

# Industrial Property

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8. — Sections 6 and 7 shall not apply when the persons mentioned therein prove that the products are intended for export.

9. — Any person who offers prepared products for sale at retail shall, when the quantities are not stated in legal units on the packages or receptacles, mark the quantity on the said packages or receptacles or on the price tag.

10. — Any person who distributes catalogs or other documents to the public for the purposes of the sale of prepared products shall state the quantities contained in the packages or receptacles.

11. — In respect of products specified by Him, the King may:

- (i) supplement or replace the rules established under Sections 6 to 10 by special rules concerning information to the consumer;
- (ii) waive the rules laid down in Sections 6 to 10;
- (iii) determine permissible discrepancies between the quantity stated and the actual quantity contained;
- (iv) fix the ways of indicating quantities, as provided for in Sections 6 to 10;
- (v) fix the standards according to which products must be prepared before being put on sale.

### 3. Naming and Composition of Products

12. — The King may, in order to ensure the fairness of commercial transactions:

- (i) fix the conditions of composition, constitution and quality which products must meet in order to be marketed under a given name;
- (ii) prohibit the marketing of products under a given name;
- (iii) control labeling and impose the use of a given name for products put on the market;
- (iv) require the addition to names under which products are marketed of signs, words or expressions to clarify their meaning;
- (v) prohibit the addition of certain signs, words or expressions to names under which products are marketed;
- (vi) impose the obligation to supply essential indications relating to products at least in the legal language or languages of the region.

### 4. Appellations of Origin

13. — For the purposes of this Law, appellation of origin means the geographical name of a country, region or locality, which serves to designate a product originating therein, the quality or characteristics of which are due exclusively or essentially to the geographical environment, including natural and human factors.

14. — Without prejudice to any statute or regulations governing products, the King may, on the proposal of the Minister for the Middle Classes:

- (i) designate the names to be considered appellations of origin applicable to Belgian products;

- (ii) fix the conditions which products must meet in order to be manufactured, offered for sale and sold under a given appellation of origin.

The geographical name generally used to designate the type or presentation of a product shall not in itself constitute an appellation of origin.

15. — Before proposing any ordinance under Section 14, the Minister for the Middle Classes shall publish an announcement in the *Moniteur belge* specifying the name which in his opinion should constitute an appellation of origin and inviting any interested persons or associations to submit their observations within the month following such publication.

The Minister for the Middle Classes shall also consult the Chamber of Trades and Businesses established in the province or provinces in which the products proposed for designation under an appellation of origin originate, and shall fix the date by which the Chamber must express its opinion.

16. — In order to ensure the proper use of appellations of origin, pursuant to Section 14, the King may:

- (i) designate one or more approved authorities with the task of certifying, by means of certificates of origin, that products sold under a given appellation of origin fulfill the conditions laid down by the ordinance recognizing that appellation of origin;
- (ii) make the manufacture, offering for sale and sale of products under a given appellation of origin subject to the possession of an individual or collective certificate of origin issued by an approved authority.

The King shall determine the conditions which the authorities must fulfill and the guarantees which they must provide in order to obtain approval, and the amount of fees which they may charge for the issue of certificates of origin.

17. — It shall not be lawful:

- (i) to make use of a name by representing it as an appellation of origin, when such name has not been recognized as such by an ordinance under Section 14 or by a special law;
- (ii) to manufacture, offer for sale or sell, under an appellation of origin, products which do not fulfill the conditions laid down by the ordinance recognizing the said appellation of origin;
- (iii) to manufacture, offer for sale or sell, under an appellation of origin, products not covered by a certificate of origin when such certificate is required by an ordinance under Section 16.

18. — The improper use of an appellation of origin shall not be relieved of its usurpatory character:

- (i) by the addition of various terms to the said appellation of origin, in particular corrective terms such as "style," "type," "fashion" or "similar";
- (ii) by the fact that the offending name is claimed to have been used to indicate the source of the product;
- (iii) by the use of foreign words where such words are merely the translation of an appellation of origin or are likely to create confusion with an appellation of origin.

### 5. Commercial Advertising

19. — For the purposes of this Law, commercial advertising means any information disseminated for the direct or indirect purpose of promoting the sale of a product or service to the public, irrespective of the place or means of communication used.

20. — Commercial advertising shall be unlawful:

- (i) when it contains statements which are likely to mislead the public concerning the identity, nature, composition, origin, quantities or characteristics of a product; the characteristics shall mean the advantages of a product, particularly with respect to its properties, possible uses, the terms of purchase and the services accompanying purchase;
- (ii) when it contains comparisons which are deceptive or derogatory or which needlessly enable the identification of one or more other traders;
- (iii) when it contains elements likely to create confusion with another trader or craftsman, or with his products or services;
- (iv) when it promotes an act which, in terms of Section 55 of this Law, must be considered at variance with the provisions therein, or which has been found to constitute an offense under Sections 60 to 63 of this Law.

21. — Only the author of the offending commercial advertisements shall be liable under Section 20.

However, where the author is not resident in Belgium or has not appointed a representative resident in Belgium, an action for an injunction may also be instituted against the publisher, the printer or the distributor of the offending commercial advertisement, and any person who contributes to the achievement of the latter's purpose.

## Chapter II — Specific Trade Practices

### 1. Sales at a Loss

22. — It shall be unlawful for any trader to offer for sale or sell a product to the consumer at a loss.

Any sale at a price which is not at least equal to the price at which the product was invoiced at the time of its supply, or the price at which it would be invoiced in the case of a further supply, shall constitute sale at a loss.

Any sale which affords the seller only an exceptionally low profit margin, account being taken of the price and overhead expenses, shall be assimilated to sale at a loss.

23. — (1) The prohibition provided for in Section 22 shall not apply, however:

- (a) to products sold for the purpose of liquidation;
- (b) to products sold in a clearance sale;
- (c) to the disposal of highly perishable products, whose preservation can no longer be guaranteed;
- (d) to products offered for sale for the special purpose of meeting a momentary need on the part of the consumer when the event or the transitory desire which gave rise to the need is past, if it is obvious that the products can no longer be sold under normal trading conditions;

(e) to products whose commercial value is severely reduced owing to their deterioration, to diminished possibilities for their use or to a radical change in technology;

(f) when the price of the product is aligned, to meet the needs of competition, on the price normally charged by other traders for the same product.

(2) Contractual clauses prohibiting sales at a loss shall not be binding on the seller in the case provided for under (c); neither shall they be binding in the other cases specified if the seller notifies the manufacturer or, where the manufacturer is not known, the supplier of the product, by registered letter, of his intention to sell at a loss and the prices which he intends to charge and if, within fifteen days from the date of such notification, the person notified has not addressed to the seller, in the same manner, an offer to take back the goods in question at the prices indicated in the notification.

### 2. Liquidation Sales

24. — For the purposes of this Law, liquidation means any offer for sale or sale advertised by the announcement "*Liquidation*," "*Uitverkoop*" or "*Ausverkauf*" or any other equivalent expression, which is carried out in order to dispose rapidly of a stock or selection of products in one of the following instances:

- (i) in compliance with a court decision;
- (ii) when the heirs or successors in title of a deceased trader put on sale all or part of the stocks concerned;
- (iii) when the trader puts on sale all or part of the stocks left to him by the predecessor in his business;
- (iv) when the trader gives up, entirely or partly, his former business activity and sells all or part of his stock, provided however that the seller has not liquidated similar products for the same reasons in the course of the previous three years;
- (v) when alteration or repair work lasting at least one month is carried out on the premises where retail selling usually takes place;
- (vi) when the transfer or vacation of the business establishment calls for the sale of the products;
- (vii) when severe damage is caused by a disaster affecting all or part of the stock of products;
- (viii) when business activity is seriously hindered by a case of force majeure.

25. — It shall not be lawful to advertise a sale by means of the announcement "*Liquidation*," "*Uitverkoop*" or "*Ausverkauf*," either alone or combined with other words, or any other equivalent expression, in cases other than those referred to in Section 24, and where all the conditions prescribed for such a sale are not fulfilled.

26. — (1) With the exception of the cases provided for in Section 24(i), liquidation may neither take place nor be advertised if the trader has not informed the Minister, or the person delegated by him for the purpose, by registered letter of his intention, stating the case and his reasons.

Liquidation may not be effected until eight working days have elapsed following the dispatch of the registered letter, except in the cases provided for in Section 24(vii).

(2) Except in the cases referred to in Section 24(i) and (vii), any liquidation sale shall take place on the premises where identical products were usually put on sale either by the seller himself or by the deceased trader or the predecessor in the business.

Any trader who claims to be unable to comply with this provision shall request derogation by registered letter addressed to the Minister or to the person delegated by him for the purpose, stating his reasons and indicating the place in which he wishes to carry out the liquidation sale. A decision shall be taken on the request within eight days. Failing communication of a reasoned refusal within that period, derogation shall be deemed to have been granted.

(3) The products offered for sale or sold in a liquidation sale may only be those which, at the time of the court decision referred to in Section 24(i), at the time of the disaster referred to in Section 24(vii), or at the time of notification provided for in subsection (1) of this Section:

- (a) formed part of the seller's stock, or
- (b) had been ordered in a manner to be considered normal in view of the size of the order and the date on which it was placed.

Where the seller possesses several sales establishments, products may not be transferred from one establishment to another without the authorization of the Minister or the person delegated by him for the purpose.

