

Industrial Property

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

8th Year

No. 9

September 1969

Contents

	Pages
WORLD INTELLECTUAL PROPERTY ORGANIZATION	
<i>Ratifications and Accessions</i>	
Israel. Ratification of the WIPO Convention	235
INTERNATIONAL UNIONS	
<i>Ratifications and Accessions</i>	
Paris Union. Ratification of the Stockholm Act. Israel	235
Madrid Agreement (Indications of Source). Ratification of the Additional Act of Stockholm. Israel	235
Lisbon Union. Ratification of the Stockholm Act. Israel	235
Nice Union. Ratification of the Stockholm Act. Israel	236
LEGISLATION	
Germany (Fed. Rep.). I. Law on the Protection of Plant Varieties (Varieties Pro- tection Law) (Text of May 20, 1968)	236
II. Order Concerning the Procedure with Regard to Protection of Varieties (Va- rieties Protection Order) (Text of June 10, 1968)	249
France-Italy. Convention Between the French Republic and the Italian Republic on the Protection of Appellations of Origin, Indications of Source, and Names of Certain Goods (of April 28, 1964)	253
GENERAL STUDIES	
The New Hungarian Law on Inventions (George Pálos)	254
NEWS CONCERNING NATIONAL PATENT OFFICES	
Summary of the Annual Report of the United States Patent Office for the Fiscal Year Ending June 30, 1968	259
NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI	
XXVII th Congress of the International Association for the Protection of Industrial Property (Venice, June 9 to 14, 1969)	261
NEWS ITEMS	
Cuba. Appointment of a New Head of the Industrial Property Registry	265
Peru. Appointment of a New Head of the Industrial Property Department	265
United Kingdom. Appointment of a New Comptroller-General of the Patent Office	265
BOOK REVIEWS	265
CALENDAR OF MEETINGS	
BIRPI Meetings	267
Meetings of Other International Organizations Concerned with Intellectual Property	268

© BIRPI 1969

Any reproduction of articles and translations of laws, published in this periodical, is authorized only with the prior consent of BIRPI

WORLD INTELLECTUAL PROPERTY ORGANIZATION

Ratification of the WIPO Convention

ISRAEL

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 the State of Israel deposited on July 30, 1969, its instrument of ratification dated July 21, 1969, of the Convention Establishing the World Intellectual Property Organization (WIPO).

The State of Israel has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently ratifying the Stockholm Act of the Paris Convention in its entirety and the Stockholm Act of the Berne Convention with the declaration provided for in Article 28(1)(b)(i) of the said Act to the effect that the ratification shall not apply to Articles 1 to 21 nor to the Protocol Regarding Developing Countries.

A separate notification will be made of the entry into force of the Convention Establishing the World Intellectual Property Organization (WIPO), when the required number of ratifications or accessions is reached.

Geneva, August 15, 1969.

WIPO Notification No. 12

INTERNATIONAL UNIONS

Paris Union

Ratification of the Stockholm Act of the Paris Convention for the Protection of Industrial Property

ISRAEL

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 instrument adopted at Stockholm, has the honor to notify him that the Government of the State of Israel deposited, on July 30, 1969, its instrument of ratification dated July 21, 1969, of the Paris Convention of March 20, 1883, for

the Protection of Industrial Property, as revised at Stockholm on July 14, 1967.

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, August 15, 1969.

Paris Notification No. 9

Madrid Agreement (Indications of Source)

Ratification of the Additional Act of Stockholm to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods

ISRAEL

Notification of the Director of BIRPI to the Governments of the Contracting 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 instrument adopted at Stockholm, has the honor to notify him that the Government of the State of Israel deposited, on July 30, 1969, its instrument of ratification dated July 21, 1969, of the Additional Act of Stockholm, of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods.

A separate notification will be made of the entry into force of the Additional Act of Stockholm of the said Agreement, when the required number of ratifications or accessions is reached.

Geneva, August 15, 1969.

Madrid (Indications of Source) Notification No. 5

Lisbon Union (Appellations of Origin)

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

ISRAEL

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 instrument adopted at Stockholm, has the honor to notify him that the Government of the State of Israel de-

posited, on July 30, 1969, its instrument of ratification dated July 21, 1969, of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration of October 31, 1958, as revised at Stockholm on July 14, 1967.

A separate notification will be made of the entry into force of the Stockholm Act of the said Convention, when the required number of ratifications or accessions is reached.

Geneva, August 15, 1969.

Lisbon Notification No. 2

Nice Union
(International Classification (Marks))
Ratification of the Stockholm Act
of the Nice Agreement Concerning
the International Classification of Goods
and Services for the Purposes
of the Registration of Marks

ISRAEL

*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 instrument adopted at Stockholm, has the honor to notify him that the Government of the State of Israel deposited, on July 30, 1969, its instrument of ratification dated July 21, 1969, 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 the said Agreement, when the required number of ratifications or accessions is reached.

Geneva, August 15, 1969.

Nice Notification No. 5

LEGISLATION

GERMANY (Fed. Rep.)

I

Law

on the Protection of Plant Varieties
(Varieties Protection Law) [Sortenschutzgesetz]
(Text of May 20, 1968) *

SECTION I

Conditions Governing, and Scope of, Protection of Plant Varieties

Article 1

Conditions Governing the Protection of Plant Varieties

(1) Protection shall be granted to a plant variety (hereinafter referred to as "variety"), provided such variety is:

1. new;
2. sufficiently homogeneous;
3. stable;
4. designated by a denomination suitable for registration.

Protection shall not be granted in respect of varieties not appearing under their species in the List of Species.

(2) Within the meaning of this Law, a variety shall be any cultivar, clone, line, stock or hybrid, whatever the origin, whether artificial or natural, of the initial variation from which it resulted.

Article 2

Novelty

(1) A variety shall be deemed to be new when it is clearly distinguishable by at least one important morphological or physiological characteristic from any other variety the existence of which is a matter of common knowledge at the time protection is applied for.

(2) The existence of another variety shall be deemed to be a matter of common knowledge when that variety has already been entered in an official register, when a precise description thereof has appeared in a publication, when the fact of its being habitually cultivated or of its inclusion in a reference collection is commonly known or, again, when the commercialization of the material used in the multiplication or any other form of propagation of the variety is already proceeding. If protection is being applied for in respect of such other variety pursuant to this Law, the existence of the said other variety shall be required to have been a matter of common knowledge prior to the publication of the application where such application is to lead to a grant of protection.

* Translation of the text, as published in the German *Bundesgesetzblatt I*, page 429, kindly supplied by the Food and Agriculture Organization (FAO).

(3) The fact that a variety is a matter of common knowledge may not be held against its novelty unless, at the time when protection is applied for, multiplication and any other propagation material of that variety has, with the authorization of the person holder of the protection right or his successor in title, already been commercialized in the territory where this Law is in force or for more than four years outside such territory.

Article 3

Propagation Material

(1) Within the meaning of this Law, propagation material shall be understood to be:

1. seed;
2. planting stock and parts of plants of species which normally reproduce by vegetative propagation, when intended for plant production.

(2) Propagation material referred to in paragraph (1), item 2, shall include whole plants.

Article 4

Commercialization

Within the meaning of this Law, commercialization shall be understood to be the offering for sale, placing on sale, sale and any other form of distribution.

Article 5

Homogeneity

A variety shall be deemed to be sufficiently homogeneous when, apart from a limited number of divergences, plants thereof are identical in all their essential characteristics, having regard to the particular features of their sexual reproduction or vegetative propagation.

Article 6

Stability

A variety shall be deemed to be stable when plants thereof remain in their essential characteristics true to the definition of the variety after each successive reproduction or at the end of each cycle in those cases where the breeding of such variety demands a particular reproduction cycle.

Article 7

List of Species

(1) Plant genera and plant species (hereinafter referred to as "species") yielding varieties eligible for grant of protection shall be those appearing in the List of Species in the Annex to this Law.

(2) The Federal Minister for Food, Agriculture and Forests (hereinafter referred to as the "Federal Minister") shall be empowered to issue ordinances introducing changes in the denomination of species where developments in scientific usage so require.

Article 8

Denomination of Varieties

(1) The denomination registered as the denomination of the variety shall be that figuring in the application for pro-

tection. However, denominations shall be excluded from such registration which:

1. do not permit of distinguishing the variety, for example, denominations composed entirely of figures;
2. correspond to a denomination, or which may be confused with a denomination, under which, in the territory where this Law is in force or in any other member State, a variety of the same botanical species or related botanical species is already entered in an official list of varieties or where propagating material of the same variety is already commercialized;
3. may cause offense or mislead, in particular those denominations which are likely to lead to confusion as to the origin, characteristics or value of the variety or as to the holder of the protection right.

(2) If application has already been made for protection for a variety or the variety is registered in a member State of the Union, only that denomination may be registered which appears in the application for protection and/or has been registered in that member State, unless reasons have been adduced for its exclusion pursuant to paragraph (1) above or the denomination is unacceptable for language reasons in the territory where this Law is in force or the holder of the protection right demonstrates the existence of a prior third-party right.

(3) By member States of the Union within the meaning of this Law shall be understood States parties to the International Convention for the Protection of New Varieties of Plants of December 2, 1961 (*Bundesgesetzblatt II*, 1968, p. 428).

Article 9

Trademark of the Holder of a Protection Right

(1) If a trademark has been registered by the holder of a plant protection right with the Patent Office and covers the variety or any other variety of the same botanical species or related botanical species or that is related to or may be confused with it, the holder of the protection right may not continue to enforce his rights under the aforementioned mark for such varieties as from the date when protection is granted. If protection has been granted in another member State of the Union for a variety which figures under the species to which it belongs in the List of Species, the provisions of the first sentence of this paragraph shall apply *mutatis mutandis*.

(2) If the denomination is entered for the same product as a mark by the holder of a protection right in the Trademark Register of the Patent Office or if application has already been made for entry of the said denomination in the said register, the holder of the protection right may demand that the date of application for the mark be recognized as determining priority for the purpose of the denomination of the variety. In such cases, the holder of the protection right shall be required to produce within three months of the application for protection a certificate from the Patent Office concerning the registration of the mark or application for such registration. Failure to produce the said certificate by the prescribed date, and the lapse, withdrawal or rejection

of the application for a mark before the delivery of the title of protection shall entail forfeiture of priority for the denomination of the variety.

(3) Marks entered in the register of internationally registered marks under the terms of the Madrid Agreement, of April 14, 1891, Concerning the International Registration of Marks, and enjoying protection in the territory where this Law is in force, shall rank *pari passu* with marks registered with the Patent Office.

Article 10

Use of Denominations

(1) Any person commercializing propagation material of a protected variety shall be required to use the denomination of that variety. The same requirement shall apply even after the expiry of the protection of that variety.

(2) In territories where this Law is in force or in any other member State of the Union, it shall be prohibited to use for another variety of the same botanical species or related botanical species the denomination of a protected variety or to use a denomination likely to be confused therewith.

(3) Prior rights of third parties shall not be affected.

Article 11

Removal of Denomination from Register

(1) The Federal Office of Plant Varieties [*Bundessortenamt*] shall remove a denomination from the register in the following cases:

1. ex officio, where registration of the denomination should have been refused pursuant to Article 8 or where circumstances subsequently arise which pursuant to Article 8(1)3 justify such refusal;
2. at the request of the holder of the protection right or of a third party where a ruling that has become executive on the grounds of *res judicata* was given against the said holder of the protection right ordering the removal of the denomination or where a prior right has prevailed and the aforementioned holder of the protection right assents to the removal;
3. at the request of a person required pursuant to Article 10(1) to use the denomination in cases where a decision made on the grounds of *res judicata* stops his use of that denomination and the holder of the protection right has been third party to such litigation or such litigation has been notified to him in so far as he has not been prevented from protecting his rights by virtue of the provisions of Article 68, second half-sentence, of the Code of Civil Procedure.

(2) The Federal Office of Plant Varieties shall invite the holder of a protection right to propose within a specified period of time a different denomination for the variety. At the request of the holder of the protection right or a third party, the Office shall establish a provisional denomination if the person submitting the application establishes a legitimate interest thereby. Upon expiry of such specified period of time the Office shall be empowered to establish a provisional denomination ex officio.

Article 12

Holders of Protection Rights in Respect of Plant Varieties

Rights for the protection of plant varieties shall belong to the holders of a right to such protection. By holder of a right to protection for a variety shall be understood the original breeder or the discoverer of the variety or their successors in title. If several persons have bred or discovered the variety jointly, the right shall belong to them jointly. If several persons have bred or discovered the variety independently of one another, the right shall belong to whoever of them is first in point of time to file an application with the Federal Office of Plant Varieties.

Article 13

Status of Applicant

In proceedings before the Federal Office of Plant Varieties, any applicant shall be deemed to be entitled to apply for a grant of protection for a variety unless it is known to the Office, or the fact is brought to its notice, that the applicant does not hold any right to the variety set out in the application.

Article 14

Persons Not Entitled to Apply

If a person not entitled to apply has filed an application for protection, the holder of the protection right may apply for the grant of protection for the variety to be made in his name or, if the protection right in respect of the variety has already been granted, for that title to be transferred to him. Requests for such transfer may not be submitted beyond the term of five years from the publication of the protection as provided for in Article 30(3), unless the holder of the protection right was not acting in good faith in obtaining that right.

Article 15

Effect of the Protection of Plant Varieties

(1) The effect of a title of protection in respect of a plant variety shall be such that only the holder of the right is authorized to produce propagating material of the protected variety for the purposes of its commercialization or to commercialize the said material.

(2) In the case of ornamental plants, the holder of the protection right in respect of a variety shall have the exclusive right of using by way of trade for the purposes of the production of ornamental plants or cut flowers such plants or parts thereof as are normally commercialized for purposes other than those of propagation.

(3) Authorization by the holder of the protection right in respect of a variety shall not be required for the use of propagating material of the variety so protected with a view to creating a new variety or to producing and making use of such new variety. Such authorization shall be required, however, when the repeated use of the said propagating material is necessary for the production of propagating material of a new variety.

(4) Special authorization by the holder of the protection right in respect of a variety shall be required whenever it is

proposed to transfer propagating material of the variety outside the territory where this Law is in force to a territory where like protection is not guaranteed in respect of such varieties.

Article 16

Continued Existence of Variety

Whenever required to do so, the holder of a protection right in respect of a variety shall forward to the Federal Office of Plant Varieties, by a date to be fixed by the Office, all necessary material for establishing the continued existence of that variety. The said holder of the protection right shall furnish the Office with all information necessary for assessing the variety and allow the Office to examine measures taken in order to ascertain the continued existence of the variety.

Article 17

Transfers of Rights of Protection in Respect of Plant Varieties

(1) Protection rights in respect of plant varieties, entitlement to apply for the grant of protection rights in respect of a variety and rights deriving from such protection shall pass to the heirs. The same rights may be transferred to others and may be subject to restrictions upon transfer.

(2) Any contract for the transfer of the rights provided for in the preceding paragraph and any undertaking so to transfer them shall be made in writing. Any person who, up to the moment of such transfer, was the holder of the protection right shall be required in the event of there being any doubt in the matter to cause the Register of Protected Plant Varieties to be amended accordingly.

