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Contents

	Pages
WORLD INTELLECTUAL PROPERTY ORGANIZATION	
Convention Establishing the World Intellectual Property Organization. Ireland. Ireland Becomes a Party to the WIPO Convention	86
INTERNATIONAL UNIONS	
Paris Union. Ratification of the Stockholm Act. Ireland	86
Madrid Agreement (Indications of Source). Ratification of the Additional Act of Stockholm. Ireland	86
Nice Union. Ratification of the Stockholm Act. Ireland	86
Working Group on the BIRPI Plan for Facilitating the Filing and Examination of Applications for the Protection of the Same Invention in a Number of Countries (Plan for a Patent Cooperation Treaty (PCT)) (Geneva, March 25 to 29, 1968)	86
I. Report	86
II. Memorandum on Questions Concerning the Proposed International Search	94
LEGISLATION	
Italy. Decrees Concerning the Temporary Protection of Industrial Property Rights at Thirteen Exhibitions (of January 25 and 31, and February 3 and 5, 1968)	105
Luxembourg. Law on the Disclosure and Putting into Practice of Inventions and Manufacturing Secrets of Interest to Territorial Defense or to State Security (of July 8, 1967)	105
GENERAL STUDIES	
The Protection of Appellations of Origin and Indications of Source (A. Devletian)	107
BOOK REVIEWS	116
CALENDAR OF MEETINGS	
BIRPI Meetings	117
Meetings of Other International Organizations Concerned with Intellectual Property	118
Vacancies for Posts in BIRPI	119
STATISTICS	
Supplement to the Industrial Property Statistics for the Year 1966 (see Annex)	

WORLD INTELLECTUAL PROPERTY ORGANIZATION

IRELAND

Ireland Becomes a Party to the WIPO Convention

Notification of the Director of BIRPI to the Governments of the Countries Invited to the Stockholm Conference

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of and, in accordance with the provisions of the above Convention, has the honor to notify him that the Government of Ireland

- (i) signed the said Convention, without reservation as to ratification, on January 12, 1968,
- (ii) and deposited, on March 27, 1968, its instrument of ratification, dated February 15, 1968, of the Stockholm Act of the Paris Convention for the Protection of Industrial Property; Ireland ratified this Act in its entirety.

Ireland has thus fulfilled the conditions provided for by Article 14 of the Convention Establishing the World Intellectual Property Organization (WIPO), and has become a party to the said Convention.

Geneva, April 2, 1968.

WIPO Notification No. 3 *)

*) The WIPO Notification No. 1 deals with the list of the signatory countries of the texts adopted by the Stockholm Conference (see *Industrial Property*, 1968, p. 33). The WIPO Notification No. 2 deals with the application of the provisional clauses of the WIPO Convention and of the Paris Convention by the Republic of China (see *Industrial Property*, 1968, p. 51).

INTERNATIONAL UNIONS

IRELAND

Ratification

of the Stockholm Acts of the Paris Convention for the Protection of Industrial Property and the Madrid (Indications of Source) and Nice (International Classification) Special Agreements

Notification of the Director of BIRPI to the Governments of the Union Countries

The Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) presents his compliments to the Minister for Foreign Affairs of

and, in accordance with the provisions of the above international instruments adopted at Stockholm, has the honor to notify him that the Government of Ireland deposited, on March 27, 1968, its instruments of ratification dated February 15, 1968,

- (i) of the Paris Convention of March 20, 1883, for the Protection of Industrial Property, as revised at Stockholm on July 14, 1967;
- (ii) of the Additional Act of Stockholm, of July 14, 1967, to the Madrid Agreement for the Repression of False and Deceptive Indications of Source on Goods;
- (iii) of the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks of June 15, 1957, as revised at Stockholm on July 14, 1967.

A separate notification will be made of the entry into force of these instruments, when the required number of ratifications or accessions is reached.

Geneva, April 2, 1968.

Paris Notification No. 3

Working Group 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, March 25 to 29, 1968)

Two documents concerning the BIRPI Plan for a Patent Cooperation Treaty (PCT) are reproduced in the present issue of Industrial Property: one is the report on the Working Group which took place in Geneva from March 25 to 29, 1968; the other is the preparatory document which served as the principal basis for discussion of that Working Group.

Other items on the PCT Plan can be found in Industrial Property, 1966, page 229; 1967, pages 58, 161, and 301; and 1968, page 3.

I

Report *)

Introduction

Composition of the Working Group, etc.

1. On the invitation of the Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), a Working Group on the Patent Cooperation Treaty (PCT) met in Geneva from March 25 to 29, 1968, in order to examine the proposed international search aspects of BIRPI's plan for facilitating the filing and examination of applications for the protection of the same invention in a number of countries.

*) BIRPI document No. PCT/II/7.

2. Those 23 countries in which, according to the latest available yearly statistics, more than 5,000 applications are filed were invited to attend the meeting of the Working Group. The following 20 were represented: Argentina, Austria, Belgium, Brazil, Canada, Czechoslovakia, Denmark, France, Germany (Federal Republic), Italy, Japan, Netherlands, Norway, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America. Three were not represented: Australia, Mexico, and South Africa. Hungary was represented by observers. India was invited as an observer but was not represented.

3. The following five intergovernmental organizations were represented: United Nations, International Patent Institute, Council of Europe, European Communities, European Free Trade Association. The Organization of American States and the African and Malagasy Industrial Property Office were invited but were not represented.

4. Eleven non-governmental organizations, representing inventors, industrialists, patent lawyers, and patent agents, were invited. Ten were represented: 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. The Japan Patent Association was invited but was not represented.

5. Representatives of Governments and private organizations had the same opportunities for participating in the discussions.

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

7. In his opening speech, the Director of BIRPI emphasized that the Patent Cooperation Treaty could only succeed if it was satisfactory both to the Patent Offices and to the interested private circles. BIRPI had this double objective constantly in mind, and the many consultations, including the present meeting, with both government and private groups were proof of this policy.

8. The Working Group unanimously elected as its Chairman Mr. J. Voyame, Director of the Swiss Federal Office of Intellectual Property, and, as Vice-Chairman, 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.

9. Dr. Arpad Bogsch, Deputy Director of BIRPI, acted as Secretary of the Working Group.

10. The list of participants is annexed to this report. The number present was around one hundred.

Scope of the Present Report

11. The present document does not identify, except when the nature of the intervention seems to require it, the persons who, or the countries or organizations which, have expressed the views recorded herein, as the purpose of this report is a

limited one, namely, to assist BIRPI in its work of preparing new drafts. Identification of the speakers, however, remains possible on the basis of the notes taken by the Secretariat and the tape recording of all interventions kept in the files of BIRPI.

12. Furthermore, because of its said limited purpose, suggestions contained in document PCT/II/2 not expressly objected to and views supporting such suggestions are generally not referred to in this report. Neither does this report generally contain the arguments advanced in support of the various counter-suggestions.

13. Discussion sometimes related to questions reserved for future meetings. Such discussion is only exceptionally reported upon.

14. Finally, because of the briefness of the time available for preparing and discussing this report, some of the suggestions of secondary importance have not been included. They, as well as the arguments advanced in support of or against the suggestions noted, will, however, also be taken into consideration on the basis of the above-mentioned notes and tape recordings.

Basis of Discussions of the Working Group

15. The agenda of the meeting (see document PCT/II/1) consisted in a single substantive item, namely, the consideration of questions concerning the proposed international search. Discussion was based on a memorandum prepared by BIRPI, dated January 31, 1968 (document PCT/II/2), and two documents containing written observations and proposals by the Delegations of the United Kingdom (document PCT/II/3) and Canada (document PCT/II/5). (The provisional list of participants bore the document number PCT/II/4 and the draft of the present document bore the document number PCT/II/6.) The Fédération internationale des Ingénieurs-conseils en propriété industrielle distributed to the participants a printed brochure containing its proposal for the international filing of patent applications.

The Proposed International Search

Purposes Served by the International Search Report

16. Several representatives of the interested private circles expressed the view that the international search report would be of interest to third parties as much as to applicants and examining Offices and consequently urged that any future paper should place these three groups — from the point of view of potential interest — on the same level.

17. It was generally understood that, in all cases in which the national laws permit amendment of the description in the application, the applicant could, on the basis of the international search report, amend during the national procedure not only the claims but also the description.

18. The representatives of some of the private circles said that the international search should be carried out on the basis of a short description, prepared by the applicant, of the subject matter of the invention rather than on the basis of the claims.

Objectives of the International Search

19. It was generally agreed that the search report should have a broad documentary scope.

20. It was further agreed that, in paragraph 7¹), the reference to the differences in law among the various countries should be omitted and that "inventive step" should be expressed as an alternative ("or" rather than "and") to non-obviousness. Furthermore, it was agreed that the objective of the international search was not only to locate but to help in locating prior art.

21. Some of the participants remarked that the international search should primarily be directed to novelty and only secondarily to inventive step or non-obviousness. Others said that such a distinction was difficult to make in practice, particularly for countries whose laws incorporated the concept of inventive step in the notion of novelty itself ("essential novelty"). Still others said that, even for countries where novelty and inventive step were sharply distinguished, it was important that the search should pay equal attention to discovering documents relevant for either criterion.

22. It was generally agreed that searching less than the prescribed documentation on account of finding "complete" anticipations (so-called "knock-out" references) should be an exception admitted only in the rarest cases, namely, where it would be absolutely unreasonable to continue the search. It was recognized that the utmost caution would be required because what could seem to be "complete" anticipations to the searcher might, upon further scrutiny of the peculiar legal situation in some of the designated countries, prove not to be such anticipations. Not only negative material should be cited but also material supporting the existence of novelty and inventive step or non-obviousness. Several speakers said that, in any case, the searcher should make an *a posteriori* rather than an *a priori* selection among the documents retrieved as being of possible interest for the application searched.

[Excursio] Documents

23. In the course of the discussion, the question arose in what documents the principles agreed upon would eventually be reflected.

24. It has been stated that the present plans provided for the following:

- (a) A *Treaty* which would incorporate the basic principles.
- (b) *Regulations* which would contain details of application.

Both the Treaty and the Regulations would be adopted and signed by the diplomatic conference which would finalize the negotiations on the Patent Cooperation Treaty. The Treaty could be modified only by another diplomatic conference and modifications therein would become binding only upon ratification. The Regulations could be modified by the Assembly of the Patent Cooperation Treaty Union, i. e., the countries which would be party to the Patent Cooperation Treaty. No ratification of the modifications would be required. According to the importance of the proposed modifications, their adoption would require either a unanimous decision or decision by a majority variously qualified.

¹) References to paragraphs are references to paragraphs of document PCT/II/2, reproduced hereunder.

(c) The draft Treaty and the draft Regulations would be accompanied by *comments* clarifying the intent underlying the more important or more complicated provisions.

(d) Many of the details concerning international search and international preliminary examination would be regulated in the *agreements* which would be concluded by the Patent Cooperation Treaty Union or the International Bureau with the Searching and Preliminary Examining Authorities. Such agreements would, as far as the Patent Cooperation Treaty Union is concerned, have to be approved by the Assembly of the members of the Patent Cooperation Treaty Union. Modifications in the agreements would be subject to the same procedure. The guiding principles for such agreements would be laid down in the Regulations. Naturally, the agreements would have to be in harmony with the Regulations.