Authorization shall be requested by registered letter containing a statement of the facts on which the request is based. A decision shall be taken on the request within eight days. Failing notification of a reasoned refusal within that period, authorization shall be deemed to have been given.

(4) Where a product is offered for sale or sold in a liquidation sale by means of an expedient suggesting a reduction in price, such reduction shall be genuine in relation to the price usually charged for identical products either by the seller himself, or by the deceased trader or the predecessor in the business.

27. — The King may regulate the methods, frequency and duration of specified liquidations.

### 3. Clearance Sales

28. — For the purposes of this Law, clearance sale means any offer for sale or sale at retail which is carried out for the purpose of the seasonal renewal of the stocks of a retailer by means of an accelerated disposal at reduced prices of outmoded, discontinued or stock-soiled products, and which is advertised by the announcement "*Soldes*," "*Opruimingen*," "*Solden*" or "*Schlussverkauf*," or any other equivalent expression.

29. — It shall not be lawful to advertise a sale by means of the expression "*Soldes*," "*Opruimingen*," "*Solden*" or "*Schlussverkauf*," either alone or combined with other words,

or any other term suggesting a clearance sale, in a case other than that provided for in Section 28 and where the conditions prescribed for such a sale are not fulfilled.

30. — (1) The clearance sale shall take place on the premises on which the products to be cleared or identical products were usually on sale.

(2) The products offered for sale or sold in a clearance sale may only be those which were in the seller's possession at the beginning of such clearance sale and which he had been accustomed to sell prior to that date; such offer for sale must not have been made in the conditions specified in Part 4 of this Chapter during the month preceding the beginning of the sale.

(3) The prices of the products to be cleared shall be genuinely lower than the prices usually charged by the seller for the same products.

31. — The King shall prescribe, either for the entire Kingdom or for parts thereof, the manner in which clearance sales are to be held and the periods during which they may take place.

Before issuing an ordinance under the preceding paragraph, the King shall consult the Central Council for Economic Affairs and the Higher Council for the Middle Classes and shall set the date by which their advice must be given.

### 4. Other Sales at Reduced Prices

32. — The provisions of this Part shall apply to the offering for sale or sale at retail, using the method of crossed-out prices or any other expedient suggesting a reduction of the prices charged by the seller, but without the use of one of the expressions referred to in Sections 24 and 28.

33. — In all the cases referred to in Section 32, the reductions in price announced must be genuine in relation to the prices usually charged by the same seller for identical products.

34. — If a price reduction is announced as being for a limited period, the seller shall dispose of the stock which should normally be provided in view of the duration of the sale and the extent of the publicity. The duration of the sale, which must be continuous, may not be less than a full day of business.

The preceding paragraph shall not apply however to the sale of the products referred to in Section 23(1)(c).

### 5. Combined Offering of Products and Services

35. — Subject to the exceptions set out below, any combined offer to consumers of products or services, or vouchers for the acquisition of products, services or any other benefits shall be unlawful.

There shall be a combined offer within the meaning of this Section when the acquisition, for consideration or otherwise, of products or services, or vouchers for the acquisition of products, services or any other benefits, is contingent on the acquisition of other specific, even identical, products or services.

36. — It shall be lawful to make a combined offer, at a single price, of:

- (i) products or services which together form a whole;
- (ii) identical products or services, provided that:
  - (a) each product or each service may be acquired individually at its usual price;
  - (b) the purchaser is clearly informed of the possibility referred to under (a), and of the individual selling price of each product and each service;
  - (c) any price reduction which may be offered to the purchaser of the combination of products or services does not exceed one-third of the aggregate price.

37. — It shall be lawful to offer, as a charge-free adjunct to a principal product or service:

- (i) the accessories of a principal product which are specially designed for that product by its manufacturer and supplied at the same time as the product for the purpose of extending or facilitating its use;
- (ii) the packages or receptacles used for the protection and preparation of the products, account being taken of the products' nature and value;
- (iii) minor services and small products accepted in trade usage, as well as the delivery, installation, verification and maintenance of the products sold;
- (iv) samples from the stock of the manufacturer or distributor of the main product, in so far as they are offered in such quantities or measures as are strictly essential to the evaluation of the product's qualities;
- (v) objects bearing indelible and clearly visible publicity inscriptions which are not found as such on the market, provided that the price at which they are acquired by the person offering them does not exceed five percent of the selling price of the principal product or service with which they are associated;
- (vi) color prints, vignettes and other pictures of negligible commercial value;
- (vii) participation vouchers for lotteries and raffles organized for the purposes of sales promotion and duly authorized under the Law on Lotteries, of December 31, 1851;
- (viii) participation vouchers for contests, games and other competitions, provided that when the prizes are likely to be awarded to the majority of the participants, they are merely publicity material corresponding to the description given under (v) of this Section.

38. — It shall also be lawful to offer as a charge-free adjunct to a principal product or service:

- (i) vouchers for the acquisition of an identical product or service, provided that the price reduction resulting from such acquisition does not exceed the percentage specified in Section 36(ii);
- (ii) vouchers for the procurement of one of the advantages provided for in Section 37(vi) to (viii);

(iii) vouchers for a cash discount, provided that:

- (a) their cash value is indicated on them;
- (b) the rate or amount of discount offered, and the products or services whose acquisition gives a right to discount vouchers, are clearly indicated at the establishment in which the sale is effected or the service performed;

(iv) vouchers consisting of documents entitling their holder, after acquisition of a certain number of products or services, to a free offer or to a price reduction on acquisition of an identical or similar product or service, in so far as this advantage is afforded by the same trader or craftsman and does not exceed one-third of the price of the products or services acquired previously.

39. — Any person who issues the vouchers referred to in this Part shall, ipso facto, be liable to pay the amount that the vouchers represent.

It shall not be lawful to grant, in any form whatsoever, an increase in the discount to which the vouchers referred to in Section 38(iii) give a right on the condition that the discount is to be applied wholly or partly to the payment of products or services.

Where a current issue of vouchers referred to in Section 38(iii) is discontinued or modified, reimbursement of the equivalent cash amount may be demanded, irrespective of the total face value of the vouchers, during the year following the publicizing procedure provided for in Section 43(1)(ii).

40. — Any person who issues vouchers provided for in Section 38(i) to (iii) must be the holder of a registration granted by the Minister.

Such registration may not be granted, either directly or through an intermediary, to persons affected by Ordinance No. 22 of October 24, 1934, prohibiting certain convicted persons and bankrupts from participating in the management or supervision of joint-stock companies, cooperative societies and credit unions, and from practising as a stockbroker or acting as a deposit bank. Nor may registration be granted to persons affected by Ordinance No. 148 of March 18, 1935, on money-lending, or to persons convicted, by a court decision having force of law, under Section 29 of the Law Governing Hire Purchase and the Financing Thereof, of July 9, 1957.

Applicants shall undertake to allow qualified agents designated by the Minister to check whether Sections 38 to 42 have been satisfied, by inspection, without power of removal, on the applicant's premises, of any documents, papers or books that may facilitate the fulfillment of their task.

41. — Vouchers issued under Section 38(i) to (iii) shall bear the registration number of the person or legal entity issuing them.

The registration number and the name, designation and address of the holder, as well as the terms for exchange or reimbursement fixed in accordance with Section 38(i) to (iii), shall be visibly marked on the voucher albums or on the vouchers themselves, and on any advertisements relating to the vouchers.

42. — Registered persons shall immediately request cancellation of their registration when they wish to discontinue the issue of vouchers, when they are authorized to suspend payments or when they fall within the application of the second paragraph of Section 40.

43. — (1) The King may:

- (i) prescribe a minimum format and distinguishing marks for the vouchers referred to in Section 38(i) to (iii);
- (ii) prescribe, in the event of discontinuation or modification of the current issue of vouchers, special publicity and the procedure therefor;
- (iii) set the minimum amount above which cash reimbursement of the vouchers referred to in Section 38(iii) may be demanded;
- (iv) make the issue of the vouchers referred to in Section 38(iii) subject to the provision of guarantees of solvency and the maintenance of special accounts, and impose measures of control;
- (v) alter, in respect of certain products or services specified by Him, the amounts and percentages provided for in Sections 36(ii), 37(v) and 38(iv), set the maximum value which may be attained by products, services or advantages offered in accordance with those provisions and limit the frequency and duration of sales and services governed by Section 36(ii);
- (vi) make the offer subject to the condition that the combined products or services offered have been sold or performed by the trader or craftsman for at least one year;
- (vii) exclude certain products and services specified by Him from the benefit of the derogations provided for in Sections 36, 37 and 38;
- (viii) extend the prohibition under Section 35 to combined offers made to retailers.

(2) Before taking the measures provided for under (v), (vi), (vii) and (viii), the King shall seek the advice of the Central Council for Economic Affairs, the Higher Council for the Middle Classes and the Consumer Council and set the date by which that advice must be given.

#### 6. Public Sales

44. — The provisions of this Part shall apply to the offering for sale and sale by public auction, whether by ascending or descending bids, and the display for the purposes of such sale, of manufactured products. These provisions shall not however apply:

- (i) to a sale and offering for sale of a non-commercial nature;
- (ii) to transactions solely with persons who trade with the products offered for sale;
- (iii) to transactions involving artistic creations, collectors' items or antiques;
- (iv) to transactions carried out in accordance with a legal provision or a court decision;
- (v) to transactions carried out in the case of a bankruptcy settlement involving relinquishment of assets.

45. — Public sales within the meaning of Section 44 shall be unlawful when they relate to new products.

