions which broaden the subject of the application."

14. Section 26, paragraph (6), sentence 1, shall be worded as follows:

"Within a period of three months from the date of filing of the application the applicant shall name the inventor or inventors and affirm that to his knowledge no other person is concerned with the invention."

15. Section 26, paragraph (7), shall be worded as follows:

"(7) If the applicant makes a verified showing that he is prevented by extraordinary circumstances from making the declarations prescribed in paragraph (6), in due time, the Patent Office shall grant him a reasonable extension. This extension shall not continue beyond the time of issue of the order granting the patent. If the above circumstances still exist at that time, the Patent Office shall grant another extension. Six months before the expiration of the period the Patent Office shall notify the patentee that the patent will lapse if he does not make the prescribed declarations within six months after service of notice."

16. Section 27, sentence 2, shall be worded as follows:

"After receipt of the declaration of priority the Patent Office shall request the applicant to indicate the serial number of the prior application and to file a copy of the said application within two months from service of the request, if such action has not already been taken."

17. Section 28 shall be worded as follows:
"Section 28.

(1) If the application obviously does not comply with the prescribed requirements (section 26), the Examining Office shall request the applicant to correct the deficiencies within a specified period. If, in the case of Section 27, the production of documentary evidence (copies of the prior application, specifications, drawings, etc.) is required, this period shall be established to end not less than three months after the filing of the application. If the application does not comply with the regulations of other requirements for applications (Section 26, paragraph (3)), the Examining Office may refrain from objecting to the deficiencies until the examining procedure is conducted (Section 28b).

(2) If, in the opinion of the Examining Office, the subject of the application obviously

- (1) constitutes essentially no invention,
- (2) does not lend itself to industrial application,
- (3) is excluded from being patentable in accordance with Section 1, paragraph (2),
- (4) is not intended as an improvement or development of the other invention in the instance of Section 10, paragraph (1), sentence 2,

the Examining Office shall notify the applicant thereof with an indication of the reasons, and request a statement of his views within a specified period.

(3) The Examining Office shall reject the application if the deficiencies specified in paragraph (1) are not corrected or the application is maintained although obviously no patentable invention exists (paragraph (2), Nos. 1-3), or the requirements of Section 10, paragraph (1), sentence 2, are obviously not met (paragraph (2), No. 4). If the rejection is to be based on facts that have not yet been communicated to the applicant, the applicant shall first be given the opportunity to state his views within a specified period."

18. The following provisions shall be inserted as Sections 28a-28c after Section 28:

"Section 28a.

(1) The Patent Office shall ascertain upon petition the publications which are to be cited in connection with the determination of patentability of the invention.

(2) The petition may be filed by the applicant or by any third party who however shall not thereby become a participant in the procedure. The petition is to be submitted in writing. Section 16 shall be applicable. A fee as determined by the fee schedule shall be paid with the petition; if the fee is not paid the petition shall not be considered filed. If the petition is filed in connection with an application for a patent of addition (Section 10, paragraph (1), sentence 2) the Patent Office shall request the applicant to file a petition as specified in paragraph (1) within a period ending one month following the request for the application of the main patent; if the petition is not filed the application for the patent of addition shall be considered as an application for an independent patent.

(3) The filing of the petition shall be published in the Patent Gazette (*Patentblatt*), but not before publication of the notice specified in Section 24, paragraph (4), sentence 1. If the petition is filed by a third party, the applicant shall be advised of the filing of that petition. Anyone shall be authorized to inform the Patent Office of publications which might prejudice the grant of a patent.

(4) A petition shall not be considered filed if a petition in accordance with Section 28b has been filed previously. In this case, the Patent Office shall notify the petitioner of the date of filing of the petition according to Section 28b. The fee paid for the petition shall be refunded.

(5) If a petition according to paragraph (1) has been filed, subsequent petitions shall not be considered filed. Paragraph (4), sentences 2 and 3, shall be applicable.

(6) If a petition filed by a third party, after notification of the applicant (paragraph (3), sentence 1), is proved ineffective, the Patent Office shall so advise the third party and the applicant.

(7) The Patent Office shall communicate the ascertained publications as specified in paragraph (1) to the applicant and if the petition has been filed by a third party, to that party and the applicant without guarantee of completeness and the issue of the communication shall be published in the Patent Gazette (*Patentblatt*).