(3) Paragraph (2) shall apply *mutatis mutandis* to contracts under which exclusive use rights in respect of a protected variety are transferred or declared lapsed.

Article 18

Duration of Protection for Plant Varieties

Protection for plant varieties shall remain in being:

1. in the case of hops, potatoes, vines and vine stocks, fruit trees and their rootstocks and also ornamental trees and trees for timber production — to the end of the twenty-fifth year following the grant of the protection right;
2. in the case of all other species — to the end of the twentieth complete year following the grant of the said right.

Article 19

Yearly Fees

A holder of a protection right in respect of a variety shall be required to pay each year (hereinafter referred to as "protection year") for the duration of such protection a yearly fee in accordance with the relevant scale of fees.

Article 20

Cessation of Protection for Varieties

(1) Protection rights in respect of plant varieties shall lapse where the holder of such a right renounces the said protection in a written declaration to that effect to the Federal Office of Plant Varieties.

(2) The said protection may be annulled upon request if it becomes evident that the requirements of Article 2 were not satisfied at the time of the grant of the right.

(3) Protection shall be declared *ex officio* to be lapsed if the holder of the protection right is unable to supply the Federal Office of Plant Varieties with propagating material possessing a development corresponding to the physical and morphological characteristics established for the variety at the time of granting the said protection right.

(4) Protection shall be declared *ex officio* lapsed if the holder:

1. fails, despite notification, to satisfy the obligations prescribed in Article 16;
2. fails, upon expiry of a period of grace, to pay arrears of yearly fees.

Article 21

Grant of License [Jedermannserlaubnis]

(1) The holder of a protection right may declare in writing to the Federal Office of Plant Varieties his willingness to authorize any person whatsoever [*Jedermannserlaubnis*], against equitable remuneration, to engage in the production by way of trade and commercialization of propagating material of the protected variety and to make available to any person whatsoever, against equitable remuneration, the propagating material necessary for such production (hereinafter referred to as "grant of license"). Any such declaration shall be irrevocable. It shall be entered in the Register of Protected Plant Varieties and made public in the Bulletin as prescribed by the Federal Minister.

(2) The declaration provided for in the paragraph immediately preceding shall be deemed not to be in order for such time as the aforesaid Register contains an entry indicating the grant of authorization for the exclusive exploitation of a protected variety or for such time as an application for the said entry to be made is proceeding before the Federal Office of Plant Varieties.

(3) The holder of a protection right may restrict the amount of propagating material he is required to make available to that which is economically acceptable to him. He may subject the grant of license to reasonable and appropriate conditions. Such restrictions and conditions shall be communicated to the Federal Office of Plant Varieties and shall constitute an integral part of the Register of Protected Plant Varieties.

(4) Any person desirous of availing himself, subsequent to the entry of the declaration provided for in paragraph (1) of this Article, of a grant of license, shall notify the holder of the protection right of his intention. Such notification shall be deemed to have been made if it has been transmitted by registered letter to the person appearing in the Register of Protected Plant Varieties or to his representative appearing in the same Register. Notification shall indicate the extent to which the notifier wishes to exploit the protected variety. Upon such notification, the notifier shall be entitled to exploit the said variety.

(5) Any person making such notification shall be required:

1. to comply with the conditions imposed by the holder of the protection right as provided for in paragraph (3);
2. to take delivery, against equitable remuneration, of the propagating material requested by him, subject to the provisions of paragraph (3);
3. to keep the holder of the protection right informed, at the end of each calendar year, of the extent to which he has exploited the variety;
4. to pay the remuneration due for such exploitation.

If the notifier fails to comply with these obligations, the holder of the protection right may intimate to him a reasonable time limit for so complying and, upon expiry of such time limit, prohibit the production by way of trade and the commercialization of the propagating material of the protected variety.

(6) The holder of the protection right shall, having regard to the restrictions provided for in paragraph (3), make available to the notifier such propagating material as the latter may require, against an equitable remuneration.

(7) Equitable remuneration, and also the restrictions and conditions prescribed in paragraph (3), shall in each case be fixed by the Federal Office of Plant Varieties, whenever either of the parties so requests in writing. Prior to doing so the Office shall consult the central trade organizations and corporative bodies. Decisions made in consequence of such consultation shall constitute an integral part of the Register of Protected Plant Varieties, and shall thereupon cease to be appealable. Upon the expiry of a period of one year from the date of fixing the level of remuneration, either of the parties may apply for such level of remuneration to be reviewed. In support of such an application, only the fact that the circumstances which had a determining influence in fixing such level of remuneration have appreciably changed shall be taken into consideration.

(8) Where the holder of a protection right grants a license in respect of a variety of a species coming within the purview of the Seed Trade Law (*Saatgutverkehrsgesetz* of May 20, 1968, *Bundesgesetzblatt I*, p. 444), he may request from the competent authority information:

1. regarding the person applying for recognition of the propagating material of the protected variety;
2. the areas of land for which the recognition of the propagating material of the said variety has been applied;
3. the amount of propagating material of the said variety that has been recognized.

Article 22

Compulsory Licensing

(1) The Federal Office of Plant Varieties shall be empowered, upon receipt of an application to that effect and subject to the payment of an equitable remuneration to the holder of the protection right, in respect of which a bail bond shall also be payable, to issue the license for the production by way of trade and the commercialization of the propagating material. The said Office may require the holder of the protection right to make available propagating material

to the applicant, subject to the payment of an equitable remuneration, and to an extent that is economically acceptable and on reasonable and appropriate conditions (grant of compulsory license). A compulsory license may be granted only if reasons of public interest so require.

(2) An application for the issue of a compulsory license may be grounded solely on the fact that the holder of the protection right:

1. does not grant licenses or does not grant a license sufficient for production by way of trade or for the commercialization of propagating material; or
2. does not make available a sufficient amount of propagating material for subsequent multiplication despite being in a position economically so to do.

(3) A compulsory license may be issued only in respect of a variety where the species comes within the purview of the aforementioned Seed Trade Law.

(4) Before any decision concerning the issue of a compulsory license is made, the opinion of the central professional and trade organizations shall be sought.

(5) The provisions of Article 21(7), fourth and fifth sentences, and (8) shall apply *mutatis mutandis*.

Article 23

Persons to whom this Law Applies

(1) The rights guaranteed by this Law shall apply to:

1. German citizens within the meaning of Article 116(1) of the Constitution and persons having their domicile within the territory where this Law is in force and, again, artificial persons with registered offices in this country;
2. citizens of another member State of the Union and natural and artificial persons having their domicile or registered offices in another member State of the Union, provided the member State of which they are citizens or where the said persons have their domicile or registered offices grants protection to varieties of the same species or if the variety corresponding to their species appears in the list annexed to the International Convention for the Protection of New Varieties of Plants;
3. other persons if, and to the extent that, pursuant to a notice to that effect published by the Federal Minister in the *Bundesgesetzblatt*, the State of which they are citizens or where they have their registered offices grants reciprocal protection to German citizens or to persons having their domicile or registered offices within the territory where this Law is in force.

(2) No person or body who is not domiciled or does not have registered offices within the territory where this Law is in force may participate in any of the procedures governed by this Law or enforce rights guaranteed thereunder unless he has appointed a representative for the territory where the Law is in force. The said representative shall be authorized to represent the person or body in all matters before the Federal Office of Plant Varieties and in all disputes concerning the protection right. The said representative shall also be authorized to institute proceedings. The place where the commercial premises at which the said representative exercises

his profession shall be deemed, within the meaning of Article 23 of the Code of Civil Procedure, to be the place where his assets are constituted. In default of such premises, the place where the said representative is domiciled, or in default of such domicile, the place where the Federal Office of Plant Varieties has its seat shall be decisive.

SECTION II

The Federal Office of Plant Varieties

Article 24

Nature and Composition of the Federal Office of Plant Varieties

(1) The Federal Office of Plant Varieties [*Bundessortenamt*] shall be an autonomous higher federal authority. It shall report to the Federal Minister.

(2) The Federal Office of Plant Varieties shall consist of a President and members. The latter shall be persons having a special competence in the sphere of plant varieties (technical expert members) or shall be qualified to fulfill the functions of judge within the meaning of the Law on the German Magistrature (legal expert members). They shall hold office for life.

(3) Normally, to be appointed technical expert member of the Office, it shall be necessary to have been a duly enrolled student at a university or higher institute of studies, within the country, in botany, horticulture, agriculture or forestry, to have taken final examinations of the State or a university and, in addition, to have practised for at least three years in the above professions and to possess the requisite legal knowledge.

(4) There are hereby created within the Federal Office of Plant Varieties examining sections and a decision-making committee.

(5) In the matter of the exclusion or the barring of members of the examining sections and the decision-making committee, Articles 41 to 44, 45, paragraph (2), second sentence, and Articles 47 and 48 of the Code of Civil Procedure shall apply. Powers shall be vested in the decision-making committee, whenever a decision is called for, to rule on applications requesting barring of members.

Article 25

Functions of the Federal Office of Plant Varieties

(1) The Federal Office of Plant Varieties shall be empowered to rule on matters pertaining to the grant of protection rights and related matters within the meaning of this Law.

(2) The examining sections shall be competent in the following matters:

1. scrutiny of applications for protection and the grant of protection rights;
2. removal of denominations from the list;
3. entry in the list of new denominations;
4. establishment of provisional denominations.

(3) The decision-making committee shall have powers for the following matters:

1. decisions concerning extra-judicial appeals lodged against decisions of the examining sections, including rulings in connection with the grant of protection in appeals procedures;
2. fixing levels of remuneration, and restrictions and conditions in respect of grants of license;
3. issue of compulsory licenses;
4. nullity rulings concerning protection rights;
5. lapsing of protection rights.

(4) The President of the Federal Office of Plant Varieties shall have powers for the settlement of all questions where the examining sections or the decision-making committee do not have such powers.

(5) Rulings shall be supported by the reasons therefor and shall be notified ex officio to the interested parties accompanied by a notification concerning such rights of appeal as may be available. The said reasons and notification shall not be required in cases where the application is fully granted and no third party is involved.

Article 26

Examining Sections [Prüfabteilungen]

(1) A technical expert member of the Federal Office of Plant Varieties shall be vested with the powers and duties of the examining section(s).

(2) The President of the Federal Office of Plant Varieties shall fix the number of examining sections and decide on the terms of reference of each section.

Article 27

Decision-making Committee

(1) The decision-making committee [*Beschlussausschuss*] shall consist of a President, a legal expert and a technical expert of the Federal Office of Plant Varieties, who shall be adviser, together with two further technical advisers (honorary advisers). The said committee shall be empowered to deliberate and make decisions, provided the President, the legal expert member and one technical expert member are present. Decisions shall be taken on a majority of votes. In the event of a tie, the President shall have a casting vote.

(2) The President of the decision-making committee shall be the President of the Federal Office of Plant Varieties or such member of that Office as he shall appoint.

(3) Honorary advisers shall be required to have a special competence in the field of plant varieties. They shall be appointed for a term of six years by the Federal Minister and may be reappointed after expiry of their term of office. No owners or employees of plant breeding firms or employees of plant breeders' associations may be appointed honorary advisers.

(4) An alternate shall be appointed for each member of the decision-making committee. Articles 27 to 29 shall apply, *mutatis mutandis*, to alternates.

(5) The Federal Minister may, for exceptional reasons, terminate the appointment of an honorary adviser.

Article 28

Obligations of Honorary Advisers

Honorary advisers shall be required, prior to their entry into office, to undertake on their honor before the President of the committee conscientiously to perform their duties.

Article 29

Allowances to Honorary Advisers

Honorary advisers shall receive an allowance as provided for in Articles 2 to 6 and 9 to 11 of the Law on Allowances for Honorary Judges, promulgated on September 26, 1963 (*Bundesgesetzblatt I*, p. 753). Article 12 of the said Law shall apply *mutatis mutandis*. The amount of the allowance shall be fixed by the President of the Federal Office of Plant Varieties. For the fixing of this amount by judicial process, however, the Administrative Tribunal in the district where the Federal Office of Plant Varieties has its seat shall be competent.

Article 30

Register of Protected Plant Varieties

(1) The Federal Office of Plant Varieties shall keep the Register of Protected Plant Varieties [*Sortenschutzrolle*]. Upon final issue of the certificate of protection, the following shall be entered in the Register:

1. the denomination of the variety;
2. the principal morphological and physiological characteristics; also, for varieties where plants are produced by crossing between certain hereditary components, the principal morphological and physiological characteristics of the said components;
3. the name and address of the original breeder or discoverer;
4. the name and address of the person or firm holding the protection right and of a representative designated by such firm (Article 23, paragraph (2));
5. the name and address of the person or firm holding an exclusive right of exploitation;
6. the date of inception and cessation of protection together with the reason therefor;
7. the date of inception and cessation of an exclusive right of exploitation;
8. any grant of the *Jedermannserlaubnis*¹;
9. any compulsory license.

The entry of the characteristics referred to in subparagraph 2 above may be replaced by cross-reference to other documents of the Federal Office of Plant Varieties.

(2) Changes of holder of a protection right, of the designated representative or holder of an exclusive exploitation right shall be entered in the register only when the Federal Office of Plant Varieties is notified thereof. For each application for such change, a fee shall be payable in accordance with the established scale of fees. In the event of non-payment of such fee, the application shall be deemed to be null and void. Any holder of a protection right, or his representative or the holder of an exploitation right who is duly registered shall continue in the rights and obligations conferred by this

Law until such time as any of the above changes has been registered.

(3) The Federal Office of Plant Varieties shall publish entries made in the Register of Protected Plant Varieties in the bulletin prescribed by the Federal Minister.

Article 31

Consultation of the Register of Protected Plant Varieties

(1) Consultation of the Register of Protected Plant Varieties and documents relating to the *Jedermannserlaubnis*¹ shall be open to all.

(2) Consultation of documents relating to applications for protection which have been published or which are covered by a protection right already granted shall be open to all persons supplying reasonable evidence that they have a legitimate interest in such consultation.

SECTION III

Procedure Before the Federal Office of Plant Varieties

Article 32

Application for the Protection of a Variety

(1) For the issue of a certificate of protection, a request (hereinafter called an application) shall be made in writing to the Federal Office of Plant Varieties. The application shall state the denomination of the variety and its principle morphological and physiological characters; in the case of varieties where the plants are produced by crossing between certain hereditary components, the principle morphological and physiological characters of those components shall be mentioned.

(2) The applicant shall mention the name of the original breeder or discoverer of the variety with which his application is concerned and state that, to his knowledge, no other person holds an interest in the breeding or the discovery of the variety. If the applicant is not the original breeder or discoverer, or is not the sole original breeder or discoverer, he shall be required to state how the variety came into his possession. The Federal Office of Plant Varieties shall not be required to verify statements made to it.

(3) Any application shall be accompanied by the payment of a fee, in accordance with the scale of fees for procedural costs. Where the payment of such fee is not made, the Federal Office of Plant Varieties shall notify the applicant that his application will be deemed to be withdrawn if the fee is not paid within a month of such notification.