Products shall be new when they show no visible signs of use.

46. — (1) The above prohibition shall not apply to liquidation sales carried out in compliance with the rules laid down in Sections 24 to 27 when they fulfill, in addition, the conditions set forth below.

(2) Any trader wishing to effect liquidation by public sale shall accordingly inform the Minister, or the person delegated by him for the purpose, by registered letter, stating the opening date of the public auction. The auction may not commence until eight working days have elapsed following the dispatch of the registered letter.

An inventory of the products to be liquidated by the public sale procedure shall be attached, in two copies, to the registered letter.

(3) Save in the case of force majeure, the public sale shall take place on the day indicated and must, if it takes place, proceed without interruption during the days following; exceptions to this rule may be made for Sundays and public holidays.

(4) The inventory shall be reproduced on posters affixed to the door of the saleroom at least three working days prior to the sale. These posters may not be removed before the end of the sale.

(5) The sale may only relate to products listed in the inventory sent to the Minister, or to the person delegated by him for the purpose.

47. — The organizer of a public sale of used manufactured products shall be personally responsible for compliance with the prohibition imposed in Section 45.

Such a public sale may moreover only be held in premises intended solely for that purpose, subject to exceptions granted in cases of necessity by the Minister, or the person designated by him for the purpose.

48. — In the event of failure to comply with the prohibition imposed in Section 45, a report shall immediately be made and notified to the organizer of the sale and to the ministerial officer entrusted with the conduct of the sale.

The effect of such notification shall be that the products specified in the report may not be offered for sale in public and shall be considered seized from the organizer of the sale until such time as a final decision has been taken by the court or the seizure order revoked by the competent authority.

49. — The ministerial officer entrusted with the conduct of the public sale shall refuse his services if:

- (i) notification as provided for in Section 46(2) has not been made within the prescribed period;
- (ii) the transactions in question involve products not included in the inventory prescribed by Section 46(2) or products considered seized in terms of the second paragraph of Section 48.

50. — The King may, for specified products, waive the prohibition imposed in Section 45 when the sale of such products by other methods proves difficult or impossible.

#### 7. Unsolicited Sales

51. — It shall be unlawful to send to a person, unless he so requests, any product with an invitation either to acquire the product on payment of its price or to return the product to the sender, even free of charge.

Exceptions may be made to this prohibition by the Minister for offers made in a charitable cause. In such a case the number of the authorization obtained must be indicated at the time of the offer.

In no event shall the addressee be obliged to return the product delivered or pay for it even if a tacit presumption of purchase has been indicated.

#### 8. Chain Sales

52. — It shall be unlawful to organize sales by the "snowball" or similar techniques, or to take part in such sales.

"Snowball" sales consist principally in offering products to the public with the opportunity of obtaining them, either free of charge or for a sum lower than their real value, in consideration for the distribution to other persons, against payment, of vouchers, coupons or other similar documents, or for the collection of memberships or subscriptions.

#### 9. Itinerant Sales

53. — Without prejudice to the application of the rules on itinerant trade and the legal provisions governing alcoholic liquor shops, and subject to the exceptions granted for certain products by the King, or under the conditions specified by Him, itinerant sales shall be unlawful.

Itinerant sales shall mean any offer for sale, display for the purposes of sale or sale made to the consumer by a trader or an agent away from his main place of business or from branches or agencies indicated in his registration in the Trade Register, or from premises occupied at a trade fair.

### Chapter III — Practices Likely to Impair the Normal Conditions of Competition

54. — Any act contrary to honest practices in trade by which a trader or craftsman attacks or attempts to attack the professional interests of one or more other traders or craftsmen, shall be unlawful.

### Chapter IV — Action for Injunction

55. — The President of the Commercial Court shall establish the existence and order the discontinuation of any act, even if subject to penal sanctions, which constitutes infringement of the following provisions:

- (a) Section 17, against the usurpation of appellations of origin;
- (b) Section 20, on commercial advertising;
- (c) Section 22, on sales at a loss;

- (d) Sections 24 to 34, governing liquidation sales, clearance sales and other sales at reduced prices, and ordinances issued under those Sections;
- (e) Section 35, prohibiting the combined offering of products and services, and ordinances issued under Section 43(v) to (viii);
- (f) Sections 44 to 48, prohibiting or regulating certain public sales;
- (g) Section 51, prohibiting unsolicited sales;
- (h) Section 53, regulating itinerant sales;
- (i) Section 54, prohibiting any act contrary to honest practices in trade.

56. — Section 55 shall not apply to acts of infringement which are punishable under the laws on patents, trademarks, industrial designs and copyright.

57. — An application under Section 55 shall be brought at the request of either the interested parties or an interested professional or interprofessional group having legal personality.

When the application concerns an act specified in Section 55(a) to (h), it may in addition be brought at the request of the Minister or any association formed for the protection of consumer's interests and having legal personality, provided that such association is represented on the Consumer Council.

58. — The President of the Commercial Court may order the placarding of his decision, during a period specified by him, both outside and inside the enterprise of the offending party, and the publication of the judgment in the newspapers or in any other manner, all at the expense of the offending party.

Such publicity measures may however only be ordered when they are likely to contribute to the discontinuation of the offending act or of its effects.

The measures may only be carried out when the decision to which they relate is no longer appealable.

59. — The application brought before the President of the Commercial Court shall be of an interlocutory nature.

A decision shall be taken on the application regardless of any proceedings relating to the same act which may be in progress before a criminal court.

The judgment shall be provisionally enforceable irrespective of any appeal against it. Security shall not be ordered.

The effects of a first-instance judgment rendered in default may not be opposed. Regardless of the validity of the application, the judgment shall be subject to appeal.

The effects of a decision of a higher court rendered in default may be opposed.

Any decision rendered in an action under Section 55 shall, within eight days and on the initiative of the registrar of the competent court be communicated to the Minister, unless the decision was rendered at his request.

The registrar shall also inform the Minister without delay of appeals lodged against any decision rendered under Section 55.

## Chapter V — Sanctions

### 1. Penal Sanctions

60. — The following shall be liable to a fine of from 26 to 5,000 francs — persons who commit an offense against:

- (i) Sections 2, 4 and 6 to 10, on indications of price and quantity, and ordinances issued under Sections 3 to 11;
- (ii) ordinances issued under Section 12, on the naming and composition of products;
- (iii) Section 40, making the right to issue certain vouchers subject to prior registration;
- (iv) Section 49, requiring ministerial officers responsible for the conduct of certain public sales to refuse their services in certain circumstances.

However, when an infringement of the provisions of the decrees issued under Section 11(v), on the standards of preparation of products, or of Section 12, on the naming and composition of products, constitutes at the same time an infringement of the Law on the Control of Foodstuffs and Other Goods, of June 20, 1964, only the penalties provided for in the latter shall be applicable.

61. — Persons who maliciously commit an offense against Section 55 shall be liable to a fine of from 1,000 to 5,000 francs.

When the facts before the Court are the subject of an action for an injunction, no decision may be taken on the criminal action until a decision having force of law has been rendered in the action for an injunction.

62. — The following shall be liable to a fine of from 26 to 5,000 francs:

- (i) persons who fail to comply with the terms of a judgment or decision rendered under Sections 55 and 58 on an application for an injunction;
- (ii) persons who willfully prevent or obstruct the persons referred to in Sections 70 and 71 from performing their duty to investigate and report infringements of this Law;
- (iii) persons who, even through an intermediary, willfully remove, obliterate or destroy all or part of the placards affixed in accordance with Sections 58 and 65.

63. — Any infringement of the prohibition imposed in Section 52 on chain sales shall be subject to the penalties provided for in Section 496 of the Criminal Code.

64. — Without prejudice to the ordinary rules on subsequent offenses, the penalty provided for in Section 62 shall be doubled when the offense provided under (i) of that Section is committed within five years of a conviction for the same offense having force of law.

65. — The Court may order the placarding of the judgment, during a period specified by it, both outside and inside the enterprise of the offending party and at the latter's expense, as well as the publication of the judgment, also at the expense of the offending party, in the newspapers or in any other manner. The Court may also order the confiscation of the profits unlawfully acquired as a result of the offense.

66. — Companies shall be liable in the case of awards of damages, fines and costs, and orders for confiscation and for restitution and any pecuniary sanctions imposed on their constituent bodies or officials for offenses under this Law.

The same shall apply to members of any commercial partnerships without legal personality, when the offense has been committed by a partner, manager or official in the course of a transaction forming part of the activities of the partnership. The partner responsible shall, however, be personally liable only to the value of the sums or benefits which he himself obtained as a result of the transaction.

The companies and partners may be summoned directly before the criminal courts by the Public Prosecutor or by the party bringing the action.

67. — The provisions of Book I of the Criminal Code, including Chapter VII and Section 85, shall apply to offenses provided for in this Law.

In derogation of Section 43 of the Criminal Code and with the exception of cases of subsequent offenses as provided for in Section 64 of this Law, the Court shall determine, when passing sentence for one of the offenses under this Law, whether special confiscation should be ordered.

The registrar of the respective court shall bring to the notice of the Minister any judgment or decision relating to an offense under this Law, within ten days of such judgment or decision.

The registrar shall also inform the Minister without delay of any appeal lodged against such judgment or decision.