(8) To accelerate disposals in the patent granting procedure the Federal Minister of Justice shall be authorized to direct by statutory order that:

(1) the ascertainment of the publications specified in paragraph (1) be assigned to Patent Office organizations other than the Examining Offices (Section 18, paragraph (1)) or to another national or international organization in whole or for specific arts or languages, provided that the organization concerned appears competent to ascertain the publications to be taken into consideration,

(2) the Patent Office shall supply the foreign or international authorities with data from the files of patent applications for mutual information on the results of examination procedures and prior art investigations, provided that the case relates to applications of inventions for which the grant of a patent has also been applied for with the said foreign or international authorities,

(3) the examination of patent applications according to Section 28, as well as the control of fees and time periods shall be transferred in whole or in part to Patent Office organizations other than the Examining Offices or Patent Sections (Section 18, paragraph (1)).

Section 28b.

(1) The Patent Office on petition shall examine whether the application complies with the prescribed requirements (Section 26) and whether the subject matter of the application is patentable according to Sections 1, 2, and 4, paragraph (2).

(2) The petition may be filed by the applicant or by any third party, who however shall not thereby become a participant in the examining procedure, until seven years have elapsed after the filing of the application.

(3) A fee determined by the fee schedule shall be paid with the petition; if the said fee is not paid the petition shall not be considered filed.

(4) If a petition according to Section 28a has been filed previously the examination procedure shall begin only after disposal of the petition according to Section 28a. In addition, Section 28a, paragraph (2), sentences 2, 3 and 5, and paragraphs (3), (5) and (6), shall be applicable. If a petition filed by a third party is ineffective the applicant himself may file a petition within a period of three months from the service of notice, provided that the said period terminates later than the period specified in paragraph (2). If the applicant does not file a petition, a publication shall be made in the Patent Gazette (*Patentblatt*) referring to the publication of the petition filed by the third party that the said petition is ineffective.

(5) The examination procedure shall continue even if the petition for examination is withdrawn. In the case of paragraph (4), sentence 3, the procedure shall continue from the status at the time of filing of the applicant's petition for examination.

Section 28c.

(1) If the application does not comply with the prescribed requirements (Section 26), the Examining Office shall request the applicant to correct the deficiencies within a specified period. If, in the case of Section 27, submission of documents (copies of prior applications, specifications, drawings, etc.) is required, the said period shall be determined to end at the

earliest three months after the date of filing of the application.

(2) If, in accordance with Sections 1, 2, and 4, paragraph (2), the Examining Office reaches the conclusion that the invention is not patentable the said Office shall so advise the applicant, giving reasons therefor, and request a statement of his views within a specified period."

19. Section 29, shall be worded as follows:

"The Examining Office shall reject the application if the deficiencies specified in Section 28c, paragraph (1), have not been remedied, or if the application is maintained although no patentable invention is involved, according to Sections 1, 2 and 4, paragraph (2). Section 28, paragraph (3), sentence 2, shall be applicable."

20. In Section 30, paragraph (2), sentence 2, insert the word "also" before the word "against."

21. Section 30, paragraph (4), shall be worded as follows:

"(4) Publication shall be postponed at the applicant's request for a period of fifteen months from the date of filing of the application with the Patent Office or, if an earlier date has been claimed as determinative, from that date."

22. In Section 35, paragraph (2), sentences 2 and 3 shall be replaced by the following sentence:

"With the withdrawal or refusal, the effects of the provisional protection (Section 24, paragraph (5), sentence 1; Section 30, paragraph (1), sentence 2) shall not be regarded as having come into force.

23. The following paragraph (3) shall be added to Section 35:

"(3) If a petition for examination is not filed within the period specified in Section 28b, paragraph (2), or if the annual fee in connection with the application is not paid in due time (Section 11), the application shall be considered withdrawn."

24. In Section 36a, paragraph (3), sentence 2, the words "Sections 28, 29 and 33, paragraph (1)" shall be replaced by "Section 28b, paragraph (1), Sections 28c, 29 and 33, paragraph (1)"

25. Section 36d, paragraph (1), shall be worded as follows:

"(1) The Board of Appeals, when deciding cases relating to Section 14, paragraph (4), and Section 30a, paragraphs (1) and (2), shall consist of one legal member as chairman and two technical members; in cases relating to Section 36l, paragraph (3), and Sections 46b, 46c and 46e, of one technical member as chairman, two additional technical members, and one legal member; in cases relating to Section 24, paragraph (3), sentence 4, of one legal member as chairman, one additional legal member, and one technical member; and in other cases, it shall consist of three legal members."

26. Section 36g, paragraph (1), shall be worded as follows:

"(1) Proceedings before the Board of Appeals shall be public if the application has been published or if a notice announcing the accessibility of the files for inspection (Section 24, paragraph (4), sentence 1) has been published. The

provisions of Sections 172-175 of the Judiciary Act shall be applicable, provided that:

- (1) on petition by a participating party the proceedings shall not be public if they may prejudice the petitioner's interests deserving protection,
- (2) decisions shall not be made public until publication of a notice of accessibility of the files for inspection (Section 24, paragraph (4), sentence 1) or until publication of the application (Section 30)."