(4) The chronological priority for applications shall, in case of doubt, be declared in the light of the order of submission of registrations recorded in the register of new entries of the Federal Office of Plant Varieties.

Article 33

Priority Right

(1) If the holder of a protection right has duly submitted an application for the protection of a variety in another member State of the Union, he may claim priority for the

¹ See Article 21.

earlier submission (hereinafter called priority right) for the application made to the Federal Office of Plant Varieties for a period of one year from the said earlier submission.

(2) A priority right may be enforced only if it is claimed in the application for the grant of a protection right. Copies of the documents constituting application for earlier submission shall be produced within three months of the submission of the application to the Federal Office of Plant Varieties. The copies in question shall be certified true by the authority which received the first application. If the said copies are not produced in due time, the application for priority shall lapse.

Article 34

Publicity for Applications

(1) Every application shall be published in the bulletin prescribed by the Federal Minister and shall mention the date on which it was submitted, the name and address of the person or firm submitting it, the name and address of the original breeder or discoverer, together with the denomination requested for the variety considered in the application and the principle characters of that variety.

(2) If, after publication, an application is withdrawn or rejected, the circumstances shall likewise be published by the Federal Office of Plant Varieties.

Article 35

Objections

For a period of three months following publication of the application, it shall be open to any person whatsoever to lodge objections with the Federal Office of Plant Varieties to the issue of a protection right. Objections shall be made in writing and supported by reasons therefor. They may be founded solely on the allegation that the variety considered in the application does not qualify for protection under the terms of Articles 2, 5 or 6, that the denomination should be rejected under the terms of Article 8 or that the applicant is not entitled, under Article 12, to the grant of a protection right. The supporting facts and elements of proof accompanying such allegation shall, except where already set forth in the official submission, be furnished in detail before the expiry of the period for filing objections.

Article 36

Control of the Variety

(1) The Federal Office of Plant Varieties shall examine applications, and as part of such examination, the variety must be grown. The Federal Office of Plant Varieties may delegate to other services the task of growing the variety or of such further research as may be necessary.

(2) If the Federal Office of Plant Varieties is already in possession of suitable examination findings, it may waive further examination. It shall, furthermore, be empowered to waive further examination in cases where examination findings have been obtained by a control service outside the territory where this Law is in force, provided the examination findings obtained by that service comply, subject to a dec-

laration of the Federal Minister to that effect, with the requirements of this Law.

(3) The Federal Office of Plant Varieties may require the applicant, by a given date, to furnish it or any service which it may indicate with the propagating material necessary for the control of the variety considered in the application and all information necessary for evaluation of the variety, and also to allow such information to be further checked. Where the holder of a protection right claims a priority right within the meaning of Article 33, he shall enjoy a period of four years following the expiry of the priority right for the submission of propagating material. If the applicant fails to comply with the above requirement, the application may be rejected.

Article 37

Examination of Denomination

(1) If the denomination of the variety considered in an application does not comply with the provisions of Article 8, the Federal Office of Plant Varieties shall require the applicant, within a stated period, to apply for a new denomination. If the applicant fails to comply with this requirement, the application shall be rejected.

(2) An applicant shall be required to state in writing in his application that he will, from the date of grant of protection, forgo, in respect of the variety considered in the application and for any other variety of the same botanical species or related botanical species, all rights to trademarks corresponding to the denomination of the variety or which are likely to create confusion therewith in respect of which he enjoys protection in another State of the Union which grants protection for varieties of that species.

Article 38

Application for Protection in Respect of a New Denomination

Where an application for protection in respect of a new denomination is filed pursuant to Article 11(2), first sentence, or Article 37(1), the provisions of Article 32(1), first sentence, (3), first sentence, (4), and Articles 34, 35 and 37 shall apply *mutatis mutandis*.

Article 39

Decision Concerning the Grant of Protection

Where the Federal Office of Plant Varieties deems the conditions for the grant of protection to be satisfied, it shall issue a decision for such grant; otherwise it shall reject the application.

Article 40

Appeal (Extra-judicial) Against Decisions of the Examining Committee

(1) All persons having an interest in a procedure before the examining committee may file an extra-judicial appeal against the decision of the said committee. Such appeal shall cause stay of execution, except in cases concerning the establishment of a provisional denomination.

(2) Appeals shall be lodged with the Federal Office of Plant Varieties within one month of the notification of the decision.

(3) If the examining committee rules that an appeal is well founded it may uphold the same. Where such appeal is not upheld it shall forthwith be transmitted to the decision-making committee.

(4) Within the period allowed for appeals, a fee shall be payable in accordance with the scale of fees; and, in the event of non-payment of such fee, the appeal shall forthwith lapse.

(5) In the event that it is not possible to file an appeal within the prescribed time limit, the time limit shall be waived by application, *mutatis mutandis*, of Articles 232 to 238 of the Code of Civil Procedure.

Article 41

Provisional Regulation

(1) By way of regulating a provisional situation for as long as no appeal has been filed against the decision on the main proceedings, the decision-making committee may, in the course of proceedings, order, upon request, that a provisional regulation be made with a view to:

1. fixing a remuneration, or a limitation or other condition, concerning the *Jedermannserlaubnis*¹ or
2. issuing a compulsory license.

(2) If it is shown that the provisional regulation was unjustified from the start, the applicant shall be required to make good the damage that the execution of such regulation may have caused to the other side.

Article 42

Parties Concerned in Proceedings and Payment of Fees in Certain Proceedings

(1) The holder of a protection right shall also be an interested party in proceedings concerning:

1. cancellation of a denomination;
2. establishment of a provisional denomination;
3. declaration of nullity of the protection right;
4. fixing of a remuneration, a limitation or other condition concerning a grant of license; or
5. issue of a compulsory license.

(2) In the proceedings referred to in paragraph (1), a fee shall be payable according to the established scale of fees, and shall accompany the relevant application. In the event of non-payment of such fee, the application shall be deemed not to have been filed.

Article 43

Powers to Promulgate Provisions Concerning Procedure

The Federal Minister shall be empowered to regulate by order the details of proceedings before the Federal Office of Plant Varieties.

SECTION IV

Judicial Proceedings

Article 44

Appeals Against Decisions of the Federal Office of Plant Varieties

(1) Appeals against the decisions of the decision-making committee or against those of the President of the Federal

Office of Plant Varieties may, pursuant to Article 25, paragraph (4), be forwarded to the Patent Court.

(2) Within the time limit prescribed for filing appeals, a fee shall be payable in accordance with the scale of fees. In the event of non-payment of the fee, an appeal shall be deemed not to have been filed.

(3) An appeal shall cause stay of execution. It shall not, however, cause such stay of execution with respect to appeals filed against the establishment of a provisional denomination or against a provisional regulation. The competent tribunal may order stay of execution of a provisional regulation or subject such execution to a bond.

(4) Article 41 shall apply *mutatis mutandis*.

(5) In all other matters, the provisions of the Patent Law, in the text of January 2, 1968 (*Bundesgesetzblatt I*, pp. 1, 2), with respect to appeal proceedings before the Patent Court shall apply.

Article 45

Appeals Chamber

(1) Decisions with respect to appeals shall be made by an Appeals Chamber of the competent tribunal.

(2) The Appeals Chamber shall pronounce on appeals filed against decisions of the decision-making committee in the cases referred to in Article 25(2), 2 to 4, and against the decisions of the President of the Federal Office of Plant Varieties sitting with three legal expert members and, also, against decisions where the court is composed of one legal expert member, being the President, one other legal expert member and two technical expert members.

Article 46

Legal Action

(1) Any decision of the Appeals Chamber shall be appealed against before the Federal Supreme Court, if the said Chamber so allows in its decision.

(2) Legal action shall not be permitted in procedures for the establishment of a provisional denomination or against a provisional regulation.

(3) The provisions of the Patent Law concerning appeal against legal procedures before the Federal Supreme Court shall also apply.

SECTION V

Infringement of Protection Rights

Article 47

Civil Actions

(1) Any person infringing a right to the protection of plant varieties (Article 15) or making use, in contravention of the provisions of Article 10(2), of the denomination of a protected variety or a denomination likely to cause confusion therewith may, by means of an injunction, be held answerable by the aggrieved party for such violation.

(2) Any person committing such act intentionally or out of negligence shall be required to make good to the aggrieved party the loss or damage resulting from the act in question. If the person responsible for the loss or damage is guilty only

¹ See Article 21.

of a minor negligence, the tribunal may grant, in lieu of the compensation for such loss or damage, an indemnity the amount of which it shall establish at a point between the loss or damage sustained by the aggrieved party and the advantage that the person responsible for such loss or damage has derived therefrom.

(3) The period for the limitation of actions provided for in paragraphs (1) and (2) shall be three months from the time an interested party was apprised of the infringement and of the identity of the person required to make reparation; and it shall not be necessary to have regard to his being so apprised if 30 years have passed since the infringement.

(4) Once the protection right has been granted, the holder of the said protection right may claim equitable remuneration from any person who, in the interval between the publication of the application for protection and the grant of title of protection has produced by way of trade propagating material of the variety concerned in the said application or has commercialized such material.

(5) Nothing in these provisions shall preclude actions grounded on other legal provisions.

Article 48

Litigation with Respect to Protection Rights

(1) Irrespective of the amount at issue in the litigation, the regional tribunals [*Landgerichte*] alone shall have jurisdiction in respect of applications concerning an action grounded in one or other of the legal relationships regulated by this Law (litigation with respect to protection rights).

(2) The Governments of the respective *Länder* shall be empowered, by order, to confer jurisdiction with respect to protection rights involving the jurisdiction of several regional tribunals to one or other of these latter. The said Governments may delegate these powers to the *Land* judicial administrations.

(3) The parties may also be represented before the tribunal for litigation with respect to protection rights by lawyers authorized to plead before the regional tribunal before which the application lies, if the regulation provided for in paragraph (2) above is inoperative. This provision shall apply to representation of the parties before the court of appeal.

(4) Additional costs incurred by a party for representation, under the terms of paragraph (3) above, by a lawyer who is not authorized to plead in the court before which the case lies shall not be reimbursable.

(5) With regard to costs arising from the services given in a case by a patent agent [*Patentanwalt*], the fees payable to the latter shall be reimbursed in accordance with the full fees provided for in Article 11 of the Federal Ordinance on Lawyers' Fees, in addition to the necessary expenses of the said patent agent.

Article 49

Violation of Protection Rights Liable to Penalties under Criminal Law

(1) Any person who without being entitled thereto is convicted of having performed any of the following acts

shall be liable to a fine or imprisonment of a term of up to one year:

1. in contravention of the provisions of Article 15(1) produces by way of trade or commercializes propagating material of a protected variety;
2. in contravention of the provisions of Article 15(2) uses by way of trade plants or parts of plants which are not normally commercialized with a view to the production of ornamental plants or cut flowers;
3. in contravention of the provisions of Article 15(3), second sentence, makes repeated use of propagating material of a protected variety with a view to the production of propagating material of a new variety; or
4. in contravention of the provisions of Article 15(4) transfers propagation material of a protected variety to territories to which the provisions of this Law do not extend.

(2) No infringement shall be subject to prosecution except at the request of the person aggrieved. An application for such prosecution may be withdrawn.

(3) Where a penalty has been imposed, the sentence may, upon application, grant at the same time to the person aggrieved the option of making public the sentence, at the expense of the person convicted, where the person aggrieved has a legitimate interest in such publicity. The sentence shall determine the nature and the coverage of such publicity. A notification of the sentence passed by virtue of *res judicata* shall be delivered to the person aggrieved at the expense of the person convicted. The option of making public the conviction shall lapse where publication is not made within one month of notification of the conviction.

Article 50

Violation of Professional Secrets

(1) Any person who reveals without authorization a secret belonging to another person, in this case an industrial or commercial secret of which he has had cognizance by virtue of his being in the employ of an authority or service to which certain tasks are entrusted pursuant to this Law, or in his capacity as representative of such authority or service, shall be liable to a fine or imprisonment not exceeding one year, or both.

(2) Where the person affected has so acted against payment or with a view to procuring gain for himself or another or to harm another, he shall be liable to imprisonment for a term not exceeding two years in addition to any fine which may be imposed upon him. Any person who, without authorization so to do, makes use of a secret belonging to another person, in this case an industrial or commercial secret of which he has cognizance under circumstances referred to in the previous paragraph, shall be liable to the same penalties.

(3) Such violations shall incur prosecution only at the request of the person aggrieved.

Article 51

Offenses Against Order Regulations

(1) A person shall be deemed to commit an offense against order regulations who, willfully or negligently:

1. in contravention of the provisions of Article 10(1) fails to make use of the denomination of the variety in the commercialization of the propagation material of a protected variety; or
2. in contravention of the provisions of Article 10(2) makes use of the denomination of a protected variety, or of a denomination likely to cause confusion therewith, for another variety of the same botanical or related species.

(2) Such infringement may be liable to an extra-judicial fine not exceeding 10,000 German marks.

SECTION VI

Transitional and Final Provisions

Article 52

Transitional Rules Concerning Varieties Hitherto Protected

(1) In the case of those varieties which, at the time of entry into force of this Law, still enjoy the protection extended to them by the Seed Law [*Saatgutgesetz*]², of June 27, 1953 (*Bundesgesetzblatt I*, p. 450), as amended by the Second Law, of December 23, 1966, amending the Seed Law (*Bundesgesetzblatt I*, p. 686), protection rights shall be extended for: hops, potatoes, vines and vine stocks, up to the end of the 25th year following the grant of the protection right and for all other species, up to the end of the 20th year following such grant. In all other matters, the provisions of this Law shall apply in the matter of protection rights except as may be otherwise provided for in the following paragraph.

(2) No protection right may be nullified under the terms of Article 20(2) unless it appears that the conditions of Article 2(2) of the Seed Law were not met at the time the protection right was granted.

(3) Any person shall be entitled, subject to an indemnity payable to the holder of the protection right, to produce by way of trade and to commercialize certified potato plants, indirectly produced from recognized selected seed or recognized supplementary seed (Article 82 of the Seed Trade Law). The Federal Minister shall be empowered to fix, by order, the amount, the method of calculation and payment of the indemnity so payable, after having sought the advice of the central professional and trade organizations and having regard to the public interests and those of the parties concerned. Article 21(8) shall apply *mutatis mutandis*.

(4) If the name of the protected variety or a denomination likely to cause confusion with the name is registered by the holder of a protection right at the time of the entry into force of this Law in the Trademark Register of the Patent Office for the said variety or for another variety of the same botanical species or related botanical species, the aforesaid holder of the protection right shall be entitled to apply, within six months from the date of entry into force of this Law, for protection for a new denomination. Where the application for protection concerning the new denomination is not filed within the above-mentioned period, the holder of the right shall no longer be entitled, upon expiry of that period, to enforce rights derived from the trademark for the

species named thereunder. Articles 9(3) and 38 shall apply *mutatis mutandis*.