### 2. Cancellation of Registration

68. — The Minister may cancel the registration provided for in Section 40:

- (i) when registration was obtained in contravention of Section 40, second paragraph, or Section 69(2);
- (ii) when the owner fails to request cancellation in accordance with Section 42;
- (iii) when the owner is the subject of an injunction or conviction for issuing vouchers in contravention of Section 38;
- (iv) when the owner has not complied with the obligations under Sections 39, 40, third paragraph, and 41, or with ordinances issued under Section 43(1)(i) to (iv).

69. — (1) Registration may not be cancelled however until the person concerned has been notified, by registered letter or by service through a court bailiff, of the following:

- (a) the facts alleged against him;
- (b) the consequences to which he is liable;
- (c) his right to communicate, in the same way, his defense within thirty days from the dispatch of the registered letter or the service through the court bailiff.

(2) Any cancellation shall be the object of a reasoned ministerial order, an extract of which shall be published in the *Moniteur belge*, and of a notification to the person concerned by registered letter. Cancellation shall take effect at the time of such notification.

In cases of cancellation, the Minister shall set the period within which a new registration may not be obtained; that period may not exceed one year following the cancellation.

However, a person incurring two cancellations may not obtain a third registration until five years have elapsed. Any further cancellation shall be final.

#### Chapter VI — Investigation and Reporting of Acts Prohibited by this Law

70. — (1) Without prejudice to the duties incumbent on the criminal investigation police, State officials duly commissioned by the Minister shall have power to investigate and note the existence by means of reports, which shall be binding until proved incorrect, of offenses provided for in Sections 60 to 63 of this Law.

(2) In carrying out this task, the officials may:

- (i) enter, during normal opening or working hours, workshops, buildings, adjacent courtyards and enclosures, where this is necessary for the performance of their task;
- (ii) make all necessary observations, cause to be produced, at the first time of asking and without any power of removal, such documents, papers and books as may be necessary for their investigations and observations, and make copies thereof;
- (iii) take possession, against receipt, of such of the documents mentioned under (ii) as are necessary as evidence of an offense or as a means of tracing other principals or accessories to the offense;
- (iv) take samples according to the procedure and under the conditions determined by the King;
- (v) if they have reason to believe that an offense has been committed, enter private dwelling-places with the prior authorization of the judge of the police court; the inspection in private dwelling-places shall be carried out between 8 a. m. and 6 p. m. by at least two officials.

(3) If the officials so request, the authorities shall assist in the enforcement.

(4) The commissioned State officials shall exercise the powers given by this Section under the supervision of the Public Prosecutor, without prejudice to their subordination to the orders of their superiors in the administration.

(5) In the cases specified in the last paragraph of Section 60, offenses may be investigated and reported either by the persons referred to in this Section or by persons empowered under Section 6 of the Law on the Control of Foodstuffs and Other Goods, of June 20, 1964.

71. — (1) The State officials referred to in Section 70(1) shall also be responsible for investigating and establishing any facts which may give rise to the action provided for in Section 55(a) to (h). Such facts shall be the object of reports to be transmitted to the Minister.

(2) For the fulfillment of these tasks, the officials shall have the powers listed in Section 70(2) (i), (ii) and (iv).

72. — On inspection of the reports drawn up under Section 70(1), the Public Prosecutor's Office may order the seizure of the products implicated in the offense.

When establishing an offense by virtue of their powers under Section 70(1), the commissioned State officials may, as a measure of safekeeping, seize the products implicated in the offense. The seizure must subsequently be confirmed by the Public Prosecutor's Office, in accordance with the first paragraph of this Section.

The person seizing the products may be appointed judicial trustee thereof.

Seizure shall, without more, be revoked by a judgment bringing an end to prosecution, when such judgment has force of law, or by the shelving of the proceedings.

The Public Prosecutor's Office may revoke a seizure ordered by it if the offender undertakes not to offer the products in the conditions which gave rise to prosecution. Such undertaking shall not imply any admission as to the prosecution's case.

73. — Holders of a certificate of origin relating to a given product may, with the authorization of the President of the Commercial Court of the place in which an offense is alleged to have been committed and by an application embodying election of domicile in that same place, cause to be carried out, by one or more experts appointed by the judge, an examination and analysis of a similar article in respect of which they have reason to believe that usurpation of an appellation of origin has been committed.

By the same order, the President may prohibit the persons in possession of products for which use of an appellation of origin is contested from disposing thereof and permit the holder of the certificate of origin to appoint a trustee or even to have the products placed under seal. The order shall immediately be notified to the person concerned by a duly commissioned court bailiff. The parties may be present at the seizure if they have been specially so authorized by the President.

If the doors are locked, or in case of refusal to open, the procedure provided under Section 1504 of the Civil Procedure Code (*Code judiciaire*) shall be followed.

Copies of the report on the examination or analysis shall be sent, as soon as possible by registered mail, by the expert or experts to the party requesting seizure and to the party against whom seizure was ordered.

74. — If, within a month of the date on which the report was sent, as appearing on the postmark, the applicant has not become a party to criminal proceedings or has not instituted civil proceedings against the person in possession of the offending product and the person using the appellation of origin before the Commercial Court whose President issued the order, the order shall automatically cease to have effect and the person in possession of the product may demand the originals of the application, the order and the report relating to the placing under seal and may require the applicant to refrain from making use of the documents or from making them public. The foregoing shall be without prejudice to any award of damages.

### Chapter VII — Amendments, Repeals and Transitional Provisions

75. — (1) Section 589 of the Civil Procedure Code (*Code judiciaire*) is replaced by the following:

“The President of the Commercial Court shall decide applications under Section 55 of the Law on Trade Practices, in accordance with the rules set forth in Sections 57 to 59 of that Law.”

(2) In Section 10 of the Decree of May 14, 1946, introducing stricter measures of price control, the words “infringements of Section 498 of the Criminal Code” are replaced by the words “infringements of Sections 498 and 499 of the Criminal Code.”

(3) The following is added to Section 588 of the Civil Procedure Code (*Code judiciaire*):

“(xii) applications under Section 73 of the Law on Trade Practices.”

76. — The following are repealed as of the date of entry into force of this Law:

- (i) the Law on Public Sales at Retail of New Products, of May 20, 1846, as amended by the Laws of March 29, 1929, and August 16, 1932, by Ordinance No. 64 of November 30, 1939, confirmed by the Law of June 16, 1947, and by Section 109 of Section 3 of the Annex to the Civil Procedure Code (*Code judiciaire*);
- (ii) the Law on the Posting of Retail Selling Prices of Goods or Produce of Vital Necessity used for Food, Clothing, Heating and Lighting of July 30, 1923;
- (iii) Ordinance No. 55 of December 23, 1934, protecting producers, traders and consumers against certain procedures likely to impair the normal conditions of competition;
- (iv) Ordinance No. 121 of February 26, 1935, protecting traders and consumers against certain procedures in the retail sale of unused merchandise, as amended by the Law of December 28, 1957;
- (v) the Law of February 9, 1960, enabling the King to control the use of the denominations under which merchandise is marketed;
- (vi) Section 575 of the Civil Procedure Code (*Code judiciaire*).

77. — The following are repealed as from one year after the publication of this Law in the *Moniteur belge*<sup>1</sup>:

- (i) Ordinance No. 61 of January 13, 1935, restricting and controlling sales with bonuses, as amended by Ordinances No. 154 of March 18, 1935, No. 186 of June 30, 1935, and No. 294 of March 30, 1936;
- (ii) the Ordinance of November 12, 1935, on the implementation of Section 4 of the Ordinance of January 13, 1935, restricting and controlling sales with bonuses;
- (iii) the Ordinance of November 12, 1935, organizing measures of supervision for the application of the ordinances restricting and controlling sales with bonuses;

<sup>1</sup> The Law was published in the *Moniteur belge* of July 30, 1971.

(iv) the Ordinance of November 4, 1955, prohibiting the offering of bonuses for the purchase of farinaceous food pastes.

78. — Ordinance No. 188 of July 27, 1935, on the posting of prices in establishments providing accommodation or meals shall be repealed, on a date to be determined by the King, in an ordinance issued on this subject for the implementation of Section 3(i) of this Law.

79. — Regulations which are not contrary to this Law shall remain in force until they are repealed or replaced by such decrees as may be issued for the implementation of this Law.

### Chapter VIII — Final Provisions

80. — This Law shall enter into force thirty days after its publication in the *Moniteur belge*<sup>2</sup>, with the exception of the provisions of Chapter II, Part 5, which shall enter into force one year after that date.

However, as from the entry into force of this Law, the persons referred to in Section 40 may request prior registration as provided for in that Section.

81. — Persons who have issued vouchers under the ordinances referred to in Section 77 shall honor those vouchers for one year after the entry into force of Chapter II, Part 5.

82. — The King shall exercise the powers vested in Him by Chapter II of this Law, on a joint proposal by the Ministers with responsibility for economic affairs and for the middle classes.

When the measures to be taken under this Law concern products or services which, in the spheres to which Chapter I or II relates, are regulated or likely to be regulated by Ministers other than the Minister with responsibility for economic affairs, the measures shall contain a reference in their preambles to the agreement of the Ministers concerned. If the case should arise, such measures shall be proposed jointly by the Ministers concerned and be carried out by them in joint agreement, each Minister acting within his sphere of interest.

The same shall apply when, in the spheres to which Chapter I or II relates, measures to be taken on the initiative of Ministers other than the Minister with responsibility for economic affairs concern products or services regulated or likely to be regulated in implementation of this Law.

<sup>2</sup> The Law was published in the *Moniteur belge* of July 30, 1971.