(e) A constant watch would be kept on the practical application of the Patent Cooperation Treaty, particularly by the *advisory committees* on searching and preliminary examination. Their recommendations would be an important source for adjusting the Regulations and the agreements to changing circumstances, and securing effective harmonization in the working methods of the Searching Authorities and Preliminary Examining Authorities.

Fields to be Covered by the International Search

25. It was recognized that the intent of paragraphs 13 to 15 was acceptable but that the terminology (e. g., "use" instead of "utility" in paragraph 14) and drafting could be improved.

Parts of the International Application to which the International Search is Directed

26. Several representatives of the private circles expressed the view that a better search could be carried out on the basis of a short summary or statement of the inventive concept than on the basis of claims, which, if this view were accepted, would become superfluous. They argued that, since the search must be a technical one, a technical summary (which is what the statement of the inventive concept would be) would be a better basis than claims, which are drafted also with legal considerations in mind. They also argued that because of the existing habits as regards claiming — which differ from country to country — it would be difficult to draft claims which would satisfy the various idiosyncrasies of prospective Searching Authorities.

27. Others, including all the government representatives except one (and another who reserved his final view), were of the opinion that claims were needed. The arguments advanced were, among others, that the claims were *par excellence* the expression of the inventive concept, and a precise expression at that, because of the care with which they must be drafted; that therefore they offer the best guidance for the searcher in his effort to orientate his search towards the inventive concept; that, in the absence of claims, the searcher would not know in which direction to search and therefore the search would be more costly and less reliable; that claims were needed to give assurance that there was continuity in the application; that, since the ultimate objective was to judge

the validity of claims, the required continuity could be assured only if every phase were tied to the claims; that, especially where claims could be amended in the national phases, harmonization of the national laws or practices was not a prerequisite, but that practices would doubtless grow more similar in time if the search reports were based on claims drafted in a certain (namely, the international) manner.

28. In subsequent discussions, it was assumed that the international application would contain claims.

29. It was noted that the international search would *not* be limited to the claims but would be directed to the invention both as described and claimed, and that the abstract which the applicant would be required to file would also help in identifying the inventive concept.

30. It was noted that the proposal contained in paragraph 19 (the search should, in so far as was possible and reasonable, also cover subject matter to which the claims might reasonably be expected to be directed after they had been amended) might be difficult to apply in practice. However, as a goal, the principle was not challenged.

Documents to be Searched

31. The question was asked what criteria — language or other — were applied in defining the minimum patent documentation (paragraph 23). It was replied that the said definition was governed by what appeared to be practical for the prospective Searching Authorities.

32. One of the government representatives urged that the minimum patent documentation should be “art-oriented,” i. e., contain, for each branch of technology, the patents of the countries which were the most “inventive” in that branch. It was remarked, in reply to this suggestion, that the said patents would probably be considered in most cases on the basis of paragraphs 21 and 38.

33. The Representative of the Soviet Union urged that the patent literature of his country prior to 1961 should also be included in the minimum documentation. This could doubtless be done if English abstracts could be produced also for the pre-1961 literature. As to the originals, the Soviet Representative said that they were available on an exchange basis.

34. The Representative of Japan urged that the question be examined whether the Japanese Patent Office could not be provided with English abstracts of those patents in the minimum documentation which were in the French and German languages and for which no English abstracts were now available. He emphasized, however, that, even if his Office was not provided with such additional abstracts, it was now — and would be in the future — in a position to search all the documents of the prescribed minimum documentation, including those in French and German.

35. On the request of the Representative of the Federal Republic of Germany, German applications published prior to the date at which *Auslegeschriften* started to be printed (i. e., 1955, see paragraph 28, footnote) are no longer included in the proposed minimum documentation.

36. Some of the participants suggested that the documents of “early publication” countries, particularly Ireland and

Belgium, be included in the minimum documentation. Others said that this seemed to be unnecessary since several countries included in the minimum documentation would soon have a system requiring early publication.

37. The Representative of Canada said that the Canadian Patent Office might be able to select, and give copies to the Searching Authorities of, those Canadian patents which did not invoke the priority of a filing abroad. These could then be included in the minimum documentation.

38. It was agreed that BIRPI would examine the question in which cases, if any, the requirement of printing should be dropped for the inclusion of published patent applications in the minimum documentation. (The last sentence of the footnote to paragraph 28 remains, in any case, unaffected.)

39. Opinions were divided on whether the search report should indicate the date of publication of the cited documents. Whereas there was no doubt that such information would be useful as a means of ascertaining the effective date of the publication and as a means of spotting and correcting miscitations, it was frequently not easy to establish the date on which a document was actually published. Furthermore, the same document may have different publication dates in different countries. Finally, the relevance, from a legal point of view, of certain dates may vary according to the laws of the various countries. Consequently, any date may, in certain circumstances, mislead the reader.

40. It was also recognized that precise dates were generally of relevance only within a short range of time, mainly when they were near the claimed priority date.

41. Several speakers emphasized, however, the need to group separately in the search report at least those documents which appear to have been published between the date of the national application whose priority is invoked and the date of actual filing of the international application. Others suggested that documents relating to an application filed earlier than the searched application (or invoking a priority that was earlier than the priority or filing of the searched application) but published after the actual filing date of the searched international application should also be cited in the search report and should be cited separately.

42. It was agreed that, whatever solution was adopted for the purposes of further drafts, the other possibilities would be referred to as alternatives.

43. In connection with paragraph 32, it was suggested that abstracts published between the priority date and the actual international filing date should also be citable and, furthermore, that abstracts published after the relevant date should be citable if the documents of which they were the abstracts had been published prior to the relevant date.

44. It was agreed that BIRPI would further study the question whether, in the case of families of patents, citations of some of the members could be omitted or could be less complete (no reference to page, paragraph, column) than in the case of other members of the same family.

45. It was suggested by several speakers that, when the search files contained abstracts, the full document, in its

original language, should be physically attached to the abstract.

46. Representatives of the interested private circles emphasized the need for the maximum degree of international cooperation in the field of searching methods, searching tools, and, in general, the organization of search. One of the government representatives recalled the need for harmonizing any documentation efforts with those sponsored by Unesco, ICSU, OECD, and other computer-based documentation systems, including those run by private enterprises. Several speakers urged the general adoption of the International Patent Classification and its use for also classifying non-patent literature for the purposes of the search files. Others said that for the time being they did not intend to organize all or some of their search files according to the International Patent Classification.

47. Several speakers of the interested private circles urged the need for effective central control of the uniform high quality of searches. It was pointed out in reply that the Advisory Committee on International Searching and other bodies of the proposed Patent Cooperation Treaty Union would be active in achieving this aim.

Contents of the International Search Report

48. Views were divided on whether the name of the applicant or patentee should be included in the citations listed in the search report.

49. As to the question of the possible inclusion of the publication dates of the cited documents, see paragraph 39, above.

50. There was general agreement that the search report should indicate the date of its completion.

51. One of the government representatives suggested that the search report should indicate the classification of the documents cited but the majority held that this was superfluous since it could be obtained from the documents themselves.

52. There was a very full discussion of the question whether the search report should include any text matter, that is, a justification of the reason for which any document was cited in it. Although at least one government representative urged inclusion of such text matter and although none of the speakers denied the possible usefulness of such indications, the majority took the view that, in order to avoid any risk of expressing an opinion in what should be a purely documentary report, the search report should contain no such text matter.

53. A further question discussed in detail was whether the search report could, particularly when the application was complicated and the number of claims relatively high, be allowed to relate certain of the citations to certain of the claims of the international application, and whether the relevant passages of the cited document (particularly if that document were long or complicated) could be referred to by page, column or paragraph number. Although some of the speakers expressed the view that allowing such an annotated presentation might render less pure the documentary character of the search report, most participants who spoke on the point gave an affirmative reply to the above questions.

The Question of the Supplementary International Search

54. Almost an entire day was devoted to the discussion of this chapter of the memorandum (that is, document PCT/II/2, reproduced hereunder).

55. One of the fundamental questions examined was whether an international search could be based on a national application. In this connection, a written proposal of the United Kingdom (PCT/II/3, paragraphs 7 to 10) and detailed oral proposals of the Representatives of the Netherlands and Switzerland were considered.

56. The general conclusions arrived at by the overwhelming majority of both the government representatives and those of the interested private group were that:

(i) the international search report must be based on the international application,

(ii) if a search according to international standards had been carried out on a national application, the international search would nevertheless be effected on the international application itself, taking into account, however, the results of the preceding search and subject to a rebate in the fees commensurate with the value of the resulting savings.

57. At least one government representative reserved opinion on the question whether any national Office being a Searching Authority should be obliged, by the Patent Cooperation Treaty, to carry out an international search in the absence of an international application.

58. In view of the above decisions, which correspond to the essence of the United Kingdom proposal, the limitation appearing in paragraph 67 of document PCT/II/2 disappears.

59. In connection with the question of a supplementary international search in the case of amendments to the claims in the international phase, it was generally agreed that there should be no *obligation* to ask for a supplementary search. On the question whether the applicant should have a *right* to a supplementary search, several speakers said that such a right should not exist, while others said that it should exist only if the supplementary search could be carried out within the prescribed maximum deadlines for the original search.

60. The question whether claims could be changed in the international phase — and there were expressions of opinion both for and against such a possibility — was reserved for further discussion in the future meetings to deal with procedure. It was, however, observed that, should the said possibility of amendment, as distinguished from amendment in the national phase, be admitted, one would have to make sure that the changes would be effective also in countries having a registration system. One of the speakers suggested allowing amendments in the international phase only during the priority year.

The Time Allowed for Establishing the International Search Report

61. The Representative of the United States said that he did not wish to see in the Treaty a rigid obligation to produce search reports within a certain number of months. An expression of intention should suffice and the governing time should

be between 6 and 16 months from the priority date. He believed that in most cases the search report would be completed by the end of the 13th month.

62. It was remarked in reply that any time limits would be set down in the Regulations rather than the Treaty and they would be subject to change in view of the requirements and in the light of experience.

63. Opinions differed on the question whether six months for bringing the search files up to date was too long or too short or just about right under present circumstances, but most of the speakers of the latter opinion admitted that, through better organization of transmittal and filing, the six months could be shortened.

64. The Representative of the United Kingdom referred in this connection to paragraph 3 of document PCT/II/3, where it was observed that the timetable in paragraph 97 could be misleading and searches might in many cases not be completed before the 18th month. Other representatives, especially the Representatives of the Federal Republic of Germany and the United States, were of the opinion that this timetable could be respected in the great majority of cases, since, among other things, waiting for new material would be a practical necessity only in those presumably rare cases where new matter was added to the application when internationally filed, and since the time needed for bringing the search files up to date could be considerably shortened (see paragraph 63, above).

65. The impact of the unity of invention requirement on international search was discussed at some length. The importance of the guarantees provided for the applicant in the footnote to paragraph 98 was emphasized by several speakers. One additional suggestion made was that in order to save time the Searching Authority itself should have the right to determine the part it would search if it was of the opinion that the unity of invention rule had not been respected. Others, however, said that this would give too much freedom to the Searching Authority. Further discussion was reserved for future meetings.