(5) If application is made for the protection of a denomination pursuant to paragraph (4), the holder of the protection right shall not be empowered, before the expiry of one year from the publication of the deed of registration of the new denomination, to prohibit from using the name of the variety those persons obliged and authorized so to do pending registration of the new denomination.

Article 53

Transitional Rules Concerning Varieties not Hitherto Protected

(1) This Law shall apply likewise to varieties in respect of which an application for protection had been filed before its coming into force. It shall, however, suffice, for the purposes of granting protection rights, that the variety appearing in the application satisfies, not the conditions prescribed in Article 2 of this Law, but the conditions prescribed in Article 2(2) of the Seed Law. Article 52(2) shall apply *mutatis mutandis*.

(2) If a variety in respect of which it was hitherto impossible to obtain protection of any kind by reason of the species to which it belonged is the subject of an application for protection, the fact that the holder of the protection right or his successor in title commercialized the propagating material or any other reproduction material of that variety during the period from January 1, 1962, up to the expiry of a period of six months following the entry into force of this Law shall not constitute a bar to the novelty of the said variety notwithstanding the provisions of Article 2(3).

(3) In cases where protection is awarded pursuant to paragraph (2), the duration of such protection shall be reduced to equal the number of completed years that have elapsed from the date when the propagating material or any other reproduction material of the variety in question was first commercialized.

Article 54

Transitional Provisions Concerning Proceedings in Progress

(1) This Law shall apply to proceedings which, at the time of its entry into force, are in progress before the Federal Office of Plant Varieties or before extra-judicial bodies and which concern protection of varieties, in the following manner:

1. Proceedings that have been commenced before commissions on varieties or commissions of appeal of the Federal Office of Plant Varieties shall be transferred, pursuant to Article 25(2) and (3), to the examining sections or the decision-making committee. The time limit for filing objections provided for in Article 35 shall begin to run, in the case of applications for protection already published, from the time of entry into force of this Law. Proceedings already commenced before the Federal Administrative Court and before the Supreme Administrative Tribunal shall be transferred to the Patent Court. Procedures pending before the Federal Administrative Court of Appeal shall be transferred to the

² See *Food and Agricultural Legislation*, Vol. II, No. 3.

Federal Supreme Court. Actions for avoidance or appeals already commenced shall be treated as a petition, and a petition for review already commenced shall be treated as a valid complaint.

2. Injunctions provided for hitherto shall be replaced by objections provided for under this Law. Actions for avoidance or appeals provided for hitherto shall be replaced by petitions to the Patent Court, and the review hitherto provided for by appeal to the Federal Supreme Court. The time limit laid down for petitions or appeals shall be governed by the provisions hitherto in force. A time limit shall also be deemed to have been observed if the said petitions or appeals have been lodged with an office or service hitherto empowered to receive them.
3. Fees established for proceedings before the Patent Court or the Federal Supreme Court shall be paid within a period to be fixed by the court in question in respect of such proceedings as have been transferred to them or which have become pending before them by virtue of subparagraphs 1 and 2 above. A deduction shall be made from these fees of the court costs already paid to courts of the administrative jurisdiction and relative to the bodies before which the proceedings are pending at the time of entry into force of this Law. The Patent Court shall also pronounce, as appropriate, regarding the costs of proceedings before the courts of the administrative jurisdiction.

(2) Decisions not made by virtue of *res judicata* of the Federal Office of Plant Varieties by which an application for protection has been rejected or protection has been withdrawn for the reason that they are devoid of value for the national culture are hereby annulled. Proceedings before courts of the administrative jurisdiction concerning such decisions shall be terminated; court costs shall not be recoverable while extra-judicial costs shall not be returned. Any application for protection shall be the subject of a fresh decision in conformity with Article 53(1).

(3) Paragraph (2) of Article 86 of the Seed Trade Law shall remain in force.

Article 55

Amendment to the Code of Criminal Procedure

Article 374, paragraph (1), subparagraph 8 of the Code of Criminal Procedure in its version of September 17, 1965 (*Bundesgesetzblatt I*, p. 1374), shall be amended to read as follows:

- “8. Any violations of patent rights, of rights to the protection of plant varieties, to utility models, to trademarks or to designs, if such violations are punishable as offenses, in the same manner as offenses specified in Articles 106 to 108 of the Copyright Law.”

Article 56

Amendment to the Patent Law

Article 1(2) of the Patent Law in its version of January 2, 1968³ (*Bundesgesetzblatt I*, pp. 1, 2) shall be amended to read as follows:

“(2) The following shall be excluded:

1. inventions, the use of which would be contrary to law or morality, except where the laws merely restrict the offering for sale or putting on the market of the subject of the invention or, if the invention relates to a process, of the product obtained directly by means of that process⁴;
2. discoveries of plant varieties which, according to their species, figure in the List of Species annexed to the Law on the Protection of Plant Varieties, of May 20, 1968 (*Bundesgesetzblatt I*, p. 429), and also processes used in breeding similar varieties.”

Article 57

Transitional Rules Concerning Patents

(1) Article 1(2) 2 of the Patent Law shall not apply where the application for a patent has been filed prior to the entry into force of this Law.

(2) Where a variety, in respect of which a patent has been granted or an application for a patent has been filed before the entry into force of this Law, is the subject of an application for protection, the holder of the protection right or the applicant for the patent or his successor in title may claim such protection right and enjoy therefor such priority as is evidenced by the date the said application for a patent was filed. If protection is awarded for the variety it shall no longer be permitted to enforce rights derived from a patent once a protection right is granted. The duration of such protection right shall be reduced by the number of whole years elapsing between the application for the patent and the grant of the protection right for the variety in question.

Article 58

Amendment to the Trademark Law

The Trademark Law in its version of January 2, 1968⁵ (*Bundesgesetzblatt I*, pp. 1, 29), shall be amended as follows:

1. Article 4(2) 6 shall be amended to read as follows:

“which correspond to the denomination of a plant variety which has previously been a subject of an application for entry in the Register of Protected Plant Varieties or in the List of Varieties of the Federal Office of Plant Varieties and which has been registered.”
2. Article 4(4), third sentence, shall be amended to read as follows:

“The provision of paragraph (2) 6 shall not apply when the products in respect of which the trademark is applied for are neither varieties of the same botanical species as the variety of the third party nor varieties of a related botanical species.”

Article 59

Amendment of the Federal Law on Lawyers' Fees

Article 66(2), first sentence, of the Federal Law on Lawyers' Fees, of July 26, 1957 (*Bundesgesetzblatt I*, pp. 861, 907), as subsequently amended by the Law on the Adaptation

³ See *Industrial Property*, 1968, p. 134.

⁴ In accordance with the BIRPI translation already published.

⁵ See *Industrial Property*, 1969, p. 23.

of Court Costs to the Law on the Turnover Tax, of May 29, 1967 (*Bundesgesetzblatt I*, p. 1246), shall be amended to read as follows:

“(2) A lawyer shall receive for appeal proceedings before the Patent Court concerning other matters than those referred to in Article 14(4), Article 30a(1) and (2), Article 36l(3), of the Patent Law; Article 10(2) of the Utility Model Law; Article 13(2) of the Trademark Law, and Article 44(1) of the Law on the Protection of Plant Varieties, three-tenths of the fees provided for under Article 31.”

Article 60

Amendment to the Ordinance on Patent Agents

Article 4(1) of the Ordinance on Patent Agents, of September 7, 1966 (*Bundesgesetzblatt I*, p. 557) shall be amended to read as follows:

“(1) In disputes resulting in an action grounded on one of the legal relationships regulated by the Patent Law, the Utility Model Law, the Trademark Law, the Law on Employees' Inventions, the Copyright Law on Designs and Models [*Geschmacksmustergesetz*], the Law on the Protection of Plant Varieties [*Sortenschutzgesetz*] and, also, any judicial appeals against decisions of the Chambers of Appeals of the Patent Court, the patent agent of one of the parties shall be heard.”

Article 61

Transitional Rules Concerning Offenses Against Order Regulations

(1) Prosecution of offenses against order regulations provided for in Article 51 shall be barred at the end of two years.

(2) The provisions of paragraph (1) shall apply only up to the day on which the Law on Offenses Against Order Regulations, of March 25, 1952 (*Bundesgesetzblatt I*, p. 177), ceases to be in force.

Article 62

Applicability to Berlin

This Law shall apply also to *Land Berlin*, pursuant to Article 13(1) of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1). Regulatory orders promulgated by virtue of the present Law shall apply to *Land Berlin* pursuant to Article 14 of the Third Extension Law.

Article 63

Entry into Force

This Law shall enter into force on July 1, 1968. The provisions under which authorization is amended to promulgate regulatory ordinances shall come into force on the day following the promulgation of this Law.

ANNEX

List of Species

Agrostis spec.	Agrostis
Allium cepa L.	Onion
Allium porrum L.	Leek
Alopecurus pratensis L.	Meadow foxtail

Apium graveolens	Celery
Arrhenatherum elatius (L.) P. Beauv. ex S. et K.B. Presl	Tall meadow oat grass
Asparagus officinalis L.	Asparagus
Avena nuda Hoejer	Naked oat
Avena sativa L.	Oat
Beta vulgaris L. ssp. vulgaris var. alba DC.	Mangold
Beta vulgaris L. ssp. vulgaris var. altissima (Doell)	Sugarbeet
Beta vulgaris L. ssp. vulgaris var. conditiva Alef.	Beetroot
Beta vulgaris L. ssp. vulgaris var. vulgaris	Mangel-wurzel
Brassica juncea (L.) Czern. et Coss. ssp. juncea	Sarepta mustard
Brassica napus L. emend. Metzger var. napobrassica (L.) Rchb.	Turnip-rooted cabbage
Brassica napus L. emend. Metzger var. napus	Colza
Brassica nigra (L.) W.D.J. Koch	Black mustard
Brassica oleracea L. convar. acephala (DC.) Alef. var. gongylodes L.	Kohlrabi
Brassica oleracea L. convar. acephala (DC.) Alef. var. sabellica L.	Kale
Brassica oleracea L. convar. acephala (DC.) Alef. var. viridis L. + var. medullosa Thell. in Hegi	Cabbage
Brassica oleracea L. convar. botrytis (L.) Alef. var. botrytis	Cauliflower
Brassica oleracea L. convar. capitata (L.) Alef. var. capitata	White cabbage/red cabbage
Brassica oleracea L. convar. capitata (L.) Alef. var. sabauda L.	Savoy cabbage
Brassica oleracea L. convar. oleracea var. gemmifera DC.	Brussels sprouts
Brassica rapa L. var. silvestris (Lam.) Briggs	Rapeseed
Brassica rapa L. emend. Metzger var. rapa	Late turnip
Bromis inermis Leyss.	Smooth broome
Cannabis sativa L.	Hemp
Cichorium endivia L.	Endive
Cichorium intybus L. var. sativum DC.	Chicory
Cucumis sativus L.	Cucumber
Cucurbita maxima Duch.	Squash
Cucurbita pepo L.	Pumkin
Dactylis glomerata L.	Cocksfoot grass
Daucus carota L. ssp. sativus (Hoffm.) Arcang.	Carrot
Fagopyrum esculentum Mench	Buckwheat
Festuca spec.	Fescue
Fragaria ananassa Duch.	Garden strawberry
Glycine soja Sieb. et Zucc.	Soy
Helianthus annuus L.	Sunflower
Helianthus tuberosus L.	Jerusalem artichoke
Hordeum vulgare L. convar. distichon (L.) Alef.	Two-row barley
Hordeum vulgare L. convar. vulgare	Common barley
Humulus lupulus L.	Hops
Lactuca sativa L. var. capitata L.	Cabbage lettuce
Lactuca sativa L. var. crispa L.	Curly salad
Lathyrus cicera L.	Chickpea
Lathyrus sativus L.	Grass peavine
Lathyrus tingitanus L.	Tangier pea
Lens culinaris Medik.	Lentil
Lycopersicon esculentum Mill.	Tomato
Linum usitatissimum L.	Flax
Lolium spec.	Rye grass
Lotus corniculatus L.	Birdsfoot trefoil
Lotus uliginosus Schkuhr	Great lotus
Lupinus albus L.	White lupin
Lupinus angustifolius L.	Blue lupin
Lupinus luteus L.	European yellow lupin
Medicago falcata L.	Yellow flowered alfalfa
Medicago lupulina L.	Hop clover
Medicago sativa L.	Alfalfa

Medicago x varia Martyn	Hybrid clover
Nicotiana rustica L.	Aztec tobacco
Nicotiana tabacum L.	Tobacco
Onobrychis viciifolia Scop.	Esparecette
Ornithopus sativus Brot.	Serradella
Panicum miliaceum L.	Millet
Papaver somniferum L.	Poppy
Petroselinum Hill crispum (Mill.) Nym. ex hort. Kew	Parsley
Phalaris arundinacea L.	Red canary grass
Phaseolus coccineus L.	Scarlet runner
Phaseolus vulgaris L. var. nanus (L.) Aschers.	Dwarf green bean
Phaseolus vulgaris L. var. vulgaris	Kidneybean
Phleum pratense L.	Timothy grass
Pisum sativum L.	Pea
Poa spec.	Meadow grass
Populus spec.	Poplar
Raphanus sativus L. var. niger (Mill.) S. Kerner	Black radish
Raphanus sativus L. var. oleiformis Pers.	Oilseed radish
Raphanus sativus L. var. sativus	Radish
Ribes nigrum L.	Black currant
Ribes nivenum Lindl.	White currant
Ribes sylvestre (Lam.) Mert. et W.D.J. Koch	Red currant
Ribes uva-crispa L.	Gooseberry
Rosa L. hort.	Rose
Rubus eubatus	Blackberry
Rubus idaeus L.	Raspberry
Scorzonera hispanica L.	Salsify
Secale cereale L.	Rye
Setaria italica (L.) P. Beauv.	Italian millet
Sinapis alba L.	White mustard
Solanum tuberosum L.	Potato
Sorghum saccharatum Moench.	Sweet sorghum
Sorghum technicum Koern.	Broomcorn
Spinacia oleracea L.	Spinach
Trifolium hybridum L.	Alsike clover
Trifolium incarnatum L.	Crimson clover
Trifolium pratense L.	Red clover
Trifolium repens L.	White clover
Trisetum flavescens (L.) P. Beauv.	Yellow oat grass
Triticum aestivum L.	Spring wheat
Triticum spelta L.	Spelt
Valerianella Mill. locusta (L.) Laterrade	Cornsalad
Vicia articulata Nornem.	One-flowered vetch
Vicia faba L. var. major Harz	Broadbean
Vicia faba L. var. minor (Peterm.) Beck (v. equina Pers.)	Pigeon bean
Vicia pannonica Crantz	Hungarian vetch
Vicia sativa L.	Vetch
Vicia sepium L.	Bush vetch
Vicia villosa Roth	Hairy vetch
Vitis spec.	Vine, vinestock
Zea mays L.	Maize

II

Order

Concerning the Procedure with Regard to Protection
of Varieties (Varieties Protection Order)

[Sortenschutzverordnung]

(Text of June 10, 1968) *

In accordance with Article 43 of the Varieties Protection Law of May 20, 1968 (*Bundesgesetzblatt I*, p. 429), the following Order is hereby made:

* BIRPI translation of the text as published in the German *Bundesgesetzblatt I*, page 622.