## GERMANY (Federal Republic)

## Law Against Unfair Competition

(of June 7, 1909, as amended) \*

[General Provision]<sup>1</sup>

1. — Any person who, in the course of business activity for purposes of competition, commits acts contrary to honest practices, may be enjoined from these acts and held liable for damages.

## [Agriculture]

2. — For the purposes of this Law, the term goods includes agricultural products, and the term commercial services and interests includes agricultural services and interests.

## [Deceptive Advertising]

3. — Any person who, in the course of business activity for purposes of competition, makes deceptive statements concerning business matters, in particular concerning the nature, the origin, the manner of manufacture, or the pricing of individual goods or commercial services or of the offer as a whole, concerning price lists, the manner or the source of acquisition of goods, concerning the possession of awards, concerning the occasion or purpose of the sale, or concerning the size of the available stock may be enjoined from making such statements.

## [Penal Sanctions]

4. — (1) Any person who, with the intention of giving the impression of an especially favorable offer, makes statements which he knows to be false and which are capable of deceiving, in public announcements or in communications intended for a larger circle of persons, concerning business matters, in particular concerning the nature, the origin, the manner of manufacture, or the pricing of goods or commercial services, concerning the manner or source of acquisition of goods, concerning the possession of awards, concerning the occasion or purpose of the sale, or concerning the size of the available stock, shall be liable to imprisonment for a term not exceeding one year and to a fine, or to either of these penalties.

(2) If the false statements indicated in subsection (1) are made in a business enterprise by an employee or an agent, the proprietor or director of the business enterprise shall be liable to punishment, together with the employee or the agent, if the act occurred with his knowledge.

## [Generic Names — Pictorial Representations]

5. — (1) Sections 3 and 4 shall not apply to the use of names which in the course of business activity serve to denominate certain goods or commercial services and which are not intended to indicate origin.

(2) For the purposes of Sections 3 and 4, pictorial representations and other devices which are calculated and suited

\* Most recently amended through the Law of June 23, 1970 (*Bundesgesetzblatt* I. p. 305).

<sup>1</sup> These titles do not form part of the official text of the Law.

to replace the statements referred to, shall be considered equivalent to such statements.

## [Sale of Goods from Bankruptcy Estate]

6. — (1) If, in public announcements or in communications which are intended for a larger circle of persons, the sale of goods originally belonging to the estate of a bankrupt is advertised, where the goods are no longer a part of this estate, every reference to the fact that the goods originated in the estate of a bankrupt is forbidden.

(2) Persons infringing this provision shall be liable to a fine not exceeding five hundred German marks or to imprisonment not exceeding six weeks.

## [Advertising Direct Sales]

6a. — (1) Any person who, in the course of business activity with the end consumer, in connection with the sale of goods, refers to his capacity as producer may be enjoined from this practice unless he:

- (i) sells exclusively to the end consumer, or
- (ii) sells to the end consumer, at the same price charged to his wholesalers or retailers or commercial users, or
- (iii) unmistakably refers to the fact that the prices of sale to the end consumer are higher than the prices to the wholesaler or retailer or commercial user, or this fact is otherwise evident to the end consumer.

(2) Any person who, in the course of business activity with the end consumer, in connection with the sale of goods, refers to his capacity as wholesaler in the sale of goods, may be enjoined from this practice, unless he predominantly supplies only retailers or commercial users and the conditions of subsection (1)(ii) or (iii) are met.

## [Purchase Authorizations]

6b. — Any person who, in the course of business activity for purposes of competition, issues authorization cards, identity cards, or other documents for the procurement of goods to the end consumer, or sells goods upon presentation of such documents, may be enjoined from this practice unless the documents authorize purchases only for a single visit and are separately issued for each shopping visit.

## [Liquidation Sales]

7. — (1) Public announcements, or communications intended for a larger circle of persons, which advertise a liquidation sale shall be permissible only where the reason for the sale is to be found in:

- (a) the dissolution of the entire business, or
- (b) the dissolution of a branch outlet of the business, or
- (c) the discontinuance of individual classes of goods.

(2) Advertisements for a liquidation sale must state which of the reasons listed in subsection (1)(a) to (c) is applicable for the liquidation sale. Where (c) is applicable, the class of goods which is being liquidated must be stated.

(3) Subsection (2) shall also apply to advertisements which, without making use of the term liquidation sale, refer to a sale of the type referred to in subsection (1).

## [Clearance Sales]

7a. — Any person who, in public announcements or in communications which are intended for a larger circle of persons, advertises a sale for the purpose of clearing out a certain stock of goods, must state in the advertisement the reason for the sale. If the sale applies only to individual classes of goods handled by the business, the advertisement must also state the classes of goods to which the sale applies.

## [Procedure for Liquidation or Clearance Sales]

7b. — (1) Notice of a sale falling within the provisions of Section 7 or 7a must, prior to its announcement, be given to an office to be designated by the higher administrative authority within a period to be specified by that authority. The notice shall be accompanied by a list of the goods to be sold indicating their type, nature and quantity. The higher administrative authority may require such list to be renewed in the event that the sale is not concluded within a certain period. The notice must contain the statements required by Sections 7(2) and (3), and 7a, and state the beginning date, the expected concluding date, and the locality of the sale. At the request of the office where notice is to be given, documented factual evidence of the reason for the sale shall be produced.

(2) The higher administrative authority may promulgate further rules in implementation of the foregoing provisions. In addition, the authority may issue regulations on the duration of sales. It may prohibit sales which extend beyond the permitted time period, which are illegal under the provisions of Section 7(1), or which, in the case of Section 7a, in the view of the trade, are not justified by the reason given. Before issuing orders, it must give hearing to the competent official representative bodies of trade, craft, and industry.

(3) Anybody may inspect the notice. In addition to the competent administrative authorities, the information submitted may be verified by the officially appointed agents of the official representative bodies of trade, craft, and industry.

## [Period of Abstention]

7c. — (1) After termination of a liquidation sale (Section 7), the business proprietor, his spouse, and their close relatives may neither continue the business establishment, or the part thereof whose dissolution was advertised, nor begin business, in the community where the sale took place, in the same classes of goods. It shall be considered equivalent to continuing the business establishment or to beginning one's own business when the business proprietor, his spouse, or their close relatives, for the purpose of avoiding the provision of the first sentence, directly or indirectly participate in the business of another. Anyone with a controlling economic interest in a business company that is a separate legal person, or who has decisive influence on the managing of its business, shall also be considered a business proprietor. Close relatives are those in descendant or ascendant relationship, and full and half brothers or sisters as well as their spouses.

(2) After commencement of a liquidation sale, persons other than those named in subsection (1) are also forbidden from beginning business with goods from the enterprise which conducted the liquidation sale in the same or in immediately neighboring premises.

(3) If the sale of the inventory of a dependent branch outlet is advertised because of dissolution according to Section 7a, no new sales branch of the same business establishment may be established in the same community within a year after the conclusion of the sale.

(4) The *Reichs-Economic Minister*<sup>2</sup> may determine that bordering communities are a single community within the meaning of subsections (1) and (3).

(5) The higher administrative authority may permit exceptions to the prohibitions of subsections (1), (2), and (3) after granting a hearing to the competent official representative bodies of trade, craft, and industry.

## [Goods Especially Procured for a Liquidation Sale — Penal Sanctions]

8. — Imprisonment not exceeding one year and a fine, or either of these penalties, shall be imposed on anyone:

- (i) who, after advertising a liquidation sale (Section 7(1) to (3)) or a sale according to Section 7a, places on sale goods which have been procured solely for such a sale ("Vorschieben" or "Nachschieben" of goods);
- (ii) who infringes the provisions of Section 7c, (1) to (3).

## [Season-Ending Sales]

9. — Sections 7a, 7b and 8 shall not apply to sales which, by reason of a general authorization, occur at the close of a buying season. The authorization may be issued by the *Reichs-Economic Minister* or an office designated by him. In so doing, rules may be promulgated concerning number, date, and duration of such sales, concerning the manner of their advertisement, and concerning the goods that may be included. In addition, the placing on sale of goods especially procured for these sales (Section 8(i)) may be forbidden or limited. If no use is made of this power by the *Reichs-Economic Minister* or the office designated by him, the higher administrative authority may issue the authorization and the more detailed rules after granting a hearing to the competent official representative bodies of trade, craft, and industry.

## [Special Sales]

9a. — The *Reichs-Economic Minister* may issue rules for the regulation of sales of special types which are not subject to the provisions of Sections 7 to 9. The rules shall be published in the *Bundesanzeiger*.

## [Penalties]

10. — A fine not exceeding five hundred German marks or imprisonment not exceeding six weeks shall be imposed on anyone:

<sup>2</sup> All language printed in italics, although still a part of the official text of the Law, has been subject to modification by subsequent constitutional and legislative developments.

- (i) who fails to give the information required by Sections 7(2) and (3) and 7a in advertisements of a liquidation sale or a sale under Section 7a;
- (ii) who infringes the provisions of Section 7b or the regulations issued pursuant thereto or, in observing the provisions or regulations, makes false statements;
- (iii) who infringes the rules issued pursuant to Section 9 by the *Reichs-Economic Minister*, by the office designated by him, or by the higher administrative authority;
- (iv) who infringes the rules issued pursuant to Section 9a by the *Reichs-Economic Minister*.

[Units of Sale]

11. — (1) By resolution of the *Bundesrat* it may be determined that certain goods in retail trade may be commercially sold or offered for sale only in prescribed units of number, volume, or weight, or with a notice to be affixed to the goods themselves or to their packaging stating number, volume, weight, the place of production or the place of origin of the goods.