66. The Representative of the United States, while reserving his opinion on paragraph 98 (1) and the footnote relating to that paragraph, suggested that any designated Office should have the right to require that the applicant transmit a translation of his application and the national filing fee by the end of the 21st month after the priority date in the admittedly abnormal case in which the search report would not yet be available and thus the communication of the international application had not yet taken place. The reason for this requirement would be to allow proceeding to the national examination of the international application without an international search report in the said abnormal cases. Also, that no designated country should have the right to require filing of such translation and payment of such fee before the expiration of the 21st month, even if the international application, together with the search report, were communicated earlier. Discussion was not opened on these procedural questions as they were reserved for future meetings.

Which Should Be the International Searching Authorities?

67. A particularly thorough discussion took place on the question of centralized versus decentralized search.

68. "Centralized search" was generally understood as search carried out for all international applications by one international organization, namely, the International Patent Institute. However, various nuances and transitional solutions were also proposed by some of the speakers, such as: branch offices of the International Patent Institute in various places of the world; subcontracting some of the work done by the International Patent Institute to national Offices with the responsibility for quality control in the International Patent Institute; effecting the initial search on the national application (if an international-type search on such application is requested by the applicant) in certain national Offices and effecting the second search (that on the international application) in the International Patent Institute, using also the results of the first search.

69. "Decentralized search," for the purpose of the discussion, was understood to mean the proposals contained in document PCT/II/2.

70. The representatives of the interested private circles who spoke on the subject expressed a strong preference for a centralized search. However, most of them added, albeit with reluctance, that, at least in the initial period of the application of the Patent Cooperation Treaty, decentralization would be necessary. Many of them expressed the desire that it should be clearly understood that decentralization was merely a transitional situation and centralization should be achieved as soon as possible. The supporters of centralized search argued that its quality would be more uniform, generally higher, and more objective.

71. Most of these views were also shared by the Representative of France, and, tentatively, the Representative of Italy.

72. The Representatives of Canada and the United Kingdom stated that the future lay in centralization of one kind or another, though one might have to start out with the existing facilities, i. e., decentralization.

73. The Representatives of the Federal Republic of Germany, the United States of America, Japan, Sweden, the Soviet Union, Poland and Austria (in the order in which they spoke) were of the opinion that the only realistic solution, at least for the foreseeable future, consisted in decentralization. Some of them argued also that centralization had definite disadvantages: for example, duplication of work in cases where a national Office had to search an application *qua* national application in any case. Also, some said that decentralization would be a potent incentive for international cooperation and harmonization of national practices and laws, incentives which would not exist in the case of a centralized international search. It was also said that decentralization would lead to sound competition among the various Searching Authorities for the producing of good quality searches. All the prospective Searching Authorities declared that their documentation and their staff were wholly adequate, even in respect of the problem of handling foreign languages, to perform searches meeting all the proposed requirements.

74. Several speakers said that it was necessary to keep the number of Searching Authorities small and possibly even to provide for the gradual reduction of their number.

75. The Director General of the International Patent Institute said that, even if the International Patent Institute were the only Searching Authority under the Patent Cooperation Treaty, the number of applications to be searched would only cause an increase of a very small percentage in the workload which the International Patent Institute would have once the French applications were searched by it. He said that the Institute would have a new headquarters building which would be able to house 1,120 searchers plus their supporting staff and that he was confident that he would be able to recruit the necessary staff. He said that each searcher could produce approximately 100 searches per year and that the Institute was scheduled to be able to handle 40,000 searches per year within five years from the signing of its agreement with France, which was expected to take place within two months. The Representative of the Federal Republic of Germany said that, for the purposes of the Patent Cooperation Treaty, which he hoped would come into force by 1971 or 1972, the International Patent Institute would have to be able by that time to perform the required amount of international searches, and he asked for a detailed estimate of the future capacity of the International Patent Institute. The Director General of the International Patent Institute said that he would prepare and communicate a study on this matter to BIRPI. He also said that the requirements of international search would be unusual for national Offices acting as Searching Authorities and that the Patent Cooperation Treaty should require "effective ability" on the part of such Offices to perform the international search. Finally, he said that the suggestion in paragraph 102 according to which the past performance of a Searching Authority could lead to non-renewal of its designation was not in conformity with international public law as applicable to the Institute and that the suggestion should be re-examined.

76. It was agreed that the compatibility of paragraph 102 with paragraph 107 would be thoroughly examined.

77. The representatives of several national Offices which were prospective Searching Authorities expressly stated that they would naturally accept quality control.

78. The Representative of France urged that, should the decentralization solution prevail, the Searching Authorities should jointly create international organs useful for the Patent Cooperation Treaty and dealing with such questions as uniform classification, cooperation in translation tasks, re-search into the search problems.

79. The Representative of the Soviet Union said that, although decentralization should be kept to a minimum, the Patent Cooperation Treaty should not preclude the creation, on a regional basis, of international Searching Authorities additional to the International Patent Institute.

Which Searching Authority Should Be Competent for Any Given Application?

80. It was explained that the right provided for the applicant in paragraph 108 as it stands was also his only possibility of

obtaining a search report in the case contemplated therein. The Representative of Switzerland said that, in his opinion, the applicant should in no case have a choice between several Searching Authorities (cf. paragraph 107).

81. It was suggested that further study should be made for the purpose of arriving at possibly more flexibility in the rules concerning the competence of any given Searching Authority. While it was generally recognized that one must prevent the flow to any of the Searching Authorities of applications which normally should not go to it, account should be taken of the fact that applicants might wish to file their first national applications in a country other than that of their residence, or assign them to persons having their residence in another country.

Fees

82. The Representative of the International Patent Institute said that the same independence with regard to fixing the search fees should be given to his Institute as was suggested for national Offices. The Representative of Italy said that applicants from all PCT countries should have equal conditions as to search fees.

Languages

83. Several speakers dealt with questions which, thereafter, were reserved for future meetings. Among these questions were the respective advantages of publishing claims or abstracts in the *Gazette*, a suggestion for not re-publishing the international application together with the search report in a case where the application was published before establishing the search report but making the latter available only upon request, and the desirability of publishing abstracts in classified groups separate from the *Gazette*.

84. The Representatives of the Federal Republic of Germany and of the Soviet Union urged that the *Gazette* be published also in German and Russian, respectively.

85. Some speakers gave warning that the cost of translating abstracts was very high.

86. One government representative suggested that it would be simpler and more efficient if copies of the international application as translated in the various languages of the designated countries were sold by the national Offices rather than by the International Bureau. It was replied that perhaps the best solution would consist in providing for both possibilities.

87. *This report was unanimously adopted by the Working Group in its closing meeting on March 29, 1968.*

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I. States

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Union of European Patent Agents

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Mr. J. Willems, Krefeld (Federal Republic of Germany).

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Mr. J. P. Simon, Legal Service, Syndicat Général de la Construction
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Mr. P. Trupia, Confederazione Generale dell'Industria Italiana, Rome.

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Dr. Arpad Bogsch, Deputy Director.

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Mr. I. Morozov, Counsellor, Industrial Property Division.

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Mr. Yoshiro Hashimoto (Patent Office of Japan).

IV. Officers of the Meeting

Chairman: Mr. J. Voyame (Switzerland)

Vice-Chairman: Mr. E. I. Artemiev (Union of Soviet Socialist Republics)

Secretary: Dr. Arpad Bogsch (BIRPI)

II**Memorandum on Questions Concerning the Proposed International Search *)****CONTENTS***The International Search*

Purposes Served by the International Search Report

Objective of the International Search

Fields to Be Covered by the International Search

Parts of the Application to Which the International Search Is Directed

Documents to Be Searched

Contents of the International Search Report

The Question of the Supplementary International Search Report

The Time Allowed for Establishing the International Search Report

The Time Involved

The International Searching Authorities

Which Should Be the Searching Authorities?

Which Searching Authority Should Be Competent for Any Given
Application?

Fees

The Languages

Language of the International Application

Language of the International Search Report

Language of Publication of the International Application

Language of the International Gazette

Copies of National Applications.

*) BIRPI document No. PCT/II/2.

The International Search

Purposes Served by the International Search Report

1. An international search report serves two main purposes (in chronological order):

- (a) for the *applicant*, it helps in deciding whether he should
 - (i) withdraw his international application,
 - (ii) maintain it as it is,
 - (iii) maintain it but with amended claims,
 - (iv) make a final decision as to the countries in which he wishes to use it;
- (b) for the *examining Office*, it helps in deciding whether it should
 - (i) refuse the application,
 - (ii) grant the patent with the claims as applied for,
 - (iii) offer the possibility of a grant with the claims amended in a certain way¹).

2. In other words, an international search would serve not only the purposes served by the searches now carried out in most national Patent Offices but also some additional purposes.

3. Today, a national search is an operation intimately linked to examination. Search and examination are not two different operations. Search is a "tactical" operation: the documents of possible relevance are not necessarily all discovered at one and the same time; some are not discovered until later, once those discovered earlier prove to be insufficient for the purposes of examination. And once the searcher is of the opinion that he has reasonably exhausted the possibility of locating prior art, or that he has citations which "kill" the application — the novelty of the invention, its *Erfindungshöhe* (inventive step), or nonobviousness — the national search is stopped.

4. This is not so in the case of the proposed international search.

5. Unlike the present-day national search (to the extent that such search is at all distinguishable from the national examination), the international search would be a completely different operation, quite distinct from examination. The international search operation would be more like that conducted today in the Patent Office of the Netherlands or the International Patent Institute and that which is expected to be introduced in the *Patentamt* of Munich under the recent revision of the Patent Law of the Federal Republic of Germany.

6. The international search does not have as its immediate objective the elimination of worthless applications or worthless claims — worthless, that is, according to a given country's concept of patentability. Its objective is wider: (i) it must be useful in the context of the laws of not only one country but

¹ If the application is maintained and the international search report is published, the latter will also be useful to a third group, namely, any person — particularly a *competitor* of the applicant — interested in the technical disclosure contained in the application. With the help of the literature cited in the international search report, it will be easier for such a person to form, for his own purposes, a judgment on the chances of the application's leading to a patent, on the probable scope of such a patent, and on the strength of such a patent.

several — ideally, all — countries, and (ii) it must be useful not only in the procedure of examination but also in deciding whether an application should be left unchanged, redrafted, or withdrawn.

Objective of the International Search

7. The objective of the international search is to locate prior art which is useful in determining the novelty, inventive step, and non-obviousness, of the invention as claimed, bearing in mind the differences in law among the various countries²).

8. *Prior art* would include — subject to the qualifications set out below — *all relevant documents*.

9. Stopping the search after one or two citations would never be permitted since even on what seems to be a "clear" or "total" anticipation views might differ, and because even a "clearly" anticipatory document may, for legal reasons — such as the date or circumstances of the publication of the document — be irrelevant in one or other of the countries party to the PCT.