27. Section 36l, paragraph (2), sentence 3, shall be worded as follows:

"The appeal and all papers containing legal petitions or declarations for the withdrawal of an appeal or of a petition, shall be served officially to the other participating parties; other papers shall be served informally to the said parties if official service is not ordered."

28. In Section 36l, paragraph (4), sentence 3, the words "two weeks" shall be replaced by the words "three months".

29. The following paragraph (3) shall be added to Section 36p:

"(3) The Patent Court may countermand the contested decision without itself deciding the case on its merits if:

- (1) the Patent Office has not yet decided the case on its merits,
- (2) the proceedings before the Patent Office suffer from a substantial defect,
- (3) new facts or evidence have become known, which are important for the decision.

The Patent Office must base its decision on the legal judgment on which the countermand is based."

30. Section 41c, paragraph (3), shall be worded as follows:

"(3) For the grant of permission to inspect the files to third parties, Section 24, paragraph (3), shall be applicable. The request shall be decided by the Patent Court. Inspection of files of proceedings for the purpose of a declaration of invalidity of a patent shall not be authorized if and to the extent that the patentee proves a protection deserving interest to the contrary."

31. The following paragraph (5) shall be added to Section 43:

"(5) Paragraph (4) shall be applicable if the provisional protection (Section 24, paragraph (5), sentence 1, Section 30, paragraph (1), sentence 2) is reinstated."

32. Section 46b, paragraph (2), shall be worded as follows:

"(2) The grant of paupers' privileges shall release the applicant provisionally from payment of,

- (1) the filing fee, in the case specified in Section 4, paragraph (3), sentence 2,
- (2) the fees for petitions specified in Sections 28a and 28b,
- (3) the fee for appeal (Section 36l, paragraph (3)),
- (4) arrears and expenses accruing in the future, including compensation for witnesses and experts, as well as service costs."

33. Section 46b, paragraph (5), shall be worded as follows:

“(5) Paragraphs (1)-(4) shall be applied appropriately:

- (1) in cases specified in Sections 28a and 28b to the petitioning third party if he can substantiate a personal interest deserving protection,
- (2) in the case of Section 32 to the opposing party if the opposition is based on Section 4, paragraph (3).”

34. The following provision shall be introduced as Section 47a, after Section 47.

“Section 47a.

If, prior to the grant of a patent, rights are judicially established which are based on an application the files of which may be inspected by anyone (Section 24, paragraph (3), sentence 2, Nos. 2 and 3), and if the decision on a litigation depends from the fact that the subject matter of the application is provisionally protected (Section 24, paragraph (5), sentence 1, and Section 30, paragraph (1), sentence 2), the Court may order that the proceedings be deferred until the decision upon the grant of the patent. If a petition for examination as specified in Section 28b has not been filed, the Court may assign, at the request of the opposing party, to the party who has asserted rights on the basis of the application a time period for the filing of the petition for examination. If the petition for examination is not filed within that time period the rights involved in the litigation on the basis of the application may not be asserted.”

Article 2

Amendment of the Trademark Law

The text of the Trademark Law of May 9, 1961 (*Bundesgesetzblatt I*, pp. 549, 574), as amended by the law of July 21, 1965 (*Bundesgesetzblatt I*, p. 625), is amended as follows:

1. Section 2, paragraph (4), shall be worded as follows:

“(4) If the application is withdrawn before the Patent Office has decided publication thereof according to Section 5, paragraph (2), or has issued a rejection order, the fees paid for more than one class or subclass shall be refunded.”

2. The following sentence 2 shall be added to Section 3, paragraph (2):

“The Patent Office shall grant access to the files to anyone who substantiates a justified interest therein.”

3. Section 5, paragraph (6), sentence 2, shall be worded as follows:

“Section 33, paragraph (2), of the Patent Law shall be applicable, with the provision that the Patent Office may also rule that other costs incurred by the parties in the opposition proceedings, provided that they were necessary as determined by equitable estimate for suitable protection of the claims and rights concerned, be charged in whole or in part to one of the parties.”

4. The following paragraph (7) shall be added to Section 5:

“(7) If a mark on the basis of which opposition has been raised has been entered in the Trademark Register for at least five years at the time of publication of the pending mark, and if the applicant contests the use of the mark, the

opposing party must establish the presumption that he has used the mark within the last five years preceding the publication of the pending mark. Use of the mark by a third party with the consent of the opposing party is equivalent to the use by the opposing party. In its decision on the similarity of the marks the Patent Office shall consider only the goods for which the opposing party has established presumption of use. If the mark against which opposition has been raised was registered in accordance with Section 6a, and if opposition was raised against registration of the said mark, sentences 1-3 only shall be applicable if five years have elapsed since the termination of the opposition proceedings.”