(2) For retail trade in beer, in bottles or mugs, a statement of the volume, with fixed allowance for error within appropriate tolerances, may be required.

(3) The determinations issued through resolution of the *Bundesrat* shall be published in the *Bundesgesetzblatt* and presented to the *Reichstag* immediately or at its next session.

(4) Persons infringing the determinations of the *Bundesrat* shall be liable to a fine not exceeding five hundred German marks or to imprisonment not exceeding six weeks.

[Corruption of Employees]

12. — (1) Imprisonment not exceeding one year and a fine, or either of these penalties shall, provided that a more severe punishment is not prescribed by other provisions, be imposed on anyone who, in the course of business activity and for purposes of competition, offers, promises, or awards presents or other advantages to an employee or agent of a commercial enterprise in order to obtain for himself or for a third party, by means of unfair acts on the part of the employee or agent, a preference in the acquisition of goods or commercial services.

(2) The same penalty shall be imposed upon an employee or agent of a commercial enterprise who, in the course of business activity, solicits, allows to be promised to him or accepts presents or other advantages for which he is to procure for another by means of unfair acts a preference in competition in the acquisition of goods or commercial services.

(3) In the judgment, the advantage received or its value shall be declared forfeited to the State.

[Right of Complaint of Businessmen and Commercial or Consumer Associations]

13. — (1) In cases falling within Sections 1, 3, 6a, and 6b, the claim for injunctive relief may be made by any businessman who produces or markets goods or services of the same or similar type, or by associations for the promotion of commercial interests, provided that the associations them-

selves are competent to file complaints in civil disputes. Such businessmen and associations may also bring suit to enjoin anyone violating Section 6, 8, 10, 11, or 12.

(1a) In cases falling within Sections 3, 6, 6a, 6b, 7(1), and 11, the claim for injunctive relief may also be made by associations whose chartered purposes include the promotion of consumer interests through information and advice provided that the associations themselves are competent to file complaints in civil disputes. The same shall apply to cases falling within Section 1 provided that the action concerns deceptive statements about goods or commercial services or some other act for purposes of competition through which essential interests of the consumer are affected.

(2) Liability for damages arising from violations shall be incurred by:

- (i) anyone, in cases falling under Section 3, who knew or should have known that the statements made by him were deceptive; a claim for damages may be brought against editors, publishers, printers or distributors of periodic publications only when they knew that the statement made by them was deceptive;
- (ii) anyone who intentionally or negligently infringes Section 6, 6a, 6b, 8, 10, 11, or 12.

(3) Where acts which are unlawful under Section 1, 3, 6, 6a, 6b, 8, 10, 11, or 12 are committed in a business enterprise by an employee or agent, the claim for injunctive relief may also be made against the owner of the business.

[Disparagement]

14. — (1) Any person who, for purposes of competition, alleges or circulates facts concerning the business of another, concerning the person of the proprietor or the director of the business, concerning the goods or commercial services of another, which are capable of damaging the operation of business or the credit of the proprietor, shall be liable to the injured party for damage caused provided that the truth of the facts is not proved. The injured party may also bring suit for an injunction prohibiting the allegation or circulation of the facts.

(2) Where a confidential communication is involved in which the publisher or recipient has a legitimate interest, the claim for injunctive relief shall be allowed only if the facts alleged or circulated are untrue. The claim for damages may be made only if the party making the communication knew or should have known that the facts were false.

(3) Section 13(3) shall apply *mutatis mutandis*.

[Penal Sanctions against Disparagement]

15. — (1) Anyone who, against his better knowledge, alleges or circulates untrue facts concerning the business of another, concerning the person of the proprietor or the director of the business, concerning the goods or commercial services of another, which are capable of damaging the operation of business, shall be liable to imprisonment not exceeding one year and to a fine or to either of these penalties.

(2) If the facts indicated in subsection (1) are alleged or circulated in a business enterprise by an employee or agent, the proprietor of the business shall be liable to punishment together with the employee or agent if the act was committed with his knowledge.

[Protection of Trade Names]

16. — (1) Anyone who, in the course of business, makes use of a name, a firm name, or the special designation of a business establishment or of a commercial enterprise, or of a printed work, in a manner capable of causing confusion with the name, firm name, or special designation legitimately used by another, may be enjoined from such use by the latter.

(2) The user shall be liable to the injured party for damages if he knew or should have known that the misuse was capable of causing confusion.

(3) Business symbols and other devices intended to distinguish one business from another which are considered within the trade concerned as the distinctive sign of the business establishment shall be equivalent to the special designation of a business establishment. These provisions shall not apply to the protection of trademarks and the presentation of products (Sections 1 and 15 of the Law on the Protection of Trademarks of May 12, 1894, Reichsgesetzblatt, p. 441)<sup>3</sup>.

(4) Section 13(3) shall apply mutatis mutandis.

[Disclosure of Trade or Industrial Secrets]

17. — (1) A punishment of imprisonment not exceeding three years and a fine, or either of these penalties, shall be imposed upon any employee, workman, or apprentice of a business enterprise who during the term of his employment relationship, without authorization, communicates to a third party a trade or industrial secret that has been confided to him or made available to him by virtue of his employment relationship, if he does so for purposes of competition or for personal gain or with the intention of damaging the proprietor of the business.

(2) The same punishment shall be imposed upon anyone who makes unauthorized use of or communicates to a third party, for purposes of competition or for personal gain, a trade or industrial secret if his knowledge of it has been gained through one of the communications designated in subsection (1) or through his own acts in violation of the law or honest practices.

(3) If the perpetrator knows at the time of communication that the secret is to be used in a foreign country, or if he himself makes use of it in a foreign country, he may be sentenced to imprisonment not exceeding five years.

(4) The provisions of subsections (1) to (3) shall also apply where the recipient of the communication, without the knowledge of the perpetrator, already knows the secret or has authorized access to it.

<sup>3</sup> Sections 1 and 25 of the existing Trademark Law.

[Improper Use of Technical Papers]

18. — A punishment of imprisonment not exceeding two years and a fine, or either of these penalties, shall be imposed upon anyone who, for purposes of competition or for personal gain, makes unauthorized use of or communicates to third parties, models or instructions of a technical nature, in particular, drawings, prototypes, patterns, cuts, or recipes, that have been confided to him in the course of business. Section 17(4) shall apply mutatis mutandis.

[Damage Liability]

19. — Infringements of the provisions of Sections 17 and 18 shall also result in liability for damage caused thereby. Where there is more than one party they shall be jointly and severally liable.

[Inducement or Offer to Infringe]

20. — (1) Anyone who, for purposes of competition or for personal gain, attempts to induce another to infringe Section 17 or 18 or accepts the offer of another to commit such infringement, shall be liable to imprisonment not exceeding two years or to a fine.

(2) The same punishment shall apply to anyone who, for purposes of competition or for personal gain, offers to commit acts in violation of Section 17 or 18, or declares himself ready to commit such acts at the behest of another.

[Domestic Businesses — Criminal Provisions]

20a. — Section 4(2)(i) of the Criminal Code for the German Reich<sup>4</sup> shall apply to infringements of Sections 17, 18 and 20 when the action was directed against a secret of a domestic business or enterprise.

[Limitation Period]

21. — (1) The claims for injunctive or damage relief prescribed in this Law shall be barred after six months from the time the person entitled to a claim obtained knowledge of the act and the identity of the party liable, or, irrespective of this knowledge, after three years from the commission of the act.

(2) In the case of claims for relief by way of damages, the limitation period shall not begin to run until the time when the damage accrued.

[Initiating a Criminal Complaint — Procedures]

22. — (1) With the exception of cases arising under Section 4, 6, 10, or 11, criminal prosecution shall be instituted only upon complaint. In cases arising under Section 8 or 12, any of the businesses or associations designated in Section 13(1) may file a complaint.

(2) A complaint may be withdrawn.

(3) In addition to the injured party (Section 374(1)(vii) of the Criminal Procedure Code), any of the businessmen or associations designated in Section 13(1) may bring a private

<sup>4</sup> Sections 3 and 4 (3)(v) of the existing German Criminal Code.

criminal action<sup>5</sup> based on activity punishable under Section 4 as well as on activity which may be prosecuted only upon complaint (Sections 8 and 12).

[Publication of Judgment]

23. — (1) At the time that sentence is passed in cases falling within Section 15, the injured party shall be authorized to publish the judgment within a certain period at the expense of the guilty party.

(2) The successful party in a suit for injunctive relief based on one of the provisions of this Law may be granted authorization in the judgment to publish the operative part of the judgment within a certain period at the expense of the losing party.

(3) The nature of the publication shall be determined in the judgment.

[Reduction of Litigation Costs]

23a. — (1) If a party to a civil dispute in which a complaint was filed under this Law presents a credible showing that the payment of costs calculated according to the full amount in controversy would substantially endanger his economic position, the court may, pursuant to a motion by such party, direct that the obligation of this party to pay court costs be measured by an amount in controversy that is adjusted according to said party's economic position. The court may make its order contingent on the fact that the party also makes a credible showing that the costs of the legal dispute to be borne by it will not be directly or indirectly paid by a third party. The effect of the order shall also be that the benefitted party pay the fees of his attorney based only on such portion of the amount in controversy. To the extent that this party is charged with court costs or assumes these costs, the court fees paid by the opposing party and the fees of his attorney must be reimbursed by this party based only on such portion of the amount in controversy. To the extent that the opposing party is obligated to pay or assumes the out-of-court costs, the attorney for the benefitted party may recover his fees from the opposing party based on the amount in controversy applicable to the latter.