I. Initiation of Procedure

Article 1

Application

(1) An application filed in respect of a variety with a view to obtaining protection of a variety (Article 32, paragraphs (1) and (2), sentences 1 and 2, of the Varieties Protection Law) shall contain:

1. the request (Article 2),
2. the description of the variety (Article 3).

(2) A separate application shall be filed in respect of each variety.

(3) The application shall be submitted in triplicate on forms issued by the Federal Office of Plant Varieties. Any submissions not made in German shall be accompanied by a translation by an officially authorized translator.

Article 2

Request

The request shall contain:

1. the name, the trade name or any other designation of the applicant, the place of domicile or establishment, and the address (town, street and number of building, and, in the case of foreign towns, the State also).

It shall be made clearly visible whether protection is requested on behalf of one or more individuals or a company, on behalf of the owner of a firm in his civil name or on behalf of the firm itself;

2. the denomination of the variety (Article 8 of the Varieties Protection Law);
3. a statement to the effect that protection is requested for the variety;
4. if a representative is appointed, his name and address. A power of attorney shall be appended to the request. The Federal Office of Plant Varieties may require an officially certified power of attorney to be submitted;
5. the name and address of the original breeder or discoverer and a statement that, to the best of the applicant's knowledge, no other persons are involved in the breeding or discovery of the variety;
6. if the applicant is not the original or sole original breeder or discoverer, an indication of the manner in which the variety came into his possession;
7. a statement to the effect that multiplication or other propagation material of the variety was not commercially exploited by the owner of the variety or his predecessor in title in the territory where the Varieties Protection Law is in force prior to the application or outside such territory for more than four years prior to the application;
8. if the applicant claims, in respect of the variety denomination, the priority of a trademark entered on his behalf in the Trademark Register of the Patent Office or filed for such registration, or of a mark (Article 9, paragraphs (2) and (3), of the Varieties Protection Law): the date of registration or filing of the trademark or mark;
9. if the applicant is a natural person, a statement whether he is a German subject in the sense of Article 116, para-

graph (1), of the Basic Law, and, if not, what his nationality is;

10. if the variety has already been filed or has been granted protection in one or more countries of the Union (Article 8, paragraph (3), of the Varieties Protection Law): an indication of the denomination of the variety, of the country or countries of the Union and of the date of application or grant of protection;
11. if a priority right is claimed under Article 33 of the Varieties Protection Law, an indication of the date and of the country of the Union in which an application was first filed;
12. a statement to the effect that, from the date of grant of protection, the applicant will forgo any trademark rights in respect of the variety concerned and of any other variety in the same botanical species or a related botanical species, where such trademarks are identical to the denomination of the variety or can be confused with it and are protected on his behalf in another country of the Union which grants protection for varieties in that species (Article 37, paragraph (2), of the Varieties Protection Law);
13. the signature of the applicant or of his representative.

Article 3

Description of the Variety

(1) The description of the variety shall state the denomination of the variety and the essential morphological and physiological characteristics of the variety; in the case of varieties in which plants are produced through crossing specific hereditary components, the essential morphological and physiological characteristics of the hereditary components shall also be indicated.

(2) The description of the variety may be supplemented by means of diagrams.

Article 4

Filing of a New Variety Denomination

With regard to the filing of a new variety denomination (Article 38 of the Varieties Protection Law), Articles 1, paragraphs (2) and (3), and 2, Nos. 1, 2, 4, 8, 9, 12 and 13, shall apply, *mutatis mutandis*.

Article 5

Other Requests

(1) In the case of requests relating to applications other than those described in Articles 1 and 4, the provisions of Articles 1, paragraphs (2) and (3), and 2, Nos. 1, 2, 4, 9 and 13, shall apply, *mutatis mutandis*. The grounds for submission of such a request shall be stated.

(2) A request for establishment of remuneration, conditions or restrictions in respect of willingness to authorize any person whatsoever [*Jedermannserlaubnis*], as specified in Article 21, paragraph (7), of the Varieties Protection Law, shall contain a proposal regarding such remuneration, conditions or restrictions.

Article 6

Official Initiation of Proceedings

If the Federal Office of Plant Varieties officially initiates proceedings, it shall immediately notify the owner of the variety protected and any other persons shown in the Register of Protected Plant Varieties as having rights in the variety concerned.

II. Examination of the Variety

Article 7

Examination of the Variety

(1) In accordance with Article 36 of the Varieties Protection Law, examination of a variety in respect of which an application has been filed shall be carried out at two places at least, and, in the case of varieties whose plants are normally propagated by vegetative means, in one place at least.

(2) Examination shall begin in the case of varieties of:

1. species of grass, clover and lucerne in the next or next but one,
2. all other species in the next

period of vegetation following the application, if the application is filed not later than April 30, for varieties of: savoy cabbage, soft fruit, vine and vine stock, corn-salad, late turnip, hops, crimson clover, winter leguminosae, spelt, rye grass, winter barley, winter lettuce, winter oilseed, winter rye, winter wheat;

not later than October 31, for varieties of: oats, potatoes, maize, summer barley, summer rye, summer wheat, and not later than September 30, for varieties of all other species.

Article 8

Required Propagation Material

(1) The Federal Office of Plant Varieties shall decide when, where and in what quantity and form the propagation material required for examination of the variety shall be delivered. In the case of varieties whose plants are produced by crossing specific hereditary components, the Office may require propagation material of the said hereditary components to be supplied as well.

(2) Unless otherwise decided by the Federal Office of Plant Varieties in cases where satisfactory reasons are substantiated, the propagation material for each examination shall originate from the vegetation period immediately preceding the examination. The propagation material shall not be previously subjected to any chemical treatment unless the Federal Office permits or prescribes such treatment. If the propagation material has been subjected to any chemical or physical treatment for plant protection purposes, a detailed description of such treatment shall be provided.

Article 9

Procedure for Carrying Out Examination

Cultivation plans shall be submitted in connection with examination. These shall indicate the location, size and order of rotation of cultivation areas, the dates of sowing or planting and the sequence of varieties. The manner in which plans

are put into effect and all observations and relevant facts ascertained shall be noted in writing, the report being dated and signed by the person performing the investigation. The individual varieties shall be identified in examination plots not by means of the denomination of the variety but by means of examination numbers to be fixed by the Federal Office.

Article 10

Notification of the Applicant

The Federal Office of Plant Varieties shall notify the applicant of the results of each year's examination.

Article 11

Examination Report

(1) If the Federal Office considers the results of examination to be sufficient for evaluation of the variety, it shall prepare an examination report. The same provisions shall apply where the applicant requests the examining section's decision on the basis of the results of examinations spread over more than one year.

(2) The examination report shall be communicated to the applicant.

Article 12

Ascertainment of the Continued Existence of the Variety

(1) With regard to ascertainment of the continued existence of a protected variety (Article 16 of the Varieties Protection Law), Articles 7, paragraph (1), 8 and 9 shall apply, *mutatis mutandis*. The relevant examination shall be performed each year, unless otherwise decided by the Federal Office of Plant Varieties.

(2) The Federal Office of Plant Varieties shall decide the sequence of examinations by species and variety and shall fix the date when such examinations shall begin.

(3) The holder of a protection right shall be notified of the results of such examination if any deficiencies in the homogeneity or the stability of the variety are discovered.

(4) If observation of the variety reveals any deficiencies justifying the initiation of proceedings for the withdrawal of protection, the Federal Office of Plant Varieties shall produce a report on its examination as a basis for such proceedings, and the report shall be communicated to the holder of the protection right.

III. Proceedings before Examining Sections

Article 13

Parties Entitled to Participate in Proceedings

(1) The parties entitled to participate in proceedings before examining sections are:

1. in proceedings for the protection of varieties or the registration of a new variety denomination: the applicant or the holder of a protection right and third parties who have lodged objections under Article 35 of the Varieties Protection Law;
2. in proceedings for the cancellation of a variety denomination or the establishment of a provisional variety de-

nomination: the holder of the protection right and the petitioner.

(2) Written submissions by any party shall be accompanied by copies for the other parties.

(3) Written submissions containing objections under Article 35 of the Varieties Protection Law, requests concerning the facts of the case or a declaration of withdrawal of an application or request shall be served on the other parties as a matter of course within a prescribed time; all other written submissions shall be communicated to them by ordinary means unless an order is issued for them to be served.

Article 14

Authorized Representatives

Parties to proceedings may be represented by persons so empowered. Empowerment shall be given in writing and shall be incorporated in the file on the case in question unless authorization of representation is recorded in the Register of Protected Plant Varieties. If a party is represented, all communications to be served or delivered by ordinary means and all convocations shall be addressed only to the representative.

Article 15

Hearing of Parties

Before any judgment is given against them, parties shall be allowed to state their views.

IV. Proceedings before the Decision-Making Committee

Article 16

Parties Entitled to Participate in Proceedings

(1) The parties entitled to participate in proceedings before the Decision-Making Committee are:

1. in objection proceedings: the person lodging the objection and the other parties participating in the proceedings before the Examining Section;
2. in proceedings for a declaration of nullity of protection or for compulsory licenses: the petitioner and the holder of the plant protection right;
3. in proceedings for annulment of protection: the holder of the protection right;
4. in proceedings for establishment of remuneration, conditions or restriction in respect of *Jedermannserlaubnis*: the petitioner, the holder of the protection right, and any person who has made use of *Jedermannserlaubnis* by means of declaration to the holder of the right, subject to written notification of his participation to the Federal Office of Plant Varieties.

(2) Articles 13, paragraphs (2) and (3), and 14 shall apply, *mutatis mutandis*.

Article 17

Hearings

The Decision-Making Committee shall give its rulings after hearing the case. There need be no hearing if the Chairman considers it preferable. If one of the members objects, a hearing shall take place.

Article 18

Preparation of Proceedings

(1) The Chairman shall prepare proceedings in such a manner as to enable the Committee to give its ruling in a single sitting if possible. The Chairman may undertake any action necessary in order to establish the facts of the case, and to that end may, in particular:

1. require parties to supplement or explain their preparatory statements and produce documents;
2. require parties to appear in person in proceedings under Articles 21 or 22 of the Varieties Protection Law;
3. require witnesses or experts to whom a party has referred or whom it appears necessary to hear to attend a hearing or to give evidence, or obtain written information from such persons;
4. require material evidence to be examined.

Article 19

Convocation, Place of Hearing

(1) The Chairman shall decide the date of hearings and shall convene the members, the parties and any witnesses and experts. Not less than two weeks' notice shall be given.

(2) The letter of convocation shall inform the parties that a decision can be taken even if they fail to appear or to be represented at the hearing.

(3) Hearings shall normally be held at the Federal Office of Plant Varieties. In special circumstances the Chairman may order the hearing to be held elsewhere.

Article 20

A Member's Inability to Attend

(1) Any member unable to attend a sitting shall immediately notify the Chairman and state the reasons.

(2) If a member is unable to attend, his alternate shall be convened.

(3) Any member excluded under Article 24, paragraph (5), of the Varieties Protection Law from performing his functions shall immediately notify the Chairman.

Article 21

Discussion and Voting

(1) The sittings of the Decision-Making Committee shall not be open to the public.

(2) The Chairman shall preside over the sitting. He shall report to the Committee on the facts of the case and the results of any examinations. He may assign the function of reporting to a member.

(3) Only the persons entitled to participate in decisions may be present during discussion and voting.

(4) The members shall vote first, in ascending order of age, and the Chairman shall vote last. No abstention may be recorded.

(5) If no hearing has taken place, the decision may be taken by putting questions to the members in writing. If a member objects, a hearing shall take place.

Article 22

Decision

(1) The decision shall be announced to the parties or their representatives present and the essential grounds stated.

(2) If the grounds for a decision are required to be stated under Article 25, paragraph (5), of the Varieties Protection Law, the Chairman shall place those grounds on record and sign them within four weeks following the Committee's decision. The members shall not be required to sign.

Article 23

Minutes

(1) Minutes shall be kept of the hearing and of evidence. The President of the Federal Office of Plant Varieties shall appoint an employee of the Office to write the minutes.

(2) The minutes shall contain:

1. the place and date of the hearing;
2. the names of the Chairman, the members and the secretary writing the minutes;
3. the designation of the case;
4. the names of parties and their representatives and assistants appearing.

(3) The minutes shall cover:

1. the parties' requests and statements;
2. the witnesses' and experts' evidence;
3. the results of any examination of material evidence;
4. the Committee's decision;
5. communication of the decision and the essential grounds to the parties or their representatives.

(4) The minutes shall be signed by the Chairman and the secretary writing the minutes.

V. Transitional and Final Provisions

Article 24

Transitional Provisions

If an application is made in respect of a variety which was ineligible for protection before the Varieties Protection Law came into force (Article 53 of the Varieties Protection Law), the request shall also state since when the multiplication or other propagation material of the said variety has been commercially exploited.

Article 25

Validity in Berlin

In accordance with Article 14 of the Third Transitional Law of January 4, 1952 (*Bundesgesetzblatt I*, p. 1), in conjunction with Article 62 of the Varieties Protection Law, this Order shall also be applicable in *Land Berlin*.

Article 26

Entry into Force

This Order shall come into force on July 1, 1968.

FRANCE—ITALY

Convention**Between the French Republic and the Italian Republic on the Protection of Appellations of Origin, Indications of Source, and Names of Certain Goods**

(of April 28, 1964) *

The President of the French Republic, President of the Community, and the President of the Italian Republic,

Conscious of the interest each of the contracting States has in protecting natural and manufactured goods from unfair competition and particularly in protecting appellations of origin, indications of source, and other names reserved for certain specific goods and merchandise;

Desirous in that spirit of revising the Agreement Relating to the Protection of Appellations of Origin and the Safeguarding of Names of Certain Goods, concluded between France and Italy on May 29, 1948, in Rome,

have designated as their plenipotentiaries . . .

who, having exchanged their credentials found in good and due form, have agreed as follows:

Article 1

Each of the contracting States hereby undertakes to adopt all necessary measures to ensure that natural and manufactured goods originating in the territory of the contracting State will be effectively protected from unfair competition in the course of trade and to ensure effective protection of the names appearing in Annexes¹ A and B to this Convention, in conformity with the provisions of Articles 2 to 6 below.

Article 2

The names appearing in Annex A to this Convention shall be reserved exclusively, in the territory of the Italian Republic, for French goods or merchandise and may be used therein only subject to the conditions laid down in the legislation of the French Republic.

Article 3

The names appearing in Annex B to this Convention shall be reserved exclusively, in the territory of the French Republic, for Italian goods or merchandise and may be used therein only subject to the conditions laid down in the legislation of the Italian Republic.

Article 4

The entry, in the lists appearing in Annexes A and B to this Convention, of names covering goods or merchandise shall be without prejudice to the provisions regulating, in each of the contracting States, the importation of such goods or merchandise.