5. Section 5, paragraphs (7) and (8), shall become Section 5, paragraphs (8) and (9).

6. In Section 6, paragraph (2), the following sentence shall be inserted after sentence 2:

“The suit must be initiated within one year from the date at which the decision establishing the similarity of the marks becomes final.”

7. In Section 6, paragraph (2), sentence 3, the words “in his favor” shall be replaced by the words “in favor of the applicant”.

8. In Section 6, the following provision shall be inserted as paragraph (3) after paragraph (2), and the present paragraph (3) shall become paragraph (4):

“(3) If the Patent Office has determined the similarity of a pending mark with one or more marks for which opposition has been raised, it may suspend proceedings on other oppositions until the decision on the registration of the pending mark is final.”

9. Section 6a, paragraph (3), sentence 3, shall be worded as follows:

“Section 5, paragraphs (3)-(7) and (9), shall be applicable to opposition proceedings.”

10. In Section 6a, paragraph (4), sentence 4 the words “sentences 2 and 3” shall be replaced by “sentences 2 to 4”.

11. The following sentence 5 shall be added to Section 6a, paragraph (4):

“Section 6, paragraph (3), shall be applicable.”

12. The following No. 4 shall be added to Section 11, paragraph (1):

“(4) If a trademark has been registered in the Trademark Register for at least five years, and if the mark holder has not used the mark within the last five years before the petition for cancellation, unless circumstances prevented his use during the said period. Section 5, paragraph (7), sentences 2-4, shall be applicable.”

13. In Section 11, paragraph (4), the words “and 4” shall be inserted after the words “in paragraph (1), No. 2”.

14. The following paragraphs (5) and (6) shall be added to Section 11:

“(5) If a trademark has not been used either within five years after registration or in the cases specified in Section 6a after termination of the opposition proceedings, the mark holder may not invoke use in connection with a petition for cancellation as specified in paragraph (1), No. 4 if

- (1) use was initiated only after the threat of petition for cancellation, or
- (2) use was initiated only after publication of a corresponding mark applied for in connection with identical or similar goods at a later date (Section 5, paragraph (2); Section 6a, paragraph (3)), and the applicant for the said mark or his legal successor has filed a petition for cancellation within six months from publication.

“(6) Paragraph (1), No. 1, shall not be applicable if, at the time of publication of the trademark of the party adverse to the petition (Section 5, paragraph (2); Section 6a, paragraph (3)), the conditions for cancellation of the trademark of the petitioner were present as specified in paragraph (1), No. 4.”

15. In Section 12, paragraph (2), No. 1, the numeral “8” shall be substituted for the numeral “7”.

16. Section 12, paragraph (3), shall be worded as follows:

“(3) The business of the Examining Office shall be conducted by a legal or a technical member (examiner), or by a senior grade official. The said official shall not be authorized, however, to order oaths, administer oaths, or to direct petitions to the Patent Court as specified in the Patent Law, Section 46, paragraph (2).”

17. Section 12, paragraph (5), sentence 1, shall be worded as follows:

“The Federal Minister of Justice shall be authorized to issue statutory orders

- (1) to delegate to senior grade officials the conduct of individual tasks incumbent upon the Trademark Divisions which entail no legal difficulty, except in the case of decisions on the cancellation of trademarks as specified in Section 10, paragraph (3), sentence 3, of the issue of expert opinions (Section 14), and of decisions to refuse the issue of expert opinions,
- (2) to delegate to middle grade officials the conduct of individual tasks incumbent upon the Examining Offices and Trademark Divisions which do not entail legal difficulty, except in the case of decisions on applications, oppositions and other petitions.”

18. Section 12, paragraph (6), sentence 2, shall be worded as follows:

“The said provisions shall apply to senior and middle grade officials, provided that they have been entrusted with the conduct of tasks incumbent upon the Examining Offices or the Trademark Divisions.”

19. The following provision, designated as Section 12a, shall be inserted after Section 12:

“Section 12a.

(1) The decisions of the Examining Offices and of the Trademark Divisions, issued by senior grade officials, may be responded to by an objection. The objection must be filed with the Patent Office in writing one month from service of notice. Section 34, paragraph (2), of the Patent Law shall be applicable.

(2) Decisions on the objection shall be made by one legal or one technical member. Section 36 l, paragraph (4), sentence 1, and paragraph (5), of the Patent Law shall be applicable.”

20. Section 13, paragraphs (1) and (2), shall be worded as follows:

“(1) Appeals from the decisions of the Examining Offices and Trademark Divisions shall be taken before the Patent Court, unless an objection is proper (Section 12a, paragraph (1)).