(2) A motion pursuant to subsection (1) may be read into the record before the clerk of the court. It shall be made prior to the trial on the merits. Subsequent to this time, it shall be valid only if the agreed or court-determined amount in controversy is thereafter increased by the court. Prior to a decision on the motion, the opposing party must be heard.

[Jurisdiction]

24. — (1) Jurisdiction for actions brought under this Law shall lie with the court in whose district the defendant has the headquarters of his business or, in the absence thereof, his domicile. For parties who have neither a business headquarters nor a domicile in the country, the court in the place of their domestic residence shall have jurisdiction.

<sup>5</sup> A criminal complaint which may be brought by the individual without the consent of the state criminal authorities.

(2) Additionally, only the court in the district where the act was committed shall have jurisdiction for complaints brought under this Law.

[Preliminary Injunctions]

25. — To preserve the rights to an injunction set forth in this Law, preliminary injunctions may be issued, even when the conditions set forth in Sections 935 and 940 of the Civil Procedure Code are not fulfilled.

[Additional Compensation]

26. — In addition to any punishment decreed pursuant to this Law, a compensation to the injured party in an amount not to exceed ten thousand marks may be granted upon his application. Any of the parties liable for this compensation shall be jointly and severally liable. When granted, such compensation shall operate to preclude further claims for damages.

[Venue]

27. — (1) Civil disputes in which the suit presents a claim based on this Law, shall be assigned, in so far as the Landgerichte (district courts) have jurisdiction as the courts of the first instance, to the commercial chambers of these courts.

(2) The governments of the Länder (States) are empowered to establish by regulation for those districts which have several Landgerichte (district courts), one such court as the court for competition disputes when this serves the administration of justice for competition matters, in particular, to assure uniform judicial decisions. The state governments may delegate this authority to their respective authorities for judicial administration.

(3) The parties may be represented before the court for competition disputes also by attorneys who have been admitted to practice before the court which, in the absence of the regulation in subsection (1), would have jurisdiction over the complaint. The same shall apply to representation before the court of appeal.

(4) The additional costs arising for a party as the result of representation pursuant to subsection (3) by an attorney not admitted to practice before the trial or appeal court may not be recovered.

[Mediation Boards]

27a. — (1) The governments of the Länder (States) shall set up mediation boards at the Chambers of Industry and Commerce for settling competition disputes in the business economy.

(2) The mediation boards shall be staffed by a lawyer qualified as a judge under the *Judiciary Act*<sup>6</sup>, as chairman, and at least two expert businessmen as additional members. The chairman should be experienced in the area of competition law. The additional members shall be appointed by the chairman for each dispute from a list of members to be compiled yearly for the calendar year. The appointment should be made with the consent of the parties, Sections 41 to 43 and

<sup>6</sup> See Section 5 of the existing Act Concerning Judges.

44(2) to (4) of the Civil Procedure Code shall apply *mutatis mutandis* to the exclusion or rejection of members of the mediation board. The Landgericht (district court) (chamber for commercial matters, or, if such is lacking, the civil chamber) with jurisdiction at the seat of the mediation board, shall rule on petitions for rejection.

(3) Where civil disputes under Section 13 are involved, the mediation board may be petitioned by each party to provide for an exchange of views on the dispute with the opposing party to the extent that the competitive acts in question relate to business dealings with the end consumer. In other civil disputes under Section 13, the mediation board may be petitioned if the opposing party agrees.

(4) In determining the jurisdiction of the mediation board, Section 24 shall apply *mutatis mutandis*.

(5) The chairman of the mediation board may order the personal appearance of the parties. The mediation board may order a penalty in the form of a fine for violation of an order against a party absent without excuse. Immediate appeal, pursuant to the provisions of the Civil Procedure Code, to the Landgericht (district court) (chamber for commercial matters, or, if such is lacking, the civil chamber) with jurisdiction at the seat of the mediation board shall lie against an order for personal appearance and a determination of a penalty.

(6) The mediation board must strive for an amicable settlement. It may make a written settlement proposal with attached reasoning. The settlement proposal and the reasoning given may be published only with the approval of the parties.

(7) If a settlement is reached, it must be entered in a separate document and, under the date on which it was reached, be signed by the members of the mediation board who took part in the proceeding as well as by the parties. The settlement reached before the mediation board shall be enforceable; Section 797a of the Civil Procedure Code shall apply *mutatis mutandis*.

(8) The mediation board may refuse to initiate settlement negotiations if it believes the claim which has been filed is obviously without basis or that it is without jurisdiction.

(9) On a petition to the mediation board, the running of the limitation period shall be interrupted in the same manner as when a complaint is filed. The interruption shall last until the completion of proceedings before the mediation board. If a settlement is not reached, the mediation board must determine the time at which the proceedings are ended. The chairman must notify the parties of this. If the petition to the mediation board is withdrawn, the interruption of the period of limitations shall be considered not to have taken place.

(10) If a complaint is filed in a legal dispute of the type described in subsection (3), first sentence, without any prior petition to the mediation board, the court may, pursuant to a motion and establishing a new date for continuing the proceedings, commission the parties to petition the mediation board to seek an amicable settlement prior to this new date. In proceedings concerning a motion for the issuance of a preliminary injunction, such order may be made only if the opposing party consents. Subsection (8) shall not be applicable. If a proceeding is pending before the mediation board, a complaint filed by the opposing party, subsequent to the petition for mediation, for a declaratory judgment that the claims asserted are not valid shall not be permissible.

(11) The governments of the Länder (States) are authorized to issue regulations necessary for the execution of the foregoing provisions and the organization of the proceedings before the mediation board, in particular, concerning the supervision of the mediation board, concerning its membership, granting adequate proportional participation on the board by businessmen not members of Chambers of Industry and Commerce (Section 2(2) to (6) of the Act for the Temporary Regulation of the Law of Chambers of Industry and Commerce of December 18, 1956, *Bundesgesetzblatt I*, p. 920), and the enforcement of procedural penalties as well as determinations concerning the assessment of fees by the mediation board.

#### [Protection — Reciprocity]

28. — Anyone lacking a principal business headquarters in Germany may claim protection pursuant to this Law only if, according to a publication inserted in the *Bundesgesetzblatt*, German businessmen enjoy a corresponding protection in the country where such principal business headquarters are located.

#### [Higher Administrative Authorities]

29. — The *central authorities in each of the federal States*<sup>7</sup> shall determine which authority in their *federal State* shall be considered to constitute the higher administrative authority within the meaning of this Law.

#### [Entry Into Force]

30. — (1) This Law shall enter into force on October 1, 1909.

(2) At the same time, the Law on the Repression of Unfair Competition of May 27, 1896 (*Reichsgesetzblatt*, p. 145) shall cease to be in force.

<sup>7</sup> Since 1948, this decision is made by the "Länder."



*LETTERS FROM CORRESPONDENTS*



**Letter from Belgium**

By Antoine BRAUN  
Attorney-at-Law, Brussels Court of Appeal









**Letter from the Federal Republic of Germany**

By Professor Dr. Friedrich-Karl BEIER  
and Dr. Paul KATZENBERGER, Munich







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# NEWS FROM PATENT OFFICES

## UNITED STATES OF AMERICA

### Commissioner's Annual Report Fiscal Year 1971

#### I. Functions

The Patent Office administers the patent laws enacted by Congress in accordance with Article 1, Section 8 of the Constitution, and the federal trademark laws. In discharging its duties relating to patents, the Office examines applications and grants patents when applicants are entitled to them under the law, publishes and disseminates patent information, maintains search files of United States and foreign patents, a Public Search Room and a Scientific Library, records assignments of patents, and supplies copies of patents and related official records to the public. Pursuant to Title 15, Sections 1051 to 1127 of the United States Code, the Patent Office also examines, registers, and maintains records of trademarks used in commerce which are qualified for protection under those federal trademark laws.

#### II. Fiscal 1971 Highlights

\* The number of new applications received rose by more than 3,500 to a new record of 104,160.

\* A record number of over 70,500 patents were issued in the fiscal year 1971.

\* Reorganizations of the Patent Office operating structure were effected, establishing an Office of Technology Assessment and Forecast within the newly consolidated Office of Planning, Budget and Evaluation and an Office of Government Inventions and Patents.

\* Progress was made in the establishment of an international patent classification system and an international system for registration of trademarks.

\* A study of the trademark laws and examining operation was completed and a program was established for implementation of the study's recommendations.

\* Over 23,000,000 documents, including patents, trademarks, publications and manuscripts, were provided to the public and government agencies.

#### III. Patent and Trademark Examining Operations

New records were again established this year for the number of patent applications received and for the number of applications on which examination was completed. The number of new applications received rose by more than 3,500 to 104,160. This record number of receipts was more than offset, however, by the completion of examination on 109,245 applications, a difference of more than 5,000. As a result, new applications are being reached for examination in an average of less than 12 months from the date of filing.

Despite substantial disruptions in the patent printing process, arising from an uncertain financial situation brought about by a midyear increase in patent printing costs, an all-time record high of 70,669 patents were printed.

After an increase in the number of trademark applications filed of more than 6,000 over the past three years, there was a slight decrease this year. Only 32,803 trademark applications were filed, representing a decrease of slightly more than 1,000 from last year. In addition, the number of trademarks registered was also off slightly at 21,868.