10. However, "all the relevant documents" must be understood to mean all documents within reasonable limits.

11. Thus, for example, if a hundred citations could be found, the searcher would be allowed to stop after — say — twenty, provided the cumulative effect of these twenty leaves no reasonable doubt that the invention has been anticipated or the relevant prior art has been covered. Citing more would be uneconomical, particularly if interested parties ordered copies of all cited documents. If such a point is reached after having searched less than the whole minimum documentation, the part not searched would have to be indicated in the search.

Fields to Be Covered by the International Search

12. The international search should cover all those technical fields — i. e., should be carried out with the help of all those search files — which may have material pertinent to the invention.

13. Not only must the art with which the invention is classifiable be searched but also analogous arts regardless of where classified.

14. These will first of all include the so-called "reference classes." But they will not be limited to pre-established reference classes. The determination of what arts are analogous, in any given case, will depend on the necessary essential function or utility of the subject matter of the invention and not only upon the function specified in the international application.

15. Furthermore, the international search should consider all subject matter that is generally recognized as equivalent to the subject matter of the invention or certain of its features, even though, in its specifics, the invention as described in the international application, is different.

² As well as the scope of the international examination if such were also to be instituted by the PCT.

Parts of the Application to Which the International Search Is Directed

16. The international search should not be limited to the claims but should be directed to the invention, both as described and claimed.

17. There should be particular emphasis on the inventive concept toward which the claims appear to be directed.

18. In other words, it is not enough that the claims alone be searched.

19. The international search should, in so far as is possible and reasonable, cover the entire subject matter to which the claims are directed or to which they might reasonably be expected to be directed after they have been amended.

20. The last point is important since, after the international search has been completed, claims may be amended and normally no second or supplementary international search will follow (see paragraph 82, below).

Documents to Be Searched

21. In the course of each international search operation, the Searching Authority must consider all the relevant documents which it has in its search files.

22. It must have in its search files certain "patent literature" and "non-patent literature." This is called the prescribed minimum documentation.

23. At the outset, the minimum patent literature would cover, within the limits stated below, seven countries: France, Germany, Japan, Soviet Union, Switzerland, United Kingdom, United States of America.

24. Published international applications would also constitute part of the minimum patent literature.

25. The required minimum of non-patent literature will be defined later.

26. Both kinds of minimum literature will be gradually enlarged.

27. International search will be based on documents. Even if the definition of prior art refers to "everything made available to the public . . . by means of . . . oral description, use . . .," it is understood that the Searching Authority will not monitor lectures and uses but will take them into account only if the oral description or the actual use is recorded in a document it has in its files. Of course, the date of the first oral delivery or of the first use (rather than the date of the document) may be relevant in some countries, but that is a different matter.

28. "Patent literature" consists of patents, inventors' certificates, and published³⁾ patent applications. Each Search-

ing Authority would have to undertake to have and maintain the published patent applications (if any), the patents, and the inventors' certificates (if any), of the following countries classified in its search files in such a way that their systematic use is assured: France, from 1920⁴⁾; Germany, from 1920⁴⁾; Japan: chemical from 1962⁵⁾, other from 1969⁶⁾; Soviet Union, from 1961⁵⁾; Switzerland (French and German languages only), from 1938⁷⁾; United Kingdom, from 1920⁴⁾; United States of America, from 1920⁴⁾.

29. Should Belgian patents once again be among the documents published at an exceptionally early date, they (as long as they are in French) should probably also be included in the above list from the date on which such early publication system would apply de facto.

30. Documents published after the date of the international filing should not be cited. The question arises whether, when the search is done on the basis of a national application (i. e., prior to the filing of the international application), documents published before the international search is completed should be cited.

31. Documents published after the priority date should be listed separately.

32. International search reports could not cite abstracts only, except if the abstract has been published (for example, in a periodical), if it constitutes in itself (that is, without reference to the full document) a relevant document, and if the publication date of the abstract precedes the priority date (or if no priority is claimed, the filing date) of the international application.

33. Abstracts published in a language other than the original document may be cited together with the original document of which they are an abstract. Such citation may be useful to parties not able to read the language of the cited patent document.

34. Otherwise, abstracts would merely serve the same purpose as indexes and classification: they are tools instrumental in getting to the patent document itself.

35. If the document is in a language which the individual searcher does not understand, and if the searcher cannot clearly see the coverage of the patent document, on the basis of the abstract, formulae, and drawings, he will have to ask for and be provided with an oral or written translation of the patent document.

36. Starting the search work with abstracts would not, in itself, be anything unusual, since it has been done for a long time in some Patent Offices even when the language of the full document is perfectly understood. For example, the files of the U. K. Office maintain not only the full texts but also an abstract of each U. K. specification. Of course, abstracts, to be useful, must be good and there would be an organized effort constantly to watch and improve their quality. Also,

³⁾ "Published" means printed documents copies of which are generally available through sale. Published German applications prior to the printing of *Auslegeschriften* as from 1955 would also be included. Mere laying open for public inspection does not constitute "publication" for present purposes.

⁴⁾ General proposed cut-off date: will represent more than fifty years when the PCT enters into force.

⁵⁾ Date from which the Derwent abstracts (English) exist.

⁶⁾ Or whatever will be the date from which English abstracts will exist also in fields other than chemistry.

⁷⁾ Present cut-off date in the International Patent Institute.

the existence, present or future, of full translations in any of the Searching Authorities would have to be promptly notified to all the other Searching Authorities and, where required, such translations would have to be put at the disposal of the latter so that duplication of work would be reduced to a minimum.

37. The rule that the patent documents of each of the said countries must be classified in the search files of each Searching Authority does not mean that all corresponding patents (that is, patents invoking the same priority document) have to be physically present in the files. It would be sufficient if one or two of the members of the same patent family were so filed and the other members could be merely referred to in the file, provided they could be easily and promptly obtained from the central archives of the Searching Authority.

38. It is emphasized that the patent documentation listed above is a *minimum* (that is, must be in the search files and must be searched) but that Searching Authorities must further undertake to discover as much of the relevant prior art as their present and future facilities going beyond the minimum documentation permit. Thus, those Searching Authorities which are national Offices will also have to search all the additional documents which they search when they perform searches under the requirements of their national laws.

39. Furthermore, it is emphasized that what it is being attempted to define now is the *initial* minimum documentation, that is, a minimum that exists or could relatively easily be created in each Searching Authority by, say, 1971. Although such documentation would cover a very high percentage (for the last 50 years some 85% and prospectively around 90%) of all the inventions on which patents are sought in one or more countries, a gradual extension of this minimum would be one of the constant objectives of the PCT. By extension is meant extension both to more countries and further back in time, if useful from a technical viewpoint.

40. Finally, it is emphasized that whereas at the beginning there will be only a rather low degree of uniformity in the *search tools* — i. e., the way in which the documents are classified, filed (as original documents, abstracts, microcards, punch cards, stored in computers) and retrieved (manually, mechanically, electronically) — there would be a constant cooperative effort among the Searching Authorities to harmonize their search tools and to divide the work of creating new ones or extending those which exist. In this respect, the constitution of the search files according to a system that would be as uniform as possible among the Searching Authorities, the creation and use of the proposed World Patent Index, and the development and application of the shared-use systems à la ICIREPAT to extend mechanized information retrieval to all or most fields of technology, will have to be energetically pursued. "Research in respect of search" will have to be organized. It is perfectly conceivable that in a decade or two much of the storage and retrieval of information could be carried out by an integrated computer system, common to all Searching Authorities, and fed and used by all of them simultaneously.

41. As to "*non-patent literature*," it is suggested that the prospective Searching Authorities tentatively agree, in ad-

vance, on an initial list of periodicals which must be constantly received by each of them and whose relevant portions will be incorporated or indicated in their search files. The work of classifying articles from periodicals should gradually be divided to avoid duplication of effort. Once the Advisory Committee on International Searching starts to function, it would be that body which would draw up and periodically revise the list of technical periodical publications which each Searching Authority should undertake to keep and consult. The final decision would, of course, rest with the Searching Authorities and the member countries of the PCT.

42. Here, too, the ultimate goal would be to computerize the information contained in the abstracts, or the full texts themselves, according to agreed principles which would allow division in the work of feeding information into the common system, i. e., a system which would be useful and available to all the Searching Authorities.

43. Both at the outset — when common computerization would not yet exist — and later, the competent organs of the PCT Union would invite not only the Searching Authorities but anybody else, particularly industrial enterprises maintaining individual or common highly specialized documentation services, to place their data banks as well as their storage and searching experience at the disposal of the Advisory Committee, which would then consider their usefulness for international search and, if appropriate, channel them to the Searching Authorities. Thus the likelihood of Searching Authorities' not following the latest developments closely and fast enough, and of any particular Searching Authority's failing to discover a relevant anticipation, would be diminished.

44. Naturally, the Advisory Committee would not consist only of the Searching Authorities. Although no new burdens could be placed on the latter without their express agreement, all countries party to the PCT and organizations representing interested private circles would also participate in the work of the Advisory Committee.

Contents of the International Search Report

45. The international search report would identify the Authority which established it and the date of its establishment.

46. The international search report would consist of the citations of the documents considered to be relevant.

47. In the case of patents, inventors' certificates, and published patent applications (together called "*patent literature*"), the citation would consist of the following:

- (i) an indication of the nature of the document (patent, inventor's certificate, published application);
- (ii) the name or symbol of the issuing country;
- (iii) the number of the document;
- (iv) where relevant, the page, column, paragraph, of the description, and the number of the claim (if there are several claims and they are numbered)⁸.

⁸ In the case of corresponding patents belonging to the same priority family, it might be enough to include these particulars only for one or two of the members of the family. All the other members must be cited

48. The question arises whether the name of the applicant, patentee, or holder of the certificate, should or should not be included in the citation, as a check on miscitations.

49. The citation would *not* include:

- (i) the title of the invention;
- (ii) the classification given to the document by the Office which published it;
- (iii) the date of issue or publication of the document;
- (iv) the date of the first application, if any, invoked in the document as the basis of a priority claim.

50. In the case of *non-patent literature*, the citation would as far as applicable, according to the bibliographical rules of the International Organization for Standardization (ISO), contain the following:

- (i) the title of the book or periodical (the latter usually in an abbreviated form) and the name of the publisher of the book, in the original language only, but transliterated into Latin script if the original is not in Latin or Cyrillic script;
- (ii) in the case of articles in periodicals, the title of the article, in the original language only, but transliterated into Latin script if the original is not in Latin or Cyrillic script;
- (iii) the name of the author, transliterated into Latin script if the original is not in Latin or Cyrillic script;
- (iv) where applicable, the number or date of issue as indicated in the periodical, the year date of the book as indicated therein, the number of the edition (*wievielte Auflage*) of the book, the page, column, and paragraph.