(2) If the appeal is from a decision relating to:

- (1) a trademark application, an opposition or a petition for cancellation; or
- (2) an objection against a decision as specified in No. 1, a fee as specified in the schedule of fees shall be paid within the period for appeal; if this fee is not paid the appeal shall not be considered filed.”

21. In Section 21, paragraph (1), the words “Section 11, paragraph (1), No. 1, 1a and 3,” shall be replaced by the words “Section 11, paragraph (1), No. 1, 1a, 3 and 4.”

22. The following paragraph (3) shall be added to Section 21:

“(3) In cases specified in Section 5, paragraph (7), and Section 11, paragraph (1), No. 4, and paragraph 5, use of a collective mark shall be recognized only if at least two members of the association use the mark.”

23. Section 28 shall be worded as follows:

“Section 28.

(1) Foreign goods which, illegally bearing the name of a German firm and locality or a legally protected trademark, enter the area of jurisdiction of the present law, for purposes of import or transit, shall upon petition by the injured party and deposition of security therefor be seized in order to remove the illegal mark.

(2) Seizure shall be effected by the customs authorities which shall also direct the necessary actions to be taken to remove the illegal mark. If the directions of the customs authorities are ignored or if removal is impracticable the customs authorities shall order confiscation of the goods.

(3) Seizure and confiscation may be contested by legal action as permissible in damage proceedings according to the law on illegal seizure and confiscation. The petitioner shall be heard in the legal proceedings.”

24. Section 34, sentence 2, shall be worded as follows:

“Seizure and confiscation shall be ordered by the customs authorities; Section 28, paragraph (3), shall be applicable.”

Article 3

Amendment of the Gebrauchsmuster (Utility Model) Law

The text of the Gebrauchsmuster Law of May 9, 1961 (*Bundesgesetzblatt I*, pp. 549, 570), as amended by the law of July 21, 1965 (*Bundesgesetzblatt I*, p. 625), is amended as follows:

- (1) Section 2, paragraph (5), sentence 3, shall be deleted.
- (2) Section 3, paragraph (5), shall be worded as follows:

“(5) Anyone shall be granted access to the Register and to the files of registered Gebrauchsmuster, including the files of cancellation proceedings. In addition, the Patent Office shall grant access to the files to anyone upon request, provided

and to the extent that a justified interest has been substantiated."

3. Section 12, paragraph (2), shall be worded as follows:

"(2) The provisions of the Patent Law granting paupers' privileges (Sections 46a-46k) shall be applied appropriately to Gebrauchsmuster cases."

Article 4

Amendment of the Law on Patent Office and Patent Court Fees

The text of the law on Patent Office and Patent Court fees of May 9, 1961 (*Bundesgesetzblatt I*, pp. 549, 582) is amended as follows:

1. In Section 1, part A, the following provisions shall be inserted as Nos. 1a-1c after No. 1

"1a. Petition for ascertainment of documents to be cited (Section 28a) 100.—

1b. Petition for examination of an application (Section 28b) if a petition according to Section 28a has already been filed 200.—

1c. Petition for examination of an application (Section 28b) if a petition according to Section 28a has not been filed 300.—"

2. Section 1, part C, No. 2 shall be worded as follows:

"2. Application class fee (Section 2, paragraph (3))

(a) first and second class, each 40.—

(b) third and fourth class, each 60.—

(c) all additional classes 70.—"

3. In Section 1, part C, No. 3, the number "12" shall be replaced by number "75".

4. In Section 1, part C, No. 6, the number "60" shall be replaced by the number "200".

5. Section 1, part C, No. 8, shall be worded as follows:

"8. Extension of term of protection class fee (Section 9, paragraph (2))

(a) first and second class, each 60.—

(b) third and fourth class, each 80.—

(c) all additional classes, each 100.—"

6. In Section 1, part C, No. 10, the number "50" shall be replaced by the number "100".

7. In Section 1, part C, No. 13, the number "75" shall be replaced by the number "150".

8. In Section 1a, parts A, B and C, every occurrence in No. 1, and in part C also in No. 3, the number "60", shall be replaced by the number "150".

Article 5

Amendment of the Law on Employees' Inventions

The text of the Law on employees' inventions of July 25, 1957 (*Bundesgesetzblatt I*, p. 756), as amended by the Law of March 23, 1961 (*Bundesgesetzblatt I*, pp. 274, 316), is amended as follows:

1. Section 17, paragraph (2), is cancelled, the present paragraph (3) shall become paragraph (2) and be worded as follows:

"(2) If the employer does not accept the capability of protection of an employee's invention he may refrain from obtaining a protection right if he appeals to the Arbitration Office (Section 29) to bring about an agreement on the capability of protection."