Article 5

1. The use in the course of trade, in contravention of the provisions of Articles 2 and 3, of one of the names listed in Annexes A and B to this Convention on any goods or merchan-

dise or their get-up or outer wrapper, or in invoices, waybills, or other commercial documents, as well as in advertising, shall be repressed by all judicial or administrative means, including seizure, that are provided for in the respective legislation of each of the contracting States, to the extent that such legislation permits.

2. The provisions of this Article shall apply even in cases where names listed in Annexes A and B to this Convention are used in translated form or with an indication of the true origin or with the addition of such terms as "kind," "type," "make," "imitation," or the like.

3. The provisions of this Article shall not apply to goods or merchandise in transit.

Article 6

The provisions of Article 5 of this Convention shall likewise apply where either of the following are used on the goods or merchandise, their get-up or outer wrappers, or in invoices, waybills, or other commercial documents, or in advertising:

- (a) false or deceptive indications, concerning the source, origin, nature, variety or substantial qualities of the goods or merchandise, resulting directly or indirectly from designations, marks, names, legends, or illustrations;
- (b) indications which such goods or merchandise are not entitled to use, under the provisions of the legislation of the country of origin.

Article 7

1. The protection provided for in Articles 5 and 6 of this Convention shall be as of right.

2. Each of the contracting States may notify the other State that importation into the latter State of goods or merchandise covered by one of the names listed in Annexes A and B to this Convention may be authorized only if such goods or merchandise are accompanied by a document attesting that they are entitled to such name. In such cases, goods or merchandise not accompanied by such document shall be turned back upon importation.

3. When availing itself of the provisions of paragraph 2 above, the contracting State shall indicate to the other State the authorities empowered to issue the document. A specimen of the document must accompany the notification.

Article 8

The lists appearing in Annexes A and B to this Convention may be amended or extended pursuant to a written communication made by one of the contracting States, subject to the agreement of the other Party. However, either of the contracting States may shorten the list of names covering goods or merchandise originating in its territory without the agreement of the other Party.

Article 9

The provisions of this Convention shall not exclude protection that has been or may hereafter be granted in one of the contracting States, by virtue of its domestic legislation or other international conventions, to the names listed for the other State in Annex A or B to this Convention.

* BIRPI translation.

¹ These annexes are not published herewith.

Article 10

1. The joint committee set up under Article 5 of the Agreement of May 29, 1948, shall be entrusted with facilitating the execution of this Convention.

It shall have the following duties in particular:

- (a) the drafting of similar or parallel legislation on appellations of origin, indications of source and protection against unfair competition, or the improvement of such legislation;
- (b) the study of the most effective means of jointly protecting French and Italian appellations of origin in other States;
- (c) the consideration of proposed amendments or additions to the lists appearing in Annexes A and B;
- (d) the study of all questions related to the implementation of this Convention.

2. Either of the contracting States may call for a meeting of the joint committee.

Article 11

1. This Convention is subject to ratification; the instruments of ratification shall be exchanged in Paris as soon as possible.

2. This Convention shall enter into force one month following the exchange of the instruments of ratification and shall remain in force without limitation of duration. It shall, as from its entry into force, supersede the Agreement of May 29, 1948.

3. Each of the contracting States may denounce this Convention by giving the other State one year's written notice to that effect.

In witness whereof, the above-named plenipotentiaries have signed the present Convention and affixed their seals thereto.

PROTOCOL

The entry in the lists annexed to this Convention of names of cheeses from one of the two countries shall, in the event that such names likewise appear or may hereafter appear in Annex B to the international Convention signed in Stresa on June 1, 1951, be without prejudice to the recognized rights of the other country regarding the use of such names subject to the conditions laid down in the said Convention.

GENERAL STUDIES

The New Hungarian Law on Inventions

By Dr. George PÁLOS

During the year, the commencement of the use of abstracts in the *Official Gazette* in lieu of claims began and a new publication, *Patent Abstracts Section of the Official Gazette*, was initiated.

Guidelines for disclosures of utility in drug or pharmaceutical cases were also published.

The quality audit program on patents, initiated last year, has continued in full operation. The amount of data obtained now permits evaluation of quality at the art unit level.

Patent Services

To minimize inconvenience to the public, new procedures were instituted in the Issue and Gazette Branch of the Office of Patent Services for insertion of certificates of correction in patented files. New procedures employed by the printing contractor and the Government Printing Office now make it possible for the Weekly Issue Section of the Office of Patent Services to receive completely prepared and collated drawings and specifications, resulting in a faster distribution of the patents and a more rapid updating of the public and examiner search files.

The patent copy fulfillment system initiated in fiscal year 1967 will become fully operational in 1969. This system enables the Patent Office to produce paper copies of patents from microform on demand, thus significantly improving service to the public. The conversion of the search files in the Public Search Room and Patent Examining Corps to microform aperture cards should be completed around 1971-1972. When the conversion is achieved, all searching would be by use of aperture cards and microform viewers.

NEWS CONCERNING NATIONAL PATENT OFFICES

Summary of the Annual Report of the United States Patent Office for the Fiscal Year Ending June 30, 1968

Patent Examining Operations

During fiscal year 1968, there were 90,663 patent applications filed, as compared with 88,508 in fiscal year 1967, an increase of 2,155. Disposals amounted to 101,512 cases, as compared with 96,811 in the prior year, an increase of 4,701. At the end of fiscal year 1968, the backlog of pending patent applications was 189,909 (lowest since May 1954), as compared with 200,739 at the end of the previous year, a reduction of 10,830 cases. In 1968, there were 61,851 patents issued, as compared with 70,310 the previous year, a decrease of 8,459 due largely to a temporary delay in printing some of the patents allowed.

A number of steps were initiated to further speed the examining process. One involved a change in the rules relating to the method of making amendments which has reduced considerably the effort required in connection with the entry of amendments and has helped to reduce the workload of the clerical groups.

A new defensive publication program became effective to save time and expense of patent prosecution for an applicant interested in patenting for defensive purposes only. The program is also designed to spare the Office the time and expense required to search and examine such applications.

Patent Documentation

The development of a concordance between the U. S. patent classification and the International Patent Classification (IPC) was completed in connection with the International Patent Classification symbols, as well as a concordance for expediting the routing of incoming foreign patents received by the U. S. Patent Office to the examiner search files. Subsequently, in January 1969, the Patent Office commenced the placement of International Patent Classification symbols on newly issuing U. S. patents.

During fiscal year 1968, a pilot program was initiated to evaluate the operation of patent documentation units attached to three of the patent examining groups — one each in chemical, electrical and mechanical examining. The program is directed to obtaining first-hand information as to possible operational and organizational changes to provide a closer and more efficient working relationship between patent documentation and patent examining.

During the year, the Ad Hoc Committee on Patent Documentation, appointed by the Secretary of Commerce upon the recommendation of the President's Commission on the Patent System, completed its studies and issued a final report. Among the recommendations of the Committee were: (a) increased efforts to provide better funding, long-range planning, continuity of management, and the development of sophisticated management tools in the Patent Office; (b) improvement in the format of the patent document and close review

and control of the quality of the patent search and documentation operations; (c) and closer collaboration in the field of patent documentation between the Patent Office and outside groups, including other government agencies and private enterprise, both in the United States and internationally.

Patent Appeals and Interferences

The Board of Patent Appeals received 7,775 appeals, including 415 petitions for reconsideration, as compared with 10,916 appeals in the preceding year, a decrease of 3,141. The Board rendered 3,358 decisions, including 464 petitions for reconsideration; 1,435 appeals were dismissed, mainly for failure to file a brief, and 4,120 appeals were withdrawn by appellants. The number of appeals on hand including reconsiderations was 3,190, as compared with 4,336 the previous year, a reduction of 1,146.

The number of interferences declared was 482, as compared with 477 the previous year. There were 615 interferences terminated, as compared with 652 the previous year. The number of pending interferences as of the end of the fiscal year was 822, as compared with 1,104 the previous year, a decrease of 222.

Trademark Examining Operations

During the past fiscal year, progress was made in reducing the time required in reaching pending applications for registration although the backlog was not reduced. The average time for acting on new applications had been reduced by the end of the year from ten to eight months.

Applications for registration filed totaled 28,292, an increase of 664 over the previous year.

Disposals amounted to 27,358, consisting of 21,499 marks registered on the Principal Register and Supplemental Register and 5,859 applications which were abandoned.

The number of registered marks published under the provisions of Section 12(c) continued to decline and totaled 290, as compared with 403 the previous year. There were 3,726 registrations renewed under the provisions of Section 9.

Although the number of marks published for opposition rose to 22,513, there was a significant decrease in the number of oppositions filed from 1,214 to 1,033. Ninety-one interference proceedings were instituted.

Beginning with the March 5, 1968, issue of the *Official Gazette*, the publication of trademarks for opposition under the provisions of Section 12(a) of the Trademark Act, registrations issued on the Supplemental Register and renewals, with the exception of certification and collective membership marks, have been marked with the International Classification number in addition to the U. S. designation.

During the past year, 575 cases were decided by the Trademark Trial and Appeal Board after a hearing, 391 of which were adversary proceedings and 184 *ex parte* appeals.

Patent Legislation

Additional hearings were held on the Administration-sponsored "Patent Reform Act of 1967." The proposed legislation was based upon recommendations contained in the

report of the President's Commission on the U. S. Patent System submitted to the President on November 7, 1966.

In these hearings, the Administration suggested a number of modifications of the Administration's original Patent Reform Act. In addition, both the Administration and interested members of the private sector offered their views concerning proposed changes in the Patent Reform Act. Senator McClellan reviewed the comments offered and shortly after the end of the fiscal year introduced a new Patent Revision Bill (S. 3892).

International Activity

Representatives of the U. S. Government and of interested private circles in the United States participated in a meeting of a "Committee of Experts" held in Geneva from October 2 to 10, 1967, to consider the proposed Patent Cooperation Treaty released by the United International Bureaux for the Protection of Intellectual Property (BIRPI) on May 31, 1967. Thereafter, during the first six months of 1968 numerous consultations occurred, at which the United States was represented, with a view to preparing a revised draft for further consideration.

Briefing conferences were held in the fall of 1968 to consider "the 1968 Draft" of the Treaty and the first full draft of the PCT Regulations released by BIRPI on July 15, 1968, as a result of these meetings. These conferences took place in a number of major cities of the United States with interested members of both the patent and business communities. Comments generated by these conferences and from other contacts with bar and business groups proved to be of great assistance in U. S. preparation for participation in the final meeting of the "Committee of Experts" in December 1968.

Other international activities included continuing search exchange programs with the patent offices of France, the Federal Republic of Germany, and the Philippines, trial search exchange programs with the patent offices of Austria, Czechoslovakia, Japan, and Switzerland, and a joint study program with the Swedish patent office.

A foreign professional training program was undertaken in cooperation with the patent offices of six other countries and the International Patent Institute at The Hague. Under this program, examiners from the U. S. Patent Office visited the patent offices of Canada, the United Kingdom, Sweden, the Federal Republic of Germany, Japan, and the Netherlands, as well as the International Patent Institute. Representatives of the patent offices of Canada, the United Kingdom, Japan and the Netherlands visited the U. S. Patent Office.

The Patent Office supported the proposal that the ICIREPAT (Committee for International Cooperation in Information Retrieval Among Examining Patent Offices) be established as a Committee of Experts of the Paris Union under the direction of the United International Bureaux for the Protection of Intellectual Property.

Research and Development

Work in various stages of advancement continued on both U. S. Patent Office and ICIREPAT mechanized information

retrieval projects, including steroid compounds, azo compounds, glass technology, ceramics, fluidics, automatic telephony, analog-digital converters, and lasers-masers.

A file augmentation project was initiated which seeks to identify remotely located documents pertinent to an examiner's central sub-class by virtue of cross-reference relationships.

Another project is the CLIPS (Coincident Light Information Photographic Sheets) which seeks to combine microfilm techniques with punch card peek-a-boo techniques. Examiners will manipulate microfilm cards to identify patents as prior art using conventional peek-a-boo techniques. Use of microfilm allows a multiple number of punch cards to be used simultaneously whereby a larger file may be searched by peek-a-boo technique without tedious repetitive manual operations. Initial photographic experiments have been conducted, and creation of a peek-a-boo deck of the transistor file is now in process.

A Honeywell 1200 computer system was installed in the Office during the year. It consists of a central processing unit with 32 K core storage, six tape drives, a random access drum storage, a card reader, a card punch, a punched paper tape reader and printer. Conversion of data processing applications on punched card equipment and other computers to the Honeywell 1200 was started, as was retraining of personnel for a computer-based ADP operation.

The Office plans to store all available data bases (both in-house and ICIREPAT) on the computer for information retrieval searches for the examiners. Access will be by data link from a remote console located in selected examining units where mechanized retrieval systems are now used. Input programs have been prepared and "debugged," and search routines are now in the process of final "debugging." While search will be slow initially, since magnetic tape is used, the addition of disc capability in fiscal year 1969 is expected to reduce access time. Batch processing is planned initially with trials of on-line operation from the remote console during selected periods of the day.

In the development of the Patent Copy Document System, the Office monitored contract output of 3,350,000 U. S. patents on master 35-mm roll film and 700,000 film cards for internal production of patent copies. Filing equipment for storage and retrieval of the film cards to be used for production of patent copies was procured. Prototype semi-automatic aperture card search readers were contracted for delivery in the summer of 1969.

Operating Cost and Income

The Patent Office appropriation for fiscal year 1968 was \$ 39,000,000, comprised of the regular appropriation of \$ 38,200,000 and a supplemental appropriation of \$ 800,000 for increased pay act costs.

Program costs for this period were \$ 38,571,273 and, with the addition of \$ 147,782 net obligations incurred for costs of other years, the total amount obligated during fiscal year 1968 was \$ 38,719,055, or 99.7 per cent of new obligational authority.

General Administration

During the year, the move of the Patent Office from the U. S. Department of Commerce Building and other scattered locations in Washington, D. C., to Crystal Plaza, Arlington, Virginia, continued. A total of 2,391 out of 2,794 employees — 85 per cent of the work force — had been moved as of June 30, 1968.

NEWS CONCERNING INTERNATIONAL ORGANIZATIONS OTHER THAN BIRPI

XXVIIth Congress of the International Association for the Protection of Industrial Property

(Venice, June 9 to 14, 1969)

The XXVIIth Congress of the International Association for the Protection of Industrial Property was held in Venice from June 9 to 14, 1969. It was attended by approximately 1,400 delegates accompanied by some 1,000 ladies or other persons. Several countries belonging to the Paris Union for the Protection of Industrial Property were represented by government officials.

BIRPI was represented by its Director, Professor G. H. C. Bodenhausen, and by its First Deputy Director, Dr. A. Bogsch.

In an address made during the first working meeting of the Congress, the Director of BIRPI called the delegates' attention to certain factors that are affecting the present situation of international industrial property protection, namely, the proliferation of international organizations concerned with industrial property, the well-nigh explosive development of technology and technical literature, and the special status of the developing countries.