51. The citation would *not* include the date of publication.

52. The international search report would contain no "text matter."

53. The international search report would contain no summary or any other text. In this, it would differ from the present reports of the International Patent Institute, which, after the citation of each cited document, usually contain an extremely concise summary or indication of the relevant subject matter of the cited document. Although such annotations would doubtless serve many useful purposes — and, in particular, would help in deciding which documents to consult or order — there is some apprehension that however concise and factual such an indication would be it could imply an opinion on the relevance of the document cited since, obviously, the annotation would be dictated by the desire to indicate the reason for which the document was cited. For this very reason, it would automatically impose a discipline upon, and require greater attention and selectivity on the part of, the searcher. These would be advantages. The dilemma to be solved is thus whether the search report should be more informative and probably more accurate or whether such advantages are outweighed by the real or illusory fear that any text in a search report would imply an expression of opinion, expressions of opinion in the search stage being, of course, undesirable.

as well (both for legal and language reasons) but, if they correspond not only because they are based on the same priority application but also in their coverage, the said particulars might be omitted.

54. Consideration could be given to an intermediary solution according to which the applicant would receive a copy which would be annotated in the said manner, whereas the copies communicated to the designated national Offices and the publication would not contain such annotations and would merely consist of the bare citations.

55. The international search report would also indicate

- (i) the fields searched;
- (ii) any countries not in the minimum list whose patent literature it covers;
- (iii) the dates from which the patent literature of a country in the minimum list has been searched if it includes documents older than required;
- (iv) any countries in the minimum list whose patent literature was not searched in the exceptional circumstances which are described in paragraph 11, above ("overkill").

56. The international search report will have to indicate the fields of technology searched by citing the subdivision(s) of the classification system used. This system might be the International Patent Classification or any other system according to which the search files of the Searching Authority are organized, provided that the key is made public so that any person can find the title and context of the cited subdivision(s).

57. If the Searching Authority searches the patent literature of one or more countries *not* included in the minimum documentation, it will indicate the countries and relevant dates. For example: "Also searched Dutch and Swedish patents from 1920."

58. An indication of non-patent literature searched beyond the minimum required would not appear in the search report as it would be impractical to do so in view of the great volume of such literature.

59. If the Searching Authority searches older patent literature than it is required to search, it will so state. For example: "U. S. patents searched since 1850."

60. It has been stated above (paragraph 11) that, in very exceptional cases, the Searching Authority may be excused from searching the patent literature of certain countries included in the minimum documentation. Such a fact would have to be indicated.

61. Easy access to the cited documents will be organized.

62. Both applicants and third parties, as well as the national Offices of countries designated in the international application, will frequently want to have the full text of the documents cited in the international search report.

63. Such documents may not be in the possession of the national Office, the applicant, the third party, or their patent lawyer or agent. Consequently, the Regulations should provide that — subject to any copyright limitation — each international Searching Authority would be able to furnish, on

request and on payment of a fee, copies of the cited documents. The applicant should even have the possibility of placing an advance order for all or some of the documents which the Searching Authority will cite. These would then be sent to him together with the international search report.

64. Facilities for verifying the availability of translations of cited documents into given languages, and the ordering of such translations, would also constitute a useful service and should be organized in due course on a truly international basis.

The Question of the Supplementary International Search Report

65. One has to start out with a certain number of assumptions as to what the PCT would provide.

66. First, it is assumed that an international search report may be requested either before or after the filing of the international application. In the former case, the document that would be searched would be the national application if it is in the language which the competent Searching Authority accepts for search, or a translation⁹⁾ of the national application if the national application was filed in a language which the competent Searching Authority does not accept for search. In the following, this document will be referred to as "the national application," it being understood that, in the second case, it is the translation rather than the national application.

67. It is also assumed that the PCT will permit the *description* in the international application to be different from the description which appeared in the *national* application on which the international search is requested. The limit within which such differences may exist is that the scope of the disclosure in the international application cannot exceed the scope of the disclosure made in the national application¹⁰⁾.

68. It is further assumed that the PCT will not permit the *description* contained in an *international* application to be changed in the international phase¹¹⁾.

69. Finally, it is assumed that the PCT will permit the *claims* to be amended. In this connection, two questions arise: (i) what kind of amendments should be permitted? (ii) how many times can the claims be amended?

70. As to the nature of the amendments, the following would apply: The scope of the amended claims cannot exceed the scope of the disclosure. Claims can be omitted. Claims may be restricted. They may be "shifted" or otherwise changed (within the limits permitted under the rules concerning unity of invention) even if they change the scope of the claims, as long as they do not exceed the scope of the disclosure.

⁹⁾ When a translation is needed, it would be prepared by and under the responsibility of the applicant.

¹⁰⁾ The international application may be based on two or more national applications, in which case the description would necessarily be different.

¹¹⁾ By international phase is meant the procedure before the international Searching Authority and the International Bureau. Once the international application, or the translation thereof, reaches the national Office of a designated State, the applicant may make all such changes in the description and the claims as the national law of that country permits in the case of national applications. Of course, it will be in the interest of the applicant not to make such changes as might endanger his priority rights.

71. As to the cases in which the claims may be amended, the following is proposed: After the international search reaches the applicant, he should be entitled to amend the claims, and, in those cases (to be discussed below) in which a supplementary international search is carried out and results in a changed international search report, the applicant should be entitled to amend the claims for a second time.

72. Now, on the basis of the foregoing assumptions, the question arises whether the international search report need be, or should be allowed to be, supplemented in either or both of the following cases: (i) when the description has been changed, (ii) when the claims have been amended.

73. Different solutions are suggested for the two cases:

74. When the *description* in the international application differs from the description in the national application on which the international search was made, both applications will be submitted to the international Searching Authority (which has already made an international search on the national application).

75. The international Searching Authority will then compare the primitive description and the primitive claims with the changed description and the amended claims and will either decide that no supplementary international search is necessary or will effect a supplementary search. In the latter case it will, if it thinks necessary, change its search report.

76. A supplementary search will entail the payment of a supplementary fee whose amount will be fixed by the Searching Authority. It will be commensurate with the amount of the supplementary work. It will be less than the initial search fee.

77. The following will be communicated to the national Offices of the designated States and will be published by the International Bureau: (i) the international application, (ii) the international search report (if changed, as changed).

78. It is to be noted that under the above rule there will generally be no supplementary search because descriptions, if changed, will generally be changed only in a manner which does not entail the need for a supplementary search.

79. In order completely to eliminate the need for a supplementary search, one would — it is believed — have to provide that the description in the national application and in the international application must be identical. Such a solution, however, does not seem to be flexible enough.

80. It should be noted that the above proposal does not apply to cases where only the *claims* are amended. (In such cases, as will be seen below, there will be no need for a supplementary search.) The above proposal applies only when the *description* is changed. If the latter is changed *and* the claims are amended, it would be impractical not to allow the Searching Authority to supplement its search even in the light of the amended claims, since it has to look at the ap-

plication once more in any case (because the description has been changed).

81. Now we come to the other case, namely, where the description is not changed but the claims are amended.

82. When the *claims* are amended, no supplementary international search is required but any applicant may ask for a supplementary search.

83. This rule would apply in cases where the amendment consists in a difference (i) between the claims of the national application (when international search was made on that application) and the international application, or (ii) between the primitive claims and the subsequent claims in the international application.

84. If no supplementary search is asked for by the applicant, both sets of claims will be communicated to the designated Offices and will be published by the International Bureau.

85. If, on the request of the applicant, a supplementary search is carried out and the international application does not invoke the priority of a national application on which the international search was made, only the amended claims and the changed search report will be published by the International Bureau. If the international application claims the priority of the said national application, the claims as they were prior to amendment will be published too. In any case, the claims as they were prior to the final amendment will always be communicated also to the designated Offices.

86. Any supplementary search will entail the payment of a supplementary fee whose amount will be fixed by the Searching Authority. It will be commensurate with the amount of the supplementary work. It will be less than the initial search fee.

87. The reason for which supplementary search is not *required* is that it is believed that amendment of claims will only rarely lead to a situation in which a supplementary search would be needed. And since both the primitive and the amended claims would be published and communicated, any interested party could, by comparing the two sets of claims, have an idea whether the international search report was fully responsive to the amended claims. The decision not to require a supplementary search is, of course, dictated by the desire to speed up procedure, save work and fees, and generally streamline the procedure.

88. On the other hand, the reason for which supplementary search is *allowed*, at the option of the applicant, is that it seems to be desirable to give an opportunity to the applicant to make sure that the international search report (on the basis of which he might withdraw his application and thereby save money) is fully responsive to his claims, and to allow him to withhold from publication those claims which, provided they are not in a priority document, he regrets having made.

The Time Allowed for Establishing the International Search Report

89. Subject to the qualifications stated below, Searching Authorities will have three months to prepare an international search report and two months to prepare a supplementary report.

90. The three months cannot start before six months have elapsed from the priority date which is or might be invoked.

91. The latter rule applies in the following cases: (i) when the international search report is made on a national application, (ii) when the international application does not invoke the priority of a national application (that is, the international application is the first application and the possible basis of priority), (iii) when the international application is filed within six months of the national application the priority of which has been invoked in the international application. In all these cases, one needs to leave six months to the Searching Authorities to integrate into their search files the most recent documents without which there would be a risk that the search would not cover essential prior art.

92. Otherwise, the three-month period will start from the date on which the Searching Authority has received the application to be searched, and the two-month period will start from the date on which the Searching Authority has received the changed description and/or the amended claims.

93. It is understood, of course, that the only case in which the description may be changed is where the international search was based on a national application. Claims may be changed after the international search report has been received and, if that is changed on the basis of a supplementary international search, claims may be changed once again, after the changed international search report has been received.

The Time Involved

94. Some further assumptions have to be made in order to illustrate the time involved in the complete procedure entailing international search only (and not also international examination, if any). Such assumptions are made on a very provisional basis since they imply solutions to questions which are reserved for meetings other than the meeting of the Working Group for which this document has been prepared.

95. Such assumptions are:

- (i) that the international application will not be published earlier than at the expiration of 18 months from the priority date;
- (ii) that, subject to the above limitation, the international application will be published at the expiration of the date on which publication is required according to the law of that designated country whose law provides for the earliest publication date for national applications;
- (iii) that the Searching Authority will normally be allowed three months in which to prepare and communicate the search report; however, where difficult questions of unity

- of invention arise, up to two additional months may be provided;
- (iv) that the applicant will normally have two months for amending his claims;
 - (v) that the applicant will be allowed a period of three months to communicate translations to the designated Offices, provided, however, that the period of 21 months referred to under (vi) below may, where applicable, shorten that period;
 - (vi) that, irrespective of whether the deadlines set for publication or the possibility of withdrawal have expired, the law of any designated State may provide that a copy or, when the international application is in a language other than the language of the designated Office, a translation of such application must be filed with such Office at the expiration of the 21st month after the priority date¹²).

96. Case A: International Search Based on National Application Without (Sub-Case A-1) or With (Sub-Case A-2) Supplementary Search.