2. Section 17, paragraph (4), shall become Section 17, paragraph (3).

Article 6

Amendment of the Law on the Accession of the Reich to the Madrid Agreement on the Suppression of False Indications of Source on Goods

Section 2, paragraph (2), of the Law on the accession of the Reich to the Madrid Agreement on the Suppression of False Indications of Source on Goods, of March 21, 1925 (*Reichsgesetzblatt II*, p. 115), shall be worded as follows:

"(2) Seizure shall be effected by the customs authorities which shall also direct the necessary actions to be taken to remove false indications. If the directions of the customs authorities are ignored or if removal is impracticable the customs authorities shall order confiscation of the goods. Seizure and confiscation may be contested by legal action as permissible in damage proceedings according to the law on illegal seizure and confiscation."

Article 7

Transitional and Final Provisions

Section 1

Patent Applications and Patents

(1) In the case of patent applications for which, as of the effective date of the present law, the Patent Office has ordered publication, the hitherto existing provisions shall apply; however, in connection with the payment of annual fees for the third and every subsequent year beginning the day following the application date after the present law takes effect, the provisions of the patent law in the wording of the present law shall be applicable. The same provisions shall apply to still unpublished patent applications rejected by the Patent Office at the time the present law takes effect on the ground that no patentable invention exists according to Sections 1, 2 and 4, paragraph (2).

(2) Aside from this, patent applications still pending at the time the present law takes effect shall be subject to the regulations of the Patent Law in the wording of the present law with the following provisions:

1. Publication of the notice concerning the possibility of inspection of the files of unpublished patent applications (Section 24, paragraph (4), sentence 1) shall not occur until six months have elapsed after service of notice to the applicant or after a corresponding announcement is published by the President of the Patent Office in the Patent Gazette (*Patentblatt*), wherein the patent application shall be indicated in general form, and not before the period specified in Section 24, paragraph (3), No. 2, has elapsed. After publication of the notice according to Section 24, paragraph (4), sentence 1, the portions of the files of the said patent applications existing at the time the present law takes effect shall be laid open to

public inspection provided the applicant has not submitted new and complete papers (Section 26, paragraph (1)) by the end of the six month period. If new papers are submitted, public inspection shall be permitted only of papers which are to be identified by the Patent Office as having been newly submitted; in all other cases of inspection of papers of those applications existing at the time the present law takes effect, the hitherto existing provisions shall apply. The sequence of patent applications in connection with which a notification or announcement according to sentence 1 is issued shall be determined by the President of the Patent Office.

2. Section 28a shall not be applicable unless application thereof is specified in Section 28b.

3. A petition for examination (Section 28b) shall be permitted only after issue of the notification or announcement specified in No. 1. The period specified in Section 28b, paragraph (2), shall not expire before two years have elapsed after the said notification or announcement.

4. If the petition for examination is filed by the applicant, the fee for the petition (Section 28b, paragraph (3)) shall count toward the filing fee (Section 26, paragraph (2), sentence 1). The old regulations shall remain in effect with respect to the payment of the annual fees for patent years which have already begun before the present law takes effect.

(3) The regulations in force to date shall remain applicable to the inspection of the portions of files of published applications and issued patents, including the files of restriction procedures (Section 36a), already existing at the time the present law takes effect; in appeal cases the Board of Appeals, composed of one legal member as chairman, one additional legal member and one technical member, shall decide.

(4) In other cases, inspection of the files of the Patent Office shall be determined by the provisions contained in the present text of the Patent Law.

(5) Patent applications still pending at the time the present law takes effect and for which the Patent Office has not yet ordered publication, and inventions of articles of food and taste, medical preparations or other substances prepared by chemical methods shall be regulated by Section 1, paragraph (2), of the present text of the Patent Law. Patent applications shall be considered filed as of that date on which the inventions in the application papers are expressed such that utilization by others skilled in the art appears possible (Section 26, paragraph (1), sentence 4, of the Patent Law). Provisions according to which an earlier date may be claimed as determinative remain unaffected. The declaration of priority (Section 27, sentence 1, of the Patent Law) may be filed until the expiration of two months after the present law takes effect. Anyone who in this country has reduced to practice the subject of such a patent application or has made arrangements therefor prior to the date the present law takes effect, shall be authorized to utilize the subject of the patent application for the purposes of his own business in his own or in foreign plants; this authorization may only be devolved or transferred together with the business.

Section 2

Trademarks

In the case of trademarks registered in the Trademark Register at the time the present law takes effect Section 5, paragraph (7), Section 6, paragraph (2), and Section 11, paragraph (1), No. 4, and paragraph (5) of the Trademark Law, in the wording of the present law shall be applicable with the provision that the periods specified in these provisions shall not begin to run before the present law takes effect.

Section 3

Fees

(1) Fees due before the effective date of the present law shall be paid on the basis of the hitherto existing rates.