#### IV. Patent and Trademark Legislation

Efforts toward the general revision of the patent laws continued in the 92<sup>nd</sup> Congress. On February 8, 1971, Senator McClellan introduced S. 643, the successor to S. 2756 of the 91<sup>st</sup> Congress. This bill would effect many beneficial changes in the patent laws, including an assignee filing system for patent applications, modernized and clarified standards for judging the novelty and unobviousness of inventions, the re-examination on request of newly issued patents and a twenty-year patent term measured from the filing date of the patent application. Senator Scott again introduced amendments to S. 643 which would clarify and stabilize the uncertain and varying relationship between the patent and antitrust laws.

Hearings on Senator Scott's amendments and certain provisions of S. 643 were held this year before the Subcommittee on Patents, Trademarks and Copyrights of the Senate Judiciary Committee. The Department testified in favor of S. 643 and the Scott Amendments, recommending certain changes in both.

At the request of the Department of Commerce, legislation was introduced to enable the United States to adhere to Articles 1 to 12 of the Stockholm Revision of the Paris Convention for the Protection of Industrial Property. This measure would modify our patent laws to recognize the right of priority in patent cases for earlier filed inventors' certificates. Hearings on this legislation were held by both the Senate and the House and the bill was passed by the House on June 21, 1971.

Legislation to amend the patent laws and give specific authority to the Commissioner of Patents to carry on studies and programs on domestic and international patent and trademark matters was introduced and was the subject of hearings in the House. The Senate passed the measure without hearings.

A measure providing relief for patent and trademark applicants and owners from delays caused by the emergency situation in the postal service in the spring of 1970, was enacted on June 30, 1971<sup>1</sup>.

<sup>1</sup> See *Industrial Property*, 1971, p. 240.

Senator McClellan introduced a bill which would establish the Commissioner of Patents as an Assistant Secretary of Commerce for Patents and Trademarks, authorize the Commissioner to excuse late payment of the issue fee, and change the nature of the appointment of examiners-in-chief from Presidential appointments to appointments under the classified civil service.

On December 30, 1970, Public Law 91-577<sup>2</sup> was enacted to provide a system for the legal protection for sexually reproduced plants to be administered by the Department of Agriculture. This law arose from a great concern in the agricultural sector over suitable ways to provide patent-like protection for plants, regardless of their manner of reproduction, and corresponds in some respects to the patent laws.

## V. International Activity

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## VI. Services Workload

In fiscal year 1971, the Patent Office provided over 23,000,000 documents to the public and to government agencies. Over 5,000,000 orders for patents and trademarks were filled. Foreign exchange searching obligations included over 3,000,000 documents, library subscriptions accounted for over 1,000,000 and more than 200,000 patents were placed in permanent storage.

## VII. Patent Office Academy

The Academy training program operated the entire year on a single session basis which combined the former basic and advanced sessions. The change from two training sessions to one was considered desirable in view of the reduction in application pendency time, which means that the examiner is completing the examining cycle in a gradually decreasing period of time.

A total of 132 patent examiners completed the fiscal 1971 program. Three U. S. non-Patent Office government employees, five persons from private industry and ten foreign guests also participated. A total of 1,179 patent examiners had completed Academy training through June 30, 1971.

## VIII. Environmental Quality Program

The Environmental Quality Program, initiated on a request from President Nixon, continued. This program, which grants a priority examination to patent applications dealing with devices and processes which can help in curbing environmental abuses, was begun in February of 1970. By June 30, 1971, over 400 petitions for this priority treatment had been granted and over 100 patent applications had been allowed. Of those allowed, approximately 45% were concerned with air pollution, 10% water pollution, and 45% soil pollution.

## IX. Search Systems Development

The experimental program to determine the feasibility of computer assisted classification has been combined with an

experimental program involving machine searching of chemical structures into a single project known by the acronym POTOMAC (Patent Office Techniques of Mechanized Access and Classification).

The creation of an experimental data base for testing various stages of POTOMAC is continuing. A segment of the experimental data base is to be directed toward Presidential priorities for environmental quality. The subject selected for this purpose is "emission control for internal combustion engines." The contract for keyboard conversion of patents to machine readable form has been expanded to cover the conversion of approximately 10,000 patents. In addition, two contracts have been awarded to manufacturers of optical character recognition equipment in order to explore the feasibility and expected cost reduction of using OCR for the conversion of the patent file.

Also during the year, lexicographic studies in the content analysis of patents by machine methods were initiated. An analysis of a number of patents was achieved under contract to derive word and phrase frequency lists. Using these lists, queries were prepared and forwarded to the contractor for the purpose of searching the file to identify patents containing various concepts.

Simultaneously, a contract was awarded to develop a query language to permit patent examiners and other future users to communicate with a computer in a quasi-English language fashion. This language will permit a user who is unfamiliar with the system to communicate with it after a minimum of training while also permitting an experienced user to employ any degree of sophistication of logical expression.

Development of a program for searching chemical structures is continuing. These chemical structures are represented in Hayward Notation, a representation scheme named after the Patent Office employee who developed it. An additional thrust of this effort involves developing a program for computer conversion of chemical structures in the Hayward Notation to structural diagrams for electronic display.

In an effort to continue the utilization of an existing search aid at no cost to the Government, the Patent Office has entered into an exchange agreement with a private concern involving Termatrix search files. These files, which involve cards punched according to index terms taken from specific patents, have previously been used on a limited basis in a number of technical disciplines, the largest being Class 424, Medicines and Poisons. Acting on a proposal from the REMAC International Corp., the Patent Office agreed to provide the specific data relating to the indexed information from Class 424 in exchange for punched Termatrix cards containing this information and the necessary equipment to utilize the cards.

## X. Patent Office Reorganization

A reorganization of the Patent Office was effective on November 16, 1970. This reorganization consolidated the Office of Planning and Programming, the budget function of the Office of Budget and Finance and the newly created Office of Evaluation into an Office of Planning, Budget and

<sup>2</sup> The text of the "Plant Variety Protection Act" will be published in a later issue of this review.

Evaluation. In addition, the Office of Automatic Data Processing was combined with the systems analysis functions of the Office of Organization and Systems Analysis into an Office of Data Systems reporting directly to the Commissioner of Patents.

Another change in the Patent Office internal structure was effected on May 4, 1971 and established the Office of Government Inventions and Patents. This office brings together for the first time administration of Executive Order 10096 which deals with the allocation of rights to inventions made by government employees and matters involving the Committee on Government Patent Policy, which is concerned with the allocation of rights to inventions made by government contractors. In addition, the reorganization effected on May 4, 1971 created an Office of Technology Assessment and Forecast and placed it within the Office of Planning, Budget and Evaluation.

## XI. Trademark Study

The Secretary of Commerce in September 1970 appointed a Public Advisory Committee for Trademark Affairs to study the trademark law and rules as well as the trademark examining operation. This group, composed of a standing committee of the United States Trademark Association, formally submitted its first report to the Commissioner of Patents in June 1971. This report contains sixty-four recommendations covering the spectrum of the trademark examining operation including management, processing of applications, post-registration procedures, inter partes proceedings, services to the public, and training of trademark examiners. At year's end, a program had been established for implementing many of the recommendations in the report.

## XII. Data Base Program

In this, the first full year of operation, a total of 28,300 patents were processed by the Patent Office under the data base program. Under this program, the full text of allowed patent applications are converted to machine readable form on magnetic tape and used to drive the Linotron at the Government Printing Office to compose patent texts for printing. Afterwards, the tapes are retained by the Patent Office for the purpose of building a full-text patent data base for future use in computer-assisted classification and search. This year, the effort involved the capture of approximately 746.8 million characters of patent specification text which were used to compose more than 121,000 pages of print. During the coming year, the number of patents to be printed by the data base program is expected to double, increasing the Patent Office machine readable data base to more than 80,000 patents.

## XIII. New Initiatives

### 1. First Action Form

During the year, one phase of a program designed to reduce the amount of professional time involved in the examination of patents was initiated on an experimental basis. On a trial basis, examiners began handwriting the first examination report to patent applicants, utilizing a specially designed form for that purpose. Although the effectiveness of

the program for its intended purpose is still being evaluated, a substantial reduction in the typing workload has already been realized.

### 2. Index to Decisions

In an effort to insure compliance with the Freedom of Information Act, the Patent Office began preparation of indices of final opinions by Patent Office tribunals for use by the public. With the assistance of personnel from the Board of Appeals, the Office of the Solicitor, utilizing a plan it developed in 1970, indexed the approximately 9,000 opinions banded down by the Board since the effective date of the Act. Each opinion was indexed according to the point of patent law involved. In addition, nearly 700 opinions of the Board of Patent Interferences were similarly indexed and work is now under way on opinions of the Commissioner of Patents. Computer printouts of the indices will be made available to the public next year.

### 3. Unofficial Patent Classification Inventory

All unofficial classifications of U. S. patents located in the examiner search files in the Patent Office were subject to an inventory in 1970. From this a documentation of all unofficial patents and their classifications in digests and unofficial subclasses was compiled. At the end of the fiscal year a Supplement to the Manual of Classification containing all of this information was published. Thus, the contents of the unofficial digests and subclasses, which are valuable searching aids, are now available to all the examiners and to the public.

### 4. Law Clerk Program

In September, a new program was put into effect under which young patent examiners serve as law clerks for members of the Board of Appeals. In addition to contributing significantly to the disposition of cases pending before the Board, these young