He made the following observations, *inter alia*, on the subject of these questions:

"It would scarcely be an exaggeration to say that the present-day world is teeming with international organizations — both governmental and non-governmental — concerned with the international protection of industrial property or at least with the transfer of technology, especially patented technology. This is true first of all of the United Nations and some of its subordinate bodies such as ECOSOC, UNCTAD, UNIDO, UNCITRAL, the Advisory Committee on the Application of Science and Technology to Development, and others. Then, there are the regional international organizations such as the Council of Europe, the European Economic Community, the European Free Trade Association, COMECON, and, in Latin America, the Latin-American Free Trade Association and the Secretariat of the General Treaty on Central American Economic Integration. All of these organizations are very seriously concerned with industrial property in one way or another, although they sometimes have different approaches to the matter.

And, alongside the development mentioned in connection with intergovernmental organizations, there has also been a parallel development of international non-governmental organizations, including IAPIP which is probably the oldest and still the most important from the standpoint of the territory it represents and the number and prestige of its members and which now finds itself followed or surrounded by an ever-growing number of younger sister organizations. Hence, it is not unusual nowadays for BIRPI to invite some ten to twelve different international non-governmental organizations to the same meeting.

This great interest shown these days in the international protection of industrial property is naturally heartening in itself, although it cannot be said that it simplifies matters.

The second factor I pointed out, that of the explosion of technology and technical literature, is likewise both heartening and disquieting.

We are all benefiting or will later benefit from the phenomenal growth of technology, but we must also realize that the international patent system in particular, as we know it and appreciate it, may collapse under its own weight if we do not find modern ways of coping with this growth.

Lastly, we are all aware of the necessity, in the field of industrial property as well as in other domains, of taking the special status of the developing countries into account.

In view of the foregoing, it seems to me that both BIRPI and interested circles should concentrate primarily on the following tasks:

(1) *defending our concept and philosophy* of international industrial property protection whenever and wherever necessary;

(2) working towards a *concentration* of efforts in resolving certain problems instead of taking separate action;

(3) finding *suitable solutions* to certain urgent problems raised by the *rapid growth of industry and the increasingly voluminous quantities of technical literature, as well as the problems caused by the current situation of the developing countries.*

These brief remarks will explain what I should like to say to you at this juncture concerning the program of BIRPI for the years to come, a program which I hope will again be carried out with the constructive and beneficial cooperation of IAPIP.

ad (1) As regards *defending our concept of protecting industrial property internationally*, it seems to me that we can assert without hesitation that the system of the Paris Convention — which is effective and at the same time allows a sufficient degree of freedom — is a good one, and that this system should be acceptable to each and every country and useful for all of them, at virtually any stage of industrial and commercial development. I also feel, however, that the interested circles could take a much more active role in the work of spreading information and — if I dare use the term — propaganda regarding the system of the Convention. BIRPI is represented at nearly all of the meetings of other intergovernmental organizations concerned with industrial property, but we rarely meet representatives of the private circles at such meetings. It is possible that IAPIP, for its part, still

closely adheres to its traditional role of preparing for revisions of the Paris Convention or working out plans for the harmonization of national laws, although such harmonization will hardly be achieved without political and economic pressure. In my opinion, it would be a great pity for IAPIP to restrict its activities in this way, for the organization could carry out another extremely useful mission if it were to take part actively in the major political trends in our field, especially those concerned with the transfer of patented and unpatented technology.

Indeed, we must not ignore the fact that the traditional doctrine of industrial property is sometimes contested or questioned, and BIRPI should not be left alone with the task of defending it.

This brings me to a concrete point, namely, the forthcoming revision of the Paris Convention which, at the kind invitation of the Austrian Government, should take place in Vienna and which had been planned for 1972. At first, the Austrian Government and BIRPI thought that this Conference could be limited to certain subjects, that is, a rearrangement of the text of the Convention, as already proposed at the Lisbon Conference, and consideration of a few substantive provisions which, after the Lisbon and Stockholm Conferences, seemed likely to be accepted without too much difficulty.

After giving more thought to the matter, however, we now have serious doubts, which I believe are shared by the Austrian Government. It does not appear that the purpose of a Revision Conference can be simply to rearrange the Convention; besides, even the usefulness of such a rearrangement seems questionable. As for the substantive matters, we scarcely see any that are both manifestly urgent and ready for a favorable decision. Moreover, the experience of the last Revision Conference, that of Stockholm in 1967, has shown — be it in the neighboring field of copyright — that with the accession of a large number of new countries to the Convention it is exceedingly difficult to find solutions that not only are likely to win general acceptance at the Conference but that are further likely to be ratified by the member States within a relatively short period of time.

This is why we now think it would be wiser to give the member countries more time to form an opinion and not to hold the Vienna Conference so soon. This would have the additional advantage of allowing us to await ratifications of the Stockholm revision and the entry into force of the new administrative system of the Paris Union, as well as of the World Intellectual Property Organization.

We are of the opinion that it would be much better to replace the planned Vienna Conference by another — to be held in Vienna or elsewhere in 1972 or, if need be, one or two years later — which would concentrate on a revision of the Madrid Agreement Concerning the International Registration of Marks or, possibly, the establishment of a new parallel Agreement. These measures would be intended to enable certain important States, such as the United States, the United Kingdom and perhaps the Soviet Union, the Nordic countries, and others, to adhere to such a system. As far as the details of this work are concerned, we have a completely open mind, and it seems that there is a good

chance that such an undertaking can be brought to a successful conclusion.

ad (2) With regard to the *concentration of efforts* that appears to be required, there is one very encouraging instance which I should like to call to your attention. As you know, the Council of Europe accomplished any very commendable piece of work in the field of international patent classification by adopting a European Convention for such a classification and, after 15 years of work, setting up the international classification itself. Yet, with an open-mindedness seldom encountered, the Council of Europe recognized that this work was of equal interest to countries other than its own member countries and it has agreed to transform both the Convention and the classification into instruments that can be used by countries all over the world, under the administration of BIRPI. Preparations for this transformation are now under way and a Diplomatic Conference for that purpose is planned for the autumn of 1970.

Nevertheless, it is clear that a centralization of efforts is just as necessary in other areas, for example, in connection with the vast question of the *transfer of technology*, both patented and unpatented.

ad (3) With a view to finding *suitable solutions to certain urgent problems* raised by the *current growth of industry and technical literature*, there are a number of important projects in progress that are likewise of special interest to the *developing countries*. The following examples can be cited:

You all know that for many years a committee, working under the name *ICIREPAT*, has been endeavoring to bring about greater harmony and closer collaboration among Patent Offices in the matter of information retrieval. This Committee, which was given a rather imprecise form, made important studies for quite a number of years but these studies did not produce very concrete results. In 1967, the Committee was transformed into a committee of experts of the Paris Union and was completely reorganized. It is hoped that from now on the studies of the Committee and its organs can be more easily and more rapidly converted to action and into decisions of the competent authorities of the member countries.

Another project we have been working on for years is the planned *World Patent Index*, which would permit all granted patents and published patent applications filed on the basis of a single priority document — and thus representing the same invention — to be found within a few seconds by means of a computer. It is obvious that such a service could be extremely useful both as regards searches made by the Patent Offices and the International Organization which perform examinations and as regards private searches and investment plans. The difficulties posed by the project have proved to be formidable, especially from the standpoint of cost, but we have not yet given up hope of resolving them in the near future.

A final example of our efforts to find solutions to certain current problems is the plan for a *Patent Cooperation Treaty (PCT)*. Since an informative discussion of this matter is scheduled for this afternoon, I shall abstain from commenting

on it. I should simply like to say that the subject of PCT is an extremely complicated one affecting a multitude of interests that are not always parallel but, on the contrary, quite often conflicting. This means that, even if every effort is made, it will never be possible to satisfy everyone. We are nevertheless convinced that a means of simplifying internationally the patent application procedure can and must be found, and we have tried to do so in close contact with *all* parties concerned. We are now preparing documents for a Diplomatic Conference that may adopt the Treaty and that is planned for the month of May 1970. It is our hope that, after the great amount of preparatory work already accomplished and under way, it will be possible to find acceptable solutions.

I should like to stress that, in all of the work I have mentioned, the close and beneficial collaboration that we have been able to establish with the International Patent Institute in The Hague has been exceedingly valuable to us, and it is with pleasure that I take this opportunity to thank the Director General of that Institute, Mr. Guillaume Finiss."

* * *

The Congress then held other working meetings and finally adopted the following resolutions:

QUESTION 23 A

Study on the unification of the rights of marks: Incontestability of registration

The Congress adopts the following principles:

I. The registration and the use of a registered trademark shall become incontestable as against prior rights to distinctive signs (words, names or symbols), when the following conditions have been met:

- (a) the trademark must have been registered in good faith;
- (b) the registration must have been published and the owners of the prior rights must have been given the possibility to attack the trademark within certain given terms;
- (c) a term of 5 years must have passed since the publication of the registration, and the trademark must have been used for an adequate time before the expiration of this term; or a term of one year must have passed from the time when the owners of the prior rights were notified, and in this case, the trademark need not, having regard to these prior rights, have been used within this term.

II. The effect of incontestability shall be that the proprietor of prior rights shall no longer be able to assert these rights against the mark which has become incontestable.

But the incontestability shall not prevent the cancellation of the trademark for lack of validity not arising from prior rights, or for unjustified non-use.

The proprietor of prior rights shall retain the right to use his mark and to rely thereon as against third parties.

III. The national laws may provide that in order to avoid confusion between the trademark which has become incontestable and the prior distinctive sign, the courts may impose conditions on the use of either the trademark or the prior sign, or both, in order to create a distinction between them.

QUESTION 40 A

Inventions of employees

The Congress,

finding that its opinion is divided on the point which will decide any solution of this question, that is to say, the definition of the service invention,

decides to refer the question back to the Executive Committee for its continued study by a next Congress.

QUESTION 41 A

The protection of the trade name

I. The Congress

for the purpose of establishing minimum common requirements for the protection of trade names adopts the following principles:

1. The trade name is a designation which distinguishes any enterprise engaged in the manufacture or sale of products or in providing services.

The trade name may consist specifically of a surname, a fanciful denomination, a combination of generic words, a combination of letters, an identifying sign, etc.

2. The trade name is the object of an exclusive right entitled to protection. This right is acquired by use or by registration.
3. (a) The trade name is protected against the use by a third party of the same designation or of a similar designation which could give rise to a risk of confusion between the enterprises or which could cause confusion of the public;
- (b) The well-known trade name is protected against use to designate enterprises that have different objects if damage is caused to the owner of the name.

II. The Congress

decides to continue the consideration of the question, particularly as regards the extension of the protection of the trade name that may be known or have a reputation in the country concerned apart from any use or registration, and as regards a possible amendment of Article 8 of the Convention.

QUESTION 42 A

The inventor's certificate

The Congress

decides to continue the study of the question.

QUESTION 47 A

Effects of the territoriality of trademark rights in case of unauthorized importation of products

The Congress

decides to continue the study of the question.

QUESTION 48 B

Application of Articles 2 and 15 of the Union Convention

The Congress

decides to continue the study of the question.

* * *

In addition to the Congress itself, there were meetings of the Executive Committee of IAPIP, as well as the Conference of Presidents of the national Groups. These meetings enabled IAPIP, inter alia, to adopt important amendments to its statutes.

And, as in the past, magnificent receptions and other social events were organized on the occasion of the Congress. Among the most outstanding were the reception held at the Doge's Palace, the opera performance given at the charming theatre "La Fenice," and the closing banquet at the Excelsior Hotel on the Lido of Venice. Only one thing was missing at this splendid banquet: a minimum degree of silence when the official speeches were being delivered.

The Congress was certainly very much appreciated by all participants. It also demonstrated, however, that IAPIP's remarkable growth over the past few years, resulting in an almost excessive number of participants at its Congresses, is not without some drawbacks. The most important of these are not to be found in the great difficulties involved in organizing such a Congress; under the competent direction of the Italian Group of IAPIP, the organization of the Congress was quite successful, despite one or two minor errors or omissions that are perhaps unavoidable. The problem stems rather from the fact that there are so many participants at these Congresses and so many delegates who speak on the subjects under discussion that, unless the working meetings are chaired with exceptional efficiency, it is extremely difficult to arrive at clear, positive results.

However, none of this can diminish in any way the great importance of the role played by IAPIP and its Congresses, as well as by the meetings of its Executive Committee and Conference of Presidents, in the field of industrial property. Its Congresses will continue to provide a forum for interesting discussions among the world's greatest specialists, with entertainment programs that themselves make the trip worth while!

NEWS ITEMS

CUBA

Appointment of a New Head of the Industrial Property Registry

We have recently been informed that Ing. José M. Rodríguez Padilla has been appointed Head of the Industrial Property Registry (*Jefe del Registro de la Propiedad Industrial, Ministerio de la Industria Básica*), Havana.

We take this opportunity to congratulate Mr. Padilla on his appointment.

PERU

Appointment of a New Head of the Industrial Property Department

We have recently been informed that Dr. Augusto Pflücker R. has been appointed Head of the Industrial Property Department of the Ministry of Industry and Commerce, Lima, with effect from April 2, 1969.

We take this opportunity to congratulate Dr. Pflücker on his appointment.

UNITED KINGDOM OF GREAT BRITAIN AND NORTHERN IRELAND

Appointment of a New Comptroller-General of the Patent Office

We have recently been informed that Mr. Edward Armitage has been appointed Comptroller-General of the Patent Office of the United Kingdom and that he will take up his new duties on October 14, 1969. He succeeds Mr. Gordon Grant who is retiring.

We take this opportunity to wish Mr. Gordon Grant a happy retirement and to congratulate Mr. Armitage on his appointment.

BOOK REVIEWS

TRANSPATENT, Auslandsdienst für Patent-, Muster-, Warenzeichen-, Wettbewerbs-Recht und Wirtschaft [Information Service on Foreign Patent, Design, Trademark, Competition Law and Economics]. Founded by A. Reinhard Rothe, edited by H. Jochen Krieger, Düsseldorf, 1949-1969. (In German)

This information service, which has been in existence for almost twenty years, publishes a loose-leaf collection of legislative texts and references to all relevant information in all countries of the world regarding the fields of industrial property law, antitrust law, and related questions of civil law, procedure, tax and customs law.

As a result of the extent of the undertaking, the collection is impressive by virtue of its size. It consists of fifty-two volumes, six of which, under the title "Handbuch" (manual), form a concise version which is intended to serve for daily use, whereas the whole collection is conceived as a "register" of all pertinent information.

The collection is established on the basis of a topical numbering system, subdividing, according to country, the areas of law and the special questions within such areas.

Thus, each loose-leaf page bears three numerical indications which can be read as one number, first the country number, then the topic number, and finally the page number. Furthermore, the pages are of different colors according to their contents (for instance, blue for legislative texts and orange for fee regulations). In order to keep the collection up to date, a supplement of loose-leaf pages is published each month.

As regards the contents of the collection, the greater part is devoted to legislative texts (laws, regulations, orders) in the field of industrial property and related fields, and announcements by Patent Offices and other governmental agencies. These texts are always translated into German and reported as soon as possible — sometimes even before they come into force so as to enable practitioners to take such measures as may be necessary as a result of the changes — and they are as complete as possible, covering those countries from which it is sometimes difficult to obtain information concerning legislation and the legal situation.