(2) If a fee for a petition or a legal action is due within three months following the effective date of the present law and paid in due time according to the old rates, the balance between the amount due in accordance with the old rates and the amount specified by the present law may be paid within a period set by the Patent Office one month after service of notice. If the balance is paid within the period set by the Patent Office, the fee shall be considered paid in due time.

(3) If a fee for the extension of the term of protection of a trademark is due within three months following the effective date of the present law and is paid in due time on the basis of the old rates, notice as specified in Section 9, paragraph (2), of the Trademark Law shall be served only for the balance between the fee paid and the fee due in accordance with the present law. The additional fee prescribed in the schedule of fees for late payment shall not be charged.

Section 4

Publication of the Text of the Amended Laws

The Federal Minister of Justice shall be authorized to publish the texts of the Patent Law, Trademark Law, Gebrauchsmuster Law, and Law on Patent Office and Patent Court Fees in the wording established by the Present law with the new date, and to eliminate any discrepancy of wording.

Section 5

Application to the Land Berlin

According to the provisions of Section 13, paragraph (1), of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt* I, p. 1), the present Law shall also apply to the Land Berlin. Statutory orders issued on the basis of the present law shall apply to the Land Berlin according to Section 14 of the Third Transitional Law.

Section 6

Effective Dates

(1) Article 2, No. 23 and 24 and Article 6 shall come into force the day after the publication of this law.

(2) Article 1, No. 1, Article 2, No. 1-22 and Article 7, Section 1, paragraph (2), No. 1, paragraph (5), Sections 2 and 4 shall come into force on January 1, 1968.

(3) The other provisions of the present Law shall come into force on October 1, 1968.

NEW PLANT VARIETIES

International Convention for the Protection of New Varieties of Plants Ratification

NETHERLANDS

The Government of the Netherlands has ratified the International Convention for the Protection of New Varieties of Plants, signed in Paris on December 2, 1961¹⁾. The instrument of ratification was deposited with the French Government on August 8, 1967.

It will be noted that the United Kingdom of Great Britain and Northern Ireland and the Netherlands are the first two countries to have ratified this Convention, which will come into force, in respect of those States which have ratified it, thirty days after the deposit of the third instrument of ratification [Article 31 (3)].

¹⁾ See *Industrial Property*, 1962, pp. 6 *et seq.*

CORRESPONDENCE

Letter from France *)

By Paul MATHÉLY
Barrister at the Court of Paris,
Professor at the Center of International Studies
in Industrial Property, Strasbourg

(Second Part)

Letter from Scandinavia*)

By Professor Berndt GODENHJELM, Helsinki

GENERAL STUDIES

Invention and Nonobviousness in United States Patent Law *)

By Jeanne BOUCOURECHLIEV, Paris

PART II

CONGRESSES AND MEETINGS

International Federation of Patent Agents (FICPI)

Cannes Congress

(September 26 to 29, 1967)

The International Federation of Patent Agents (FICPI) held a Congress at Cannes from September 26 to 29, 1967. This Congress was preceded, not only by a session of the Executive Committee of the Federation, but also, in view of the importance of certain matters appearing on the agenda of the Congress, by sessions of the Contact Commission FICPI — Patentanwaltskammer, the European Patent Agents Study Group and the Union des Conseils en Brevets Européens.

The Congress itself was attended by Federation members from a great many European and non-European countries. It was presided over by Mr. René Jourdain, President of the Federation, who conducted the discussions with authority and efficiency while maintaining perfect courtesy towards all participants. The organization of the Congress was flawless and beyond all praise.

BIRPI was represented at the Congress by its Director, Professor G. H. C. Bodenhausen.

The work of the Congress was devoted to the following subjects:

At the first working session the Director of BIRPI presented and commented on, the outcome of the Diplomatic Conference of Stockholm.

Mr. Ernest A. Faller, Delegate of the Commissioner of Patents in Washington, on permanent mission in Geneva, then gave some information on the main provisions of the new United States Patent Bill.

Mr. L. Robbins (United States) also spoke on the Patent Bill and, at the same time, made some advance comments concerning the discussion of the following subject.

At the second working session the Director of BIRPI broadly outlined the BIRPI PCT plan, which is intended to provide for international cooperation in respect of patents, and pointed out a number of problems which would have to be resolved in order for that plan to be successful.

This report was followed by an extensive debate in which official representatives of the International Association for the Protection of Industrial Property (IAPIP), the Union of European Patent Agents, and the European Patent Agents Study Group, took part, in particular.

In a statement that received wide attention, Mr. Guillaume Finnis, President and Director General of the International Patent Institute (IIB), discussed the IIB and the international solution for patent proceedings presented by BIRPI.