- | | |
|---|---|
| Starting date: | First national filing with request for international search. |
| 1 st to 6 th months: | Waiting period for completion of search files, transfer to Searching Authority where Office of first filing and Searching Authority are not the same. |
| 7 th to 9 th months: | International searching. |
| 10 th to 12 th months: | If PCT route still desired, preparation and filing of the international application with the search report. |
| 13 th to 15 th months: | Examination as to formalities; determination as to whether a supplementary international search is required; performance of that search if required; transmittal of notice that no supplementary search is required or of changed search report to the applicant. |
| 16 th to 18 th months:
(Sub-case A-1) | Preparation and filing of translations into the languages of the designated Offices where no supplementary search has been performed. |
| 16 th and 17 th months:
(Sub-case A-2) | Preparation and filing of any amendment to claims where a supplementary search has been performed and amendments are desired. |
| 18 th month: | Earliest possible date of international publication (to prevent publication, application would have to be withdrawn two weeks prior to date applicable for publication). |

¹²) This is a new proposal in order to make sure that, in cases where the international search is not completed within 21 months, the national Offices will have a full translation in their search files, since the international application may constitute an anticipation for other applications whose searching would otherwise be incomplete. It is to be noted, however, that this rule would rarely have to be applied (see time charts below) and, thus, the potential burden on the applicant would be relatively light.

- | | |
|--|---|
| 18 th to 21 st months:
(Sub-case A 2) | Preparation and filing of translations into the languages of the designated Offices where a supplementary search has been performed. (In no case will translations be submitted after the 21 st month where a designated national Office so requires.) |
|--|---|

97. Case B: International Search Based on International Application Without (Sub-Case B-1) or With (Sub-Case B-2) Supplementary Search.

- | | |
|---|---|
| Starting date: | First national filing. |
| 12 th month: | International application filed. |
| 13 th to 15 th months: | International searching (including examination as to formalities; rectification). |
| 16 th and 17 th months:
(Sub-case B-1) | If international application maintained and amendment of claims desired, preparation and filing of such amendments together with request for supplementary search, if any. |
| 18 th month: | Earliest possible date of international publication (to prevent publication, application would have to be withdrawn two weeks prior to date applicable for publication). |
| 18 th and 19 th months:
(Sub-case B-2) | If amendments filed and supplementary search requested, performance of such search. |
| 20 th and 21 st months: | If international application maintained and further amendment of claims desired in view of supplementary search, preparation and filing of such further amendments. |
| 21 st month: | Translation of application, where required, must be filed in designated national Offices. (This translation will contain the primitive claims if amendments not yet available.) |

98. Observations on Cases A and B.

(1) Communication of the international application to the national Offices of the designated States will be effected together with the international search report. A designated national Office may, however, receive a copy of the international application without the search report, and therefore before the formal "communication" of the international application, in any of the following cases: (i) when it asks for a copy under Article 8 of the 1967 PCT draft (document PCT/I/4), (ii) if international publication precedes the formal communication (which will happen in the, presumably rare, cases where the international search has not been completed by the time international publication has to be made), (iii) by the end of the 21st month (since by that time any designated Office may ask for a translation from the applicant of the international application and, therefore, will also need a

copy of the original). Naturally, examination in the designated national Offices having an examination system would not start on the basis of copies so transmitted but only on the basis of the formally communicated international application.

(2) If the national Office receiving the international application is not the Searching Authority, a period of one month must be added to all the times indicated above in order to permit the national Office to perform any security checks necessary and to transfer the application to the Searching Authority.

(3) The above time periods are representative of average or normal cases. In certain other cases, these periods may be shorter or longer, and will be longer especially in cases where questions of unity of invention are involved¹³).

(4) It is to be noted that in many cases the international application will be filed either at the time of the first application or well before the end of the priority period. In these cases, the time available for the various steps in the international procedure could be lengthened and, even with these lengthened periods, the procedure could be completed before the deadline for publication and filing of translations, if any.

The International Searching Authorities

Which Should Be the Searching Authorities?

99. It is proposed that the International Patent Institute and any national Patent (Inventions) Office capable of covering all fields of technology, employing at least 150 full-time examiners (searchers), and formally undertaking to apply and observe all the common rules of international search, should be able to acquire the status of international Searching Authority through an agreement concluded with the International Bureau.

100. The agreement would have to be approved by the Assembly of the member countries of the PCT Union.

101. Approval would depend on the Assembly's being satisfied that the international search reports issuing from the prospective Searching Authority would, in all probability, meet the prescribed uniform requirements, attain the necessary uniform standards of quality, and be prepared within the prescribed time limits.

102. Any such agreement would be for a certain number of years and would be renewed from time to time provided that past performance justified its continuation.

¹³) Consideration should be given to the question of treating lack of unity of invention, discovered during the international search stage, in the following way: the Searching Authority invites the applicant either to limit his international application to one of the described inventions (in which case, divisional applications could be filed for the other inventions) or to pay a separate search fee for each of the inventions described. If the applicant, within a brief period — say, two months — does not comply with this request, his international application would be considered to be withdrawn. The treaty would provide for the possibility of avoiding this consequence by converting the international application into national applications in the designated countries within the same time period.

103. It is believed that such a procedure is desirable because, the PCT being a cooperative undertaking, it would not seem to be appropriate that each Patent Office should be its own judge of the question whether it is likely to be able to act as a Searching Authority and, once it has become a Searching Authority, whether it meets and will continue to meet the required standards.

104. It is believed that only the International Patent Institute and national Patent Offices should be eligible to become Searching Authorities. They should, however, probably not be prevented from entrusting searching, under their supervision and responsibility, in certain fields to any international intergovernmental scientific agency particularly well equipped in such fields. Any such "sub-contracting" would require that sufficient safeguards be written into the Regulations (for example, that the Contracting States must agree, subject to a highly qualified majority, that the sub-contractor is bound by the usual rules of secrecy, etc.), and probably that in each case both the applicant and the national Office to which his application would otherwise go for searching agree to the preparation of the international search report by such specialized agency.

Which Searching Authority Should Be Competent for Any Given Application?

105. The question which Searching Authority would be competent to establish the international search report for any given invention would depend on the country of residence of the applicant.

106. Each country whose national Office is a Searching Authority (within the meaning of the PCT) could oblige its residents to request an international search report from such Office. It could also allow its residents to choose — for all or certain kinds of inventions — between such Office and the International Patent Institute. Or it could force its residents, for some kinds of inventions, to turn to the International Patent Institute.

107. Each country whose national Office is not a Searching Authority could oblige its residents to turn to the International Patent Institute or to a given national Office which is a Searching Authority (provided, of course, that the latter accepts).

108. Any applicant who is not obliged by the country in which he resides to turn to a Searching Authority other than the International Patent Institute would have the right to turn to the International Patent Institute, and the International Patent Institute would undertake to serve any such applicant.

109. It is recognized that this system implies that the International Patent Institute must have a capacity for handling applications from an unlimited number of countries. In practice, it will not be too difficult to estimate the maximum workload which new accessions to the PCT could cause

to the International Patent Institute. In any case, safeguards would have to be provided so that, if, contrary to all expectations, the International Patent Institute could not increase its capacity fast enough, applications would be rerouted in the now existing systems without loss of the priority rights.

Fees

110. It is proposed to distinguish between three cases, namely:

- (i) when an application is searched by a national Office and the applicant is a resident of the country of that Office;
- (ii) when an application is searched by the International Patent Institute;
- (iii) when an application is searched by a national Office and the applicant is not a resident of the country of that Office and has no legal possibility of having his application searched by the International Patent Institute.

111. In case (i), it is proposed that the question of fees for establishing an international search report should not be the subject of international regulation.

112. One of the reasons is that search would, in this case, normally serve two purposes (grant of national patent, issuance of international search report) and it would be difficult to assess the cost or value attaching to each. Furthermore, no harm is likely to ensue from leaving the matter to an internal decision. If the fee is nil (as it well might be, for example, in the Soviet Union) or small (as it is, for example, in the United States of America, where the filing fee clearly is insufficient to cover the cost of searching), the applicant is not harmed. If it is high, applicants will shy away from the PCT, and this would harm the general economic interests of their countries, so that it is likely that the fees will be lowered. In other words, the amount of the fee will be self-regulatory.

113. In case (ii), it is proposed that the fee for the search report should be an amount fixed, from time to time, by agreement between the International Bureau and the International Patent Institute. The amount would be a maximum.

114. The International Patent Institute could charge less, for example, when the applicant is a resident of a member State of the International Patent Institute which subsidizes the Institute¹⁴). Or the national Office of the Government of the country of the applicant could, instead of the applicant, pay part or all of the fee, or could reimburse part or all of the fee to the applicant, or could allow the applicant to deduct part or all of the fee from his national taxes. Admittedly, this could result in less expense for residents of Country X than for residents of Country Y. It must be recognized, however, that any decision to have complete equality would be a mere paper decision since, in practice, no country could be prevented from assisting its inventors or industrialists if it wished to do so.

¹⁴) The reduction in charge should be commensurate with the subsidization.

115. In case (iii), the national Office would have to undertake not to charge a higher fee than the maximum fee agreed between the International Bureau and the International Patent Institute.

116. It is to be noted that the above proposals deal only with the fees for the international search report. The question of other fees, including those payable for services rendered by the International Bureau, particularly the fee for the international publication, is another matter. Those fees will be dealt with in their proper context. However, it can already be stated that they will be the same for all applicants, irrespective of their residence and of the origin of their search reports.

The Languages

Language of the International Application

117. It is proposed that the languages in which international applications may be filed should be those which the Searching Authorities are able to handle.

118. This would mean, in particular:

for the Moscow Office:	Russian
for the Munich Office:	German
for the Tokyo Office:	Japanese
for the Washington Office:	English
for the International Patent Institute:	Dutch, English, French, German

119. If the international search is effected on a national application and the national application is in a language other than those which the competent Searching Authority can handle, the applicant would have to file a translation in the required language. The translation would be prepared by the applicant. It would have to be filed at the same time as the national application.

120. The above list of languages is based on the present possibilities of the prospective Searching Authorities. It does not imply any judgment as to the relative merits of any language.

121. It is, for example, regrettable that no prospective Searching Authority can handle Spanish, Italian, or some of the other major languages. The matter is merely one of de facto possibilities and needs. Thus, for example, if several Spanish-speaking countries accede to the PCT, and if a significant number of international applications originating in such countries can be expected, it would be only natural for the International Patent Institute to undertake the searching of applications presented in Spanish.

Language of the International Search Report

122. International search reports would be established in the same language as that in which the document to be searched was filed.

123. If the search report is in a language other than English, the International Bureau will prepare an official English translation thereof. Its cost would be covered by the

general fee payable to the International Bureau. Since search reports will contain almost exclusively bibliographical references, the task of translation and its cost will be negligible.

Language of Publication of the International Applications

124. *International applications* would be published in separate sheets or pamphlets, one sheet or pamphlet for each application.

125. Each sheet or pamphlet would contain not only the application, but also the abstract, and the international search report.

126. *The abstract* would be prepared by the applicant but the Searching Authority would have the right and the obligation to make any changes in the abstract to ensure that it be informative, neither too long nor too short, clear, and correct. The Searching Authority would have to take the responsibility for the quality of each abstract and see to it that the abstract would be available together with the search report. There would be machinery to coordinate working methods among the Searching Authorities so that the style, length and terminology of the abstracts would be as uniform as possible.

127. If the abstract prepared by the applicant is manifestly inadequate, he would have to be charged a fee by the Searching Authority.