In this context, *Transpatent* is very much assisted by its correspondents in many countries of the world who cooperate by sending legislative texts or by supplying short surveys of new laws and regulations.

Besides these texts, the collection contains — mostly in the form of short abstracts — references to important court decisions, articles in periodicals, and newly published books, so that the reader is quickly informed about new developments in the law. These references are always up to date, and they are not limited to legal questions but also extend to some economic aspects of industrial property law and such related questions as taxation, and so forth. Thus, *Transpatent* is an especially valuable source of information, owing to the promptness of its reporting, for anybody who deals with questions of industrial property law on a worldwide scale.

Furthermore, it should be mentioned that the *Transpatent* editors also publish other useful information concerning patent applications, patent grants, and trademark registrations, for instance aperture cards for patent documents and the "World Watch Cards" for trademarks.

L.B

Selection of New Publications

CENTRE D'ÉTUDES INTERNATIONALES DE LA PROPRIÉTÉ INDUSTRIELLE. *Protection (La) des résultats de la recherche face à l'évolution des sciences et des techniques.* Paris, Librairies techniques, 1969. - 248 p. Colloque de Strashourg, October 1967. Faculté de droit et des sciences politiques et économiques de Strashourg.

CIEZKI (Kurt). *Neuererbewegung in Privatbetrieben.* Berlin, Staatsverlag der DDR, 1967. - 80 p. Herausgegeben vom Amt für Erfindungs- und Patentwesen der DDR.

CONSEIL DE L'EUROPE. COMITÉ D'EXPERTS EN MATIÈRE DE BREVETS. *Official "Catchword Index" to the International Classification of Patents.* West Wickham, Morgan-Grampian, 1969. - vii-300 p.

EMINESCU (Yolanda). "Legislația invențiilor, inovațiilor și raționalizărilor. Texte comentate." Bucharest, Editura științifică, 1969. - 301 p.

ESPAGNE. GABINETE JURIDICO ADMINISTRATIVO DEL BOE. *Propiedad industrial.* Madrid, BOE, 1968. - 459 p. Colección textos legales. Boletín oficial del estado. 2nd Edition.

GAMM (Otto-Friedrich, Freiherr von). *Warenzeichen-Aenderungsgesetz vom 4. September 1967 mit der Neufassung des Warenzeichengesetzes vom 2. Januar 1968 und der neuesten Rechtsprechung zum WZG.* Munich, C. H. Beck, 1968. - 78 p.

- GAZDA (István). *Ipari (Az) know how*. Budapest, Országos műszaki könyvtár és dokumentációs központ, 1969. - 121 p. Műszaki Fejlődési Áttekintések, 3.
- GEORGE WASHINGTON UNIVERSITY. GOVERNMENT CONTRACTS PROGRAM. *Patents and technical data*. Washington, The George Washington University, 1967. - 192 p. Government contracts monograph No 10.
- Geschmacksmustergesetz mit Nebengesetzen. Textausgabe mit Sachregister. Stand 1. Januar 1968*. Cologne, C. Heymann, 1968. - 131 p.
- GUYENOT (Jean). *Contrats (Les) de concession commerciale. Droits français et communautaire de la concurrence*. Paris, Librairie Sirey, 1968. - viii-690 p. Pref. R. Houin and B. Goldman. Bibliothèque de droit commercial. Tome 16.
- HEMMERLING (Joachim). *Planung und Leitung der Neuererbewegung*. Berlin, Staatsverlag, 1968. - 555 p.
- INSTITUT D'ÉTUDES EUROPÉENNES and PRACTISING LAW INSTITUTE. *Program on United States patent practice: comparison with recent European and international trends*. Brussels, 1968. - 132 p.
- INSTITUT NAUCHNO-TEKHNICHESKOI INFORMATSII I PROPAGANDY PRI SOVETE MINISTROV ESTONSKOI SSR. *Bibliograficheskii sbornik zakonov, instruksii i ukazanii po izobretatel'stvu*. Tallin, "Bit," 1968. - 71 p.
- LE TARNEC (Alain). *Réforme (La) du droit des brevets d'invention. Loi No. 68-1 du 2 janvier 1968 et décret No. 68-1100 du 5 décembre 1968*. Paris, Imprimerie du Palais, 1969. - 22 p. Extr. Gazette du Palais, 1969, Nos. 25-31, January 1969; Nos. 32-42, February 1969.
- MILGRIM (Roger M.). *Trade Secrets*. New York, Matthew Bender, 1968.
- MÖSCHEL (Wernhard). *Rechtliche (Die) Behandlung der Paralleleinfuhr von Markenware innerhalb der Europäischen Wirtschaftsgemeinschaft. Bad Homburg, Gehlen, 1968*. - 207 p. *Wirtschaftsrecht und Wirtschaftspolitik, Band 1*.
- MULITZE (Heinz). *Neuererbewegung in den PGH [Produktionsgenossenschaft des Handwerks]*. Berlin, Amt für Erfindungs- und Patentwesen der Deutschen Demokratischen Republik, 1967. - 99 p.
- NESKE (Werner) and MULITZE (Heinz). *Rechte (Die) und Pflichten der Neuerer. Erläuterung der wichtigsten Bestimmungen der Neuererverordnung*. Berlin, Staatsverlag der DDR, 1968. - 151 p. 2nd Edition.
- PILLET (Antoine). *Grandes (Les) marques*. Paris, Presses universitaires de France, 1968. - 126 p. "Que sais-je?". No 991. 2^e édition refondue.
- RIEHLE (Gerhard). *Markenrecht und Parallelimport; ein Beitrag zu Grundlagen und zur Territorialität des Warenzeichenrechts*. Stuttgart, F. Enke, 1968. - xvi-270 p. Münchener Universitätschriften. Band 1.
- ROVELLI (Roberto). *Concorrenza (La) sleale ed i beni immateriali di diritto industriale*. Turin, Unione tipografico-editrice, 1967. - xii-416 p.
- SCHEER. *Internationale Patent-, Muster- und Warenzeichen-Tafel*. Köln-Braunsfeld, Scheer, 1969. - 2 tables.
- SCHRÖTER (Siegfried) and MÜHLKE (Günter). *Arbeit (Die) mit dem Warenzeichen; Grundsätze für die schutzrechtspolitische Arbeit im Zeichenwesen*. Berlin, Staatsverlag, 1967. - 170 p.
- SEIDEL (Arthur H.). *What the general practitioner should know about trademarks and copyrights*. Philadelphia, American Law Institute, 1967. - xii-199 p. Joint committee on continuing legal education of the American Law Institute and the American Bar Association. Business transactions practice handbook 4. 2nd Edition.
- SWEDEN. JORDBRUKSDEPARTEMENTET. *Växtförädlarrätt*. Stockholm, Esselte, 1969. - 184 p. Statens offentliga utredningar 1969: 15.
- TORKANOVSKII (Evgenii Petrovich). *Planirovanie i material'noe stimulirovanie izobretatel'stva i ratsionalizatsii na predpriatii*. Kuibyshev, Kuibyshevskoe knizhnoe izdatel'stvo, 1968. - 140 p.
- USSR. COMMITTEE FOR INVENTIONS AND DISCOVERIES UNDER THE COUNCIL OF MINISTERS OF THE USSR. *Patent services. Brief annotated catalogue*. Moscow, 1969. - 33 p.
- USSR. GOSUDARSTVENNYI KOMITET PO DELAM IZOBRETIENII I OTKRYTII PRI SOVETE MINISTROV SSSR. *Ukazatel' klassov izobretanii SSSR*. Moscow, 1965-1967, 6 Vol. - 1323 + 392 p.) *Tsentral'nyi nauchno-issledovatel'skii institut patentnoi informatsii i tekhniko-ekonomicheskikh issledovanii*.
- *Izmeneniia i dopolneniia k ukazateliu klassov izobretanii SSSR*. Moscow, 1966. *Tsentral'nyi nauchno-issledovatel'skii institut patentnoi informatsii i tekhniko-ekonomicheskikh issledovanii*.
- WINDISCH (Ernst). *Gewerblicher Rechtsschutz und Urheberrecht im zwischenstaatlichen Bereich*. Berlin, J. Schweitzer, 1969. - xxxviii-[1]-244 p. Recht der internationalen Verwaltung und Wirtschaft. Band 3.
- ZÜRCHER (Hubert). *Priorität (Die) im schweizerischen Patentrecht*. Baden, Baden Verlag, 1967. - 91 p.
- ZWEIGBERGK (Åke von) and LEWIN (Saul). *Neue (Die) nordische Patentgesetzgebung*. Weinheim, Chemie, 1969. - vi-86 p. GRUR-Abhandlungen. Heft 4.

CALENDAR OF MEETINGS

BIRPI Meetings

- September 17, 1969 (Geneva) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Coordination Committee (2nd Session)
- September 18 and 19, 1969 (Geneva) — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — First Ordinary Session
- September 22 to 26, 1969 (Geneva) — Interunion Coordination Committee (7th Session)
Object: Program and Budget of BIRPI for 1970 — *Invitations:* Argentina, Australia, Austria, Belgium, Brazil, Cameroon, Denmark, France, Germany (Fed. Rep.), Hungary, India, Iran, Italy, Japan, Kenya, Mexico, Morocco, Netherlands, Poland, Portugal, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America
- September 22 to 26, 1969 (Geneva) — Executive Committee of the Conference of Representatives of the Paris Union (5th Session)
Object: Program and Budget (Paris Union) for 1970 — *Invitations:* Argentina, Australia, Austria, Cameroon, France, Germany (Fed. Rep.), Hungary, Iran, Japan, Kenya, Mexico, Morocco, Netherlands, Poland, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America — *Observers:* All the other member States of the Paris Union; United Nations; International Patent Institute
- September 22 to 26, 1969 (Geneva) — Council of the Lisbon Union for the Protection of Appellations of Origin and their International Registration (4th Session)
Object: Annual Meeting — *Invitations:* All member States of the Lisbon Union — *Observers:* All other member States of the Paris Union
- September 29 to October 3, 1969 (Washington) — International Copyright Joint Study Group
Object: To examine all questions concerning international copyright relations — *Invitations:* Argentina, Australia, Brazil, Canada, Ceylon, Czechoslovakia, France, Germany (Fed. Rep.), India, Italy, Ivory Coast, Japan, Kenya, Mexico, Netherlands, Nigeria, Peru, Philippines, Rumania, Senegal, Spain, Sweden, Tunisia, United Kingdom, United States of America, Yugoslavia — *Observers:* Organizations to be designated — *Note:* Meeting convened jointly with Unesco
- September 30 to October 2, 1969 (Geneva) — Committee of Experts on the Establishment of a "Priority Fee" (Paris Convention)
Object: Implementation of the Recommendation adopted by the Stockholm Conference — *Invitations:* Algeria, Argentina, Austria, France, Germany (Fed. Rep.), Iran, Italy, Japan, Kenya, Netherlands, Rumania, Soviet Union, Spain, Sweden, Switzerland, United Kingdom, United States of America, Yugoslavia — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- October 6 to 10, 1969 (Vienna) — Expert Group Meeting on the Organization and Administration of Industrial Property Offices
Object: Discussion of various aspects of the organization and administration of Industrial Property Offices in developing countries — *Invitations:* All member countries of the United Nations or of the Paris Union — *Note:* Meeting convened jointly with the United Nations Industrial Development Organization (UNIDO)
- October 21 to 24, 1969 (Munich) — Joint ad hoc Committee on the International Classification of Patents (2nd Session)
Object: Practical application of the Classification — *Invitations:* Czechoslovakia, France, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Spain, Switzerland, United Kingdom, United States of America — *Observers:* International Patent Institute — *Note:* Meeting convened jointly with the Council of Europe
- October 27 to 31, 1969 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Industrial Designs
Object: To study a Draft Model Law — *Invitations:* Developing countries members of the United Nations — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- October 27 to 29, 1969 — Paris Union Committee for International Cooperation in Information Retrieval Among Patent Offices (ICIREPAT) — Technical Committee II (Technical Fields: Forward Planning) (2nd Session)
Note: The exact place of the session will be announced later
- October 30 and 31, 1969 — ICIREPAT — Technical Committee III (Advanced Computer Techniques) (2nd Session)
Note: The exact place of the session will be announced later
- November 3 to 8, 1969 (Cairo) — Arab Seminar on Industrial Property
Object: Exchange of views on industrial property questions and on their importance for developing countries — *Invitations:* Algeria, Iraq, Jordan, Kuwait, Lebanon, Libya, Mauritania, Morocco, Republic of Yemen, Saudi Arabia, South Yemen People's Republic, Sudan, Syria, Tunisia, United Arab Republic; Sheikdoms of Abu Dhabi, Bahrain, Dubai, Qatar, and Sharjah — *Observers:* Intergovernmental and international non-governmental Organizations concerned
- November 3 and 4, 1969 (Geneva) — ICIREPAT — Technical Committee I (Retrieval Systems, Design and Testing) (2nd Session)
- November 5 and 6, 1969 (Geneva) — ICIREPAT — Technical Committee VI (Systems Implementation) (2nd Session)
- November 10 to 12, 1969 (Geneva) — ICIREPAT — Technical Committee IV (Microform) (2nd Session)
- November 13 and 14, 1969 (Geneva) — ICIREPAT — Technical Committee V (Patent Format and Printing) (2nd Session)
- December 10 to 12, 1969 (Paris) — Intergovernmental Committee Rome Convention (Neighboring Rights), convened jointly by BIRPI, ILO and Unesco (2nd Session)
- December 15 to 19, 1969 (Paris) — Permanent Committee of the Berne Union (14th Ordinary Session)
- January 19 to 23, 1970 (Geneva) — Committee of Directors of National Industrial Property Offices of the Madrid Union (Marks)
Object: Administrative questions — *Invitations:* All member States of the Madrid Agreement (Marks)

January 26 to 30, 1970 (Geneva) — Committee of Experts for the Revision of the Madrid Agreement (Marks)

March 9 to 20, 1970 (Geneva) — Preparatory Study Group on PCT Regulations

Object: Study of Draft PCT Regulations — *Invitations:* All member States of the Paris Union — *Observers:* Intergovernmental and international non-governmental Organizations concerned

May 25 to June 19, 1970 — Diplomatic Conference for the adoption of the Patent Cooperation Treaty (PCT)

Invitations: All member States of the Paris Union — *Observers:* Other States; Intergovernmental and international non-governmental Organizations concerned — *Note:* The exact place of the Conference will be announced later

Meetings of Other International Organizations Concerned with Intellectual Property

September 8 to 12, 1969 (Nuremberg) — International Federation of Musicians (FIM) — 7th Ordinary Congress

October 14 to 17, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

November 12 to 14, 1969 (Strasbourg) — Committee of Experts on Patents of the Council of Europe

November 25 to 28, 1969 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents — Working Group

December 8 to 11, 1969 (The Hague) — International Association for the Protection of Industrial Property (IAPIP) — Council of Presidents

January 12 to 16, 1970 (Luxembourg) — Intergovernmental Conference for the setting up of a European system for the grant of patents