Mr. Roger Gajac, representing Mr. F. Savignon, Director of the Institut National Français de la Propriété Industrielle, brought in some very interesting information on the subject of the reform of the French Patent Law.

Mr. Höst-Madsen (Denmark) then reported on the Patent Bill in the Scandinavian countries.

The last working session of the Congress was devoted to matters concerning the patent agent profession and the exercise of that profession on the national and international levels. Those who took the floor during the meeting were, *inter alia*: Professor Jean-Marc Mousseron, representing Professor Bastian, Director of the Center of International Studies in Industrial Property at Strasbourg; Dr. Radt, President of the Patentanwaltskammer; and Mr. Massalski, Vice-President of the Federation.

The Congress carried out its work in the magnificent setting of Cannes. The organizers were able to take advantage of this by planning a brilliant program of social events, including a reception by the Municipality of Cannes, an excursion for ladies and another excursion for all Congress participants, a buffet dinner at the Club House of the new Cannes yacht harbor, and a splendid closing dinner at the Palm Beach Casino, brightened by fire works. In addition, the participants met for lunch every day at the Carlton Hotel.

NEWS ITEMS

MALTA

Appointment of New Director of Industrial Property Office

We have been informed that Mr. Louis Sammut Briffa has been appointed Comptroller of the Maltese Industrial Property Office. He succeeds Mr. Joseph Schranz who has retired.

FEDERAL REPUBLIC OF GERMANY

Inauguration of the New Headquarters of the Max-Planck-Institute for Foreign and International Law of Patents, Copyright and Competition, Munich

The *Max-Planck-Institut für ausländisches und internationales Patent-, Urheber- und Wettbewerbsrecht* (Max-Planck-Institute for

Foreign and International Law of Patents, Copyright and Competition), and the *Institut für Gewerblichen Rechtsschutz und Urheberrecht der Universität München* (Institute for Industrial Property and Copyright of the University of Munich) inaugurated their new headquarters in Munich, Siebertstrasse 3, on October 17, 1967.

The ceremony was attended by several hundred guests coming from some twenty different countries. Professor G. H. C. Bodenhausen, Director of BIRPI, was among the speakers who greeted the new Max-Planck-Institute and its Director, Professor Eugen Ulmer.

The Institute's new headquarters include spacious facilities for its library which constitutes an exceptionally rich collection of works on intellectual property subjects. The collection, containing approximately 15,000 volumes, is organized into sections by countries, and each section is subdivided according to the main branches of the law of intellectual property.

The Institute has some 50 collaborators, half of them with academic degrees. In addition to its scientific research tasks, the Institute lays great emphasis on the training of a new generation of scientists in the field of intellectual property law. In this connection, the Institute accepts also foreign scientists as guest collaborators.

The inauguration was followed by lectures given by Professor Eugen Ulmer, Professor Friedrich-Karl Beier, Miss Barbara Ringer, and Mr. Gert Kolle.

CALENDAR

Meetings of BIRPI

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1967				
December 18 to 21, 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, United States of America, Yugoslavia	All other Member States of the Paris Union or of the Berne Union

Date and Place	Title	Object	Invitations to Participate	Observers Invited
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 (Paris Union)	All Member States of the Paris Union	United Nations; Council of Europe; International Patent Institute
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, United States of America, Yugoslavia	All other Member States of the Paris Union
December 20 and 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
1968				
March 25 to 29 1968 Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning searching, etc.	To be announced later	To be announced later
June 17 to 21 1968 Geneva	Working Group — Patent Cooperation Treaty (PCT)	Questions concerning formalities, etc.	To be announced later	To be announced later
September 24 to 27 1968 Geneva	Interunion Coordination Committee (6 th Session)	Program and Budget of BIRPI	To be announced later	To be announced later
October 2 to 8, 1968 Locarno	Diplomatic Conference	Adoption of a Special Agreement concerning the International Classification of Industrial Designs	All Member States of the Paris Union	To be announced later
November 4 to 12 1968 Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	To be announced later	To be announced later

Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
1967			
The Hague	December 4 to 6, 1967	International Patent Institute (IIB)	94 th Session of the Administrative Council
1968			
Buenos Aires	April 15 to 19, 1968	International Association for the Protection of Industrial Property (IAPIP)	Presidents' Conference
Munich	April 22 to 26, 1968	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	Advisory Board for Cooperative Systems — Standing Committees I and II
Amsterdam	June 9 to 15, 1968	International Publishers Association (IPA)	Congress
Vienna	June 24 to 29, 1968	International Confederation of Societies of Authors and Composers (CISAC)	Congress
Tokyo	October 21 to November 1, 1968	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT)	8 th Annual Meeting
Lima	December 2 to 6, 1968	Inter-American Association of Industrial Property (ASIPI)	Congress