128. If at the time of the international publication of the international application the international *search report* is not yet available, or if the claims are amended after publication, the sheet or pamphlet will be republished, this time with the search report or with the amended claims and, if the search report has been changed or the abstract has had to be changed, with the changed search report and abstract.

129. As to the languages of the various elements of such publication, the following is suggested:

130. If the application was in English or French, or German, or Japanese, or Russian, it would be published in the language of the application.

131. If the application was in another language (for the moment, only one such language is contemplated: Dutch), it would be published in English¹⁵.

132. The search report would be published in English only.

133. The abstract would be published in English only.

134. It is to be noted that the above proposals differ on three major points from the proposals made to the meeting in October 1967.

135. *First*, the earlier proposal did not provide for the filing and publication of applications in Japanese. This, however, seems now indispensable if accession by Japan to the PCT is to be expected. It is believed that this does not represent a major inconvenience in countries other than Japan, as

long as the abstracts — whose quality is now guaranteed in the new proposals — are available in English and, through the Gazettes (see paragraphs 142 and 143, below), also in French, probably also in German, and possibly also in other languages.

136. *Second*, the earlier proposal provided that the abstracts would also be available in French, German, and Russian. In French, they would be available in the Gazette; in German, they would probably also be available in the Gazette; in Russian and other languages, they might be available in the Gazette. See paragraphs 142 and 143, below.

137. *Third*, the earlier proposal provided that not only the abstracts but also the independent claims would always be published in English, French, German, and Russian. No translation of the independent claims is proposed. As to the availability of the whole application in various languages, see paragraphs 145 to 149, below.

138. The reason is one of economy (to save the cost of translation and printing) and a matter of time (to shorten the time of publication).

139. Admittedly, claims may convey information not contained in the abstract. However, it is generally believed that translation of the independent claims would serve essentially the same purpose as — and less well than — the translation of the abstract. Thus, an additional translation of the independent claims would be superfluous. The purpose is to help interested persons to decide whether it is worth while procuring and studying a copy of the full text of the application. It is generally held that a translation of the independent claims would be to very little further purpose, and in any case it could not serve any purpose having legal consequences, because for a legal purpose one has to rely on the original international application or the translation thereof as filed in — or the text of the patent issued by — the national Office of the country in the light of the law of which the legal effects must be judged.

Language of the International Gazette

140. It is contemplated that an international gazette would be published by the International Bureau.

141. For each international application, the Gazette would contain: (i) the basic data, such as name of the applicant, date of filing, priority claim, title of the invention, classification, etc.; (ii) at least one characteristic drawing (if there are drawings in the application); (iii) the abstract, namely, the same abstract as is printed together with the application. The Gazette would contain neither the description nor the claims.

142. The Gazette would be published in English and in French. It would also be published in any other language whose publication would be self-supporting through sales or could be made self-supporting through sales and a contribution by the interested Governments.

143. It is expected that, under these conditions, a German publication would almost certainly issue. Italian, Russian, and Spanish editions might also issue. All translations would be made under the responsibility of the International Bureau.

¹⁵ It would be a matter for agreement between the Searching Authority and the International Bureau to decide who would prepare the English translation, or under whose responsibility it would be prepared.

144. The Gazette could be published in several series, each covering a major field (chemistry, electronics, etc.). Each issue (probably weekly) would contain an index according to the International Patent Classification.

Copies of National Applications

145. Consideration could be given to the following possibility in order to speed up and facilitate access in several languages to international applications:

146. Applicants would be required to send to the International Bureau a copy of any full translation of their international applications as filed, and as soon as filed, in the various designated or elected countries, in so far as these differ from each other in language¹⁶).

147. The International Bureau would advertise in its Gazette the availability of each translation received.

148. Any interested person could order a copy, subject to payment.

149. Admittedly, the claims appearing in such translation may differ from those contained in the international application. This, however, would not matter too much because the claims, as contained in the international application, would be accessible in another language — the language in which the international application was published by the International Bureau.

¹⁶) Naturally, this would apply only after the international application has been published.

S. I. R. — I° Salone internazionale del regalo: procellane, cristalleria, ceramiche, argenteria, casalinghi (Naples, May 30 to June 3, 1968);

XV^a Mostra internazionale avicola (Varese, June 8 to 13, 1968);

I° Salone del giocattolo, arredamento, abbigliamento ed alimentazione per il fanciullo — BIMBOSUD (Naples, June 8 to 16, 1968);

XI^a Fiera internazionale della casa, edilizia, arredamento, abbigliamento, alimentazione (Naples, June 22 to July 7, 1968);

22^a Fiera Campionaria nazionale del friuli — venezia giulia (Pordenone, August 25 to September 8, 1968);

8^a Mostra campionaria internazionale calzature pelletterie cuoio (Florence, September 2 to 8, 1968);

XXIII^a Mostra internazionale delle industrie per le conserve alimentari — Conserve, imballaggi, impianti ed attrezzature industriali (Parma, September 21 to 29, 1968);

I° Salone mercato dell'abbigliamento (Naples, September 25 to October 3, 1968);

Salone internazionale delle materie plastiche "PLAST '68" (Milan, October 5 to 13, 1968);

III^e Esposizione internazionale delle attrezzature per il commercio ed il turismo "EXPO CT '68" (Milan, October 12 to 20, 1968)

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

²) See *La Propriété industrielle*, 1939, p. 124; 1940, p. 84.

³) *Ibid.*, 1940, p. 196.

⁴) *Ibid.*, 1942, p. 168.

⁵) *Ibid.*, 1960, p. 23.

LEGISLATION

ITALY

Decrees

Concerning the Temporary Protection of Industrial Property Rights at Thirteen Exhibitions

(Of January 25 and 31, and February 3 and 5, 1968)¹)

Single Article

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

VERDECASA' 68 — Mostra della pianta nell'arredamento (Genoa, April 20 to May 5, 1968);

XXXII^a Fiera di Bologna — Campionaria internazionale (Bologna, May 11 to 26, 1968);

XXIII^o Mercato internazionale del tessili per l'abbigliamento — arredamento — MITAM (Milan, May 12 to 15, 1968);

¹) Official communications from the Italian Administration.

LUXEMBOURG

Law

on the Disclosure and Putting into Practice of Inventions and Manufacturing Secrets of Interest to Territorial Defense or to State Security

(Of July 8, 1967)¹)

CHAPTER 1

General Provisions

Article 1

Where the disclosure of inventions or of manufacturing secrets is contrary to the interests of territorial defense or of the security of the Luxembourg State or of any State with which the Grand Duchy of Luxembourg is united by regional agreement for the purposes of joint defense, such disclosure shall be prohibited.

Where it is established that they could not be unaware that the disclosure was contrary to the interests referred to

¹) See *Mémorial A*, No. 49, of July 21, 1967, p. 796. — BIRPI translation.

in the preceding paragraph, the author of such disclosure and any person causing it by negligence shall be liable to the penalties prescribed in Article 13.

Article 2

Notwithstanding the application of Article 1, the Minister for National Economy and Energy, the Minister responsible for industrial property, and the Minister for the Armed Forces, may jointly declare that the disclosure of an invention or of a manufacturing secret is contrary to the interests referred to in Article 1, paragraph 1, and that such disclosure shall be prohibited for a period of time to be determined by them.

Article 3

Where they deem it necessary in order to ensure territorial defense or State security or the security of any State with which the Grand Duchy of Luxembourg is united by regional agreement for the purposes of joint defense, the Ministers referred to in the preceding Article may, by joint action, temporarily determine and control the conditions of working inventions and of putting manufacturing secrets into practice.

Where it is established that such measures do not satisfy the requirements of territorial defense or State security, the said Ministers may, in a decision giving the grounds on which it is based, temporarily prohibit any working of the inventions or putting into practice of the manufacturing secrets, or compel the party concerned to grant licenses to State-authorized third parties, or compel the party concerned to reveal fully to the State an unpatented invention or manufacturing secret.

The Ministers may also obtain, for the State, a license in respect of a patent and the full revelation of an unpatented invention or of a manufacturing secret under freely contracted licenses.

CHAPTER 2

Special Provisions Concerning Inventions Which Are the Subject of Patent Applications

Article 4

Any invention which is the subject of a patent application may, as from the time such application is filed, be brought, by the Minister responsible for industrial property, to the knowledge of the Minister for National Economy and Energy and the Minister for the Armed Forces, so as to determine whether the needs of territorial defense or State security, or the security needs of any State with which the Grand Duchy of Luxembourg is united by regional agreement for the purposes of joint defense, require that the measures prescribed in Articles 2 and 3 of this Law be applied in respect of the invention.

With the same end in view, the Minister for the Armed Forces may make an *ex officio* inspection of the subject matter of patent applications as soon as they are filed.

Persons authorized to inspect patent applications shall be obliged to maintain the utmost secrecy regarding facts which, as a result of such inspection, have come to their knowledge and shall perform this duty in accordance with a procedure to be established by rules of public administration;

these rules shall also determine the precautions to be taken by the applicants and their agents, if any, in order to preserve secrecy.

Article 5

Where a patent application undergoes inspection by the Minister for the Armed Forces, in pursuance of Article 4 of this Law, the applicant shall be advised thereof without delay by posted registered letter. As from that time, he shall be prohibited from disclosing, without express authorization, the invention which is the subject of the patent application and, in particular, from filing a patent application abroad, assigning rights in the application, or granting a license therefor.

Grant of the patent shall be withheld where postponement of grant is required for the purposes of the inspection referred to in Article 1.

Article 6

Within a period of two months from filing, the Minister for the Armed Forces shall inform the Minister for National Economy and Energy and the Minister responsible for industrial property whether or not it is necessary to take one or more of the special measures prescribed in Articles 2 and 3.

By not later than four months from the date of the filing of the patent application, the Ministers shall decide either to take one or more of the measures prescribed in Articles 2 and 3 or not to take any such measures, and shall notify the applicant of their decision without delay.

Article 7

During the inspection prescribed in Article 4, and throughout the period of prohibition ordered in pursuance of Article 2, the Office shall be obliged to ensure the secrecy of inventions which are the subject of patent applications or of patents.

CHAPTER 3

Lifting of Prohibitions

Article 8

Prohibitions or limitations of right formulated under the provisions of Articles 2, 3 and 5 may be partially or wholly lifted at any time by a joint decision of the Ministers issuing them. Such removal may be requested by the holder of the right subjected to prohibition or limitation.

Where the prohibitions or limitations of right concern an invention which is the subject of a foreign patent application, and where the competent Ministers intend to lift the measures of secrecy, they shall inform the other interested Governments of their intention six months ahead of time. In their decision, they shall, as far as possible, take into account remonstrances made by the other Governments during the said six months' period.

CHAPTER 4

Indemnification

Article 9

Any person to whom one of the administrative decisions provided for in Articles 2, 3 and 5 is directed shall have the right to compensation, in the form of an indemnity, for the injury he has suffered.

Article 10

Should there be differences of opinion regarding the fixing of indemnities and the payment thereof, or regarding the payment of amounts due by virtue of contracts as provided for in the last paragraph of Article 3, a conciliation preliminary shall be held before a board composed of representatives of the Minister for National Economy and Energy, the Minister responsible for industrial property, the Minister for the Armed Forces, the Minister for the Treasury, and, depending on the nature of the invention, the Chamber of Commerce or the Chamber of Trades. The person concerned shall be heard and may be assisted by counsel.

Article 11

If the conciliation is unsuccessful, the differences of opinion shall fall within the jurisdiction of the civil courts of the district, regardless of the amount of the request.

CHAPTER 5

Secrecy of Inventions Which Are the Subject of Patent Applications in a Foreign State

Article 12

Where, in the interests of defense, a foreign State or an international organization prohibits the disclosure of an invention which is the subject of a patent application, the Minister responsible for industrial property shall ensure, either at the request of such State or organization, or at the request of the applicant duly authorized to file an application in Luxembourg concerning the secret invention, that the invention will be kept secret as long as the prohibition remains in force.

Such request shall be taken into consideration only in cases where Luxembourg is bound to the foreign State or to the international organization issuing the prohibition by a bilateral or multilateral convention providing for the keeping of inventions secret. The applicant shall have no right to indemnity on the part of the Government of Luxembourg by reason of the fact that the invention concerned in the patent application is kept secret in Luxembourg. He shall, however, be entitled to file an action for indemnity under the laws of Luxembourg in the event of the use, by the Government of Luxembourg, or the non-authorized disclosure of the invention concerned in the patent application.

The competent Ministers of Luxembourg shall officially put an end to the secrecy upon receipt of a copy of the document attesting that the secrecy instituted by the Government of the country of origin or by the soliciting international organization has come to an end.

CHAPTER 6

Penal Provisions

Article 13

Without prejudice to the provisions of the Penal Code, the author of the disclosure referred to in Articles 1, 2 and 5 shall be liable to imprisonment of from six months to five years and to a fine of from five hundred one (501) to one

hundred thousand (100,000) francs, or to one of these penalties, only.

Any person who, by negligence, has caused such disclosure shall be liable to imprisonment of from one month to one year and to a fine of from five hundred one (501) to fifty thousand (50,000) francs, or to one of these penalties, only.

Infractions of the measures prescribed in Article 3 shall be punishable by imprisonment of from one month to one year and by a fine of from five hundred one (501) to fifty thousand (50,000) francs, or by one of these penalties, only.

The provisions of Book 1 of the Penal Code as well as those of the Law of June 18, 1879, stating the competence of the courts to assess extenuating circumstances, amended by the Law of May 16, 1904, shall be applicable to infractions of this Law.

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CALENDAR OF MEETINGS

BIRPI Meetings

Date and Place	Title	Object	Invitations to Participate	Observers Invited
1968				
June 28 *) Geneva	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Enlarged Transitional Steering Committee	Questions of technical cooperation	Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America	International Patent Institute
July 1 to 5 Paris (Unesco Headquarters)	Committee of Experts on the Photographic Reproduction of Works Protected by Copyright, convened jointly with Unesco	To examine the copyright problems raised by the reproduction of protected works by photographic or analogous processes and to formulate appropriate recommendations with a view to possible solutions	Argentina, Bulgaria, Congo (Kinshasa), Czechoslovakia, France, India, Iran, Japan, Lebanon, Mexico, Nigeria, Netherlands, Spain, Sweden, United States of America. Consultants from Germany (Fed. Rep.) and the United Kingdom	<i>Intergovernmental Organizations:</i> United Nations and Specialized Agencies <i>Non-Governmental Organizations:</i> International Confederation of Societies of Authors and Composers (CISAC); International Congress on Reprography; International Council on Archives; International Federation for Documentation; International Federation of Library Associations; Internationale Gesellschaft für Urheberrecht; International Law Association; International Literary and Artistic Association; International Publishers Association
September 24 to 27 Geneva	Interunion Coordination Committee (6th Session)	Program and Budget of BIRPI for 1969	Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	—
September 24 to 27 Geneva	Executive Committee of the Conference of Representatives of the Paris Union (4th Session)	Program and Budget (Paris Union) for 1969	Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Morocco, Mexico, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America	All the other member States of the Paris Union; United Nations; International Patent Institute; Council of Europe
October 2 to 8 Locarno	Diplomatic Conference	Adoption of a Special Agreement Concerning the International Classification of Industrial Designs	All member States of the Paris Union	States not members of the Paris Union <i>Intergovernmental Organizations:</i> United Nations; Unesco; Council of Europe <i>Non-Governmental Organizations:</i> Committee of National Institutes of Patent Agents; Inter-American Association of Industrial Property; International Association for the Protection of Industrial Property; International Chamber of Commerce; International Federation of Patent Agents; International League Against Unfair Competition; International Literary and Artistic Association; Union of European Patent Agents
October 21 to November 1 Tokyo	Committee for International Cooperation in Information Retrieval among Examining Patent Offices (ICIREPAT) - Meeting	Particulars to be announced later		

*) Changed from May 3 and 4.

Date and Place	Title	Object	Invitations to Participate	Observers Invited
November 25 to 29 Geneva	BIRPI Symposium on Practical Aspects of Copyright (held with the cooperation of CISAC)	To offer to participants information on practical aspects of copyright protection (collection and distribution of royalties, organization and working of authors' societies or other bodies, etc.)	Personalities from developing countries. Individual participants against payment of a registration fee	—
December 2 to 10*) Geneva	Committee of Experts — Patent Cooperation Treaty (PCT)	New Draft Treaty	All member States of the Paris Union	<p><i>Intergovernmental Organizations:</i> United Nations; United Nations Industrial Development Organization; United Nations Conference on Trade and Development; International Patent Institute; Organization of American States; Permanent Secretariat of the General Treaty for Central American Economic Integration; Latin-American Free Trade Association; Council of Europe; European Atomic Energy Community; European Economic Community; European Free Trade Association; African and Malagasy Industrial Property Office</p> <p><i>Non-Governmental Organizations:</i> 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; Japan Patent Association; National Association of Manufacturers (U. S. A.); Union of European Patent Agents; Union des industries de la Communauté européenne</p>

*) This meeting replaces the meetings previously announced for the weeks of July 1 to 9, and November 4 to 12, 1968.

Meetings of Other International Organizations Concerned with Intellectual Property

Place	Date	Organization	Title
1968			
Prague	May 1 to 5	International League Against Unfair Competition (LICCD)	Symposium
Strasbourg	June 17 to 21	Council of Europe	Working Party of the Committee of Experts on Patents
Amsterdam	June 9 to 15	International Publishers Association (IPA)	Congress
Vienna	June 24 to 29	International Confederation of Societies of Authors and Composers (CISAC)	Congress
Lima	December 2 to 6	Inter-American Association of Industrial Property (ASIPI)	Congress

VACANCIES FOR POSTS IN BIRPI

Applications are invited for the following posts:

Competition No. 60

Second Deputy Director or Assistant Director

Category:

According to the qualifications and experience of the candidate selected, an appointment will be offered either as Second Deputy Director or as Assistant Director.

Duties:

The duties of the post consist, in general, in assisting the Director of BIRPI in organizing and implementing the tasks of BIRPI.

Qualifications:

- (a) wide experience in the field of industrial property law and in the field of copyright law — particularly in their international aspects — or at least in one of these two fields, preferably with some experience in the other;
- (b) wide experience in administrative matters, preferably in connection with international organizations;
- (c) university degree in law or equivalent professional qualification;
- (d) excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other. Knowledge of additional languages would be an advantage.

Nationality:

Candidates must be nationals of one of the member States of the Paris Union or of the Berne Union.

Age limit:

Less than 55 at the date of appointment.

Date of entry on duty:

January 1, 1969, or a later date as mutually agreed.

Applications forms and full information regarding the *conditions of employment* may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.

Applications forms duly completed should reach BIRPI *not later than July 31, 1968.*

Competition No. 55**Senior Assistant in the Industrial Property Division****Category and grade:**

P3/P4, according to qualifications and experience.

Principal duties:

In general, to assist in the implementation of BIRPI's program in the patent field with special emphasis on the preparatory work for the proposed Patent Cooperation Treaty.

The particular duties will include:

- (a) legal studies on problems related to the Patent Cooperation Treaty;
- (b) study of patent office practice in several countries with a view to proposing adequate solutions for the practical implementation of PCT;
- (c) other surveys in the patent field;
- (d) drafting, and assistance in drafting, of working papers for and reports on international meetings, especially in connection with the Patent Cooperation Treaty;
- (e) participation in meetings of other international organizations.

Qualifications:

- (a) university degree in law or qualification equivalent to such degree;
- (b) good knowledge in the field of patent law (including its international aspects and the practice of major examining patent offices);
- (c) excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other.

Preference will be given to candidates who, in addition to the above-mentioned law degree, also hold a university or equivalent degree in a given field of technology and have practical experience in the processing of patent applications, especially as a patent examiner.

Date of entry on duty: as soon as possible.

Competition No. 56**Assistant in the Industrial Property Division****Category and grade:**

P1/P2, according to qualifications and experience.

Principal duties:

In general, to assist in the implementation of BIRPI's industrial property program.

Under the direction and supervision of a senior staff member, the particular duties will include:

- (a) legal studies on industrial property questions, especially in the field of marks and unfair competition;
- (b) drafting, and assistance in drafting, of working papers for and reports on international meetings;
- (c) participation in meetings of other international organizations;
- (d) collecting the material for, and preparing the publication of, a complete collection of industrial property legislation of all countries.

Qualifications:

- (a) university degree in law or qualification equivalent to such degree;
- (b) at least some familiarity with industrial property, especially in the field of marks and unfair competition (preferably including its international aspects);
- (c) excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other.

Date of entry on duty: as soon as possible.

Competition No. 59**Assistant
(Developing Countries)**

(Fixed term appointment for two years with the possibility of renewal)

Category and Grade: P 3.**Principal duties:**

In general, to assist in the formation and implementation of BIRPI programs concerning assistance to developing countries.

The particular duties will include:

- (a) correspondence and contacts with representatives of developing countries;
- (b) participation in international meetings dealing with questions of particular interest to developing countries;
- (c) studying and preparing documents on questions of technical assistance to developing countries in the field of industrial property and copyright.

Qualifications:

- (a) university degree or equivalent qualification;
- (b) experience in the field of industrial property or copyright (preferably including their international aspects) with particular knowledge of conditions in developing countries;
- (c) experience in the work of intergovernmental agencies would be an advantage;
- (d) excellent knowledge of one of the official languages (English and French) and at least a good knowledge of the other.

Date of entry on duty: August 1968.

For the three posts above-mentioned:**Nationality:**

Candidates must be nationals of one of the member States of the Paris or Berne Unions. Qualifications being equal, preference will be given to candidates who are nationals of States of which no nationals are on the staff of BIRPI.

Age limit:

The candidates designated must be less than 50 years of age at the date of appointment. (As regards Vacancy No. 56, desirable age: 30/35 years.)

Application forms and full information regarding the *conditions of employment* may be obtained from the Head of Personnel, BIRPI, 32, chemin des Colombettes, 1211 Geneva, Switzerland.

Application forms duly completed should reach BIRPI *not later than May 31, 1968* (as regards vacancies Nos. 55 and 56) or *June 30, 1968* (as regards vacancy No. 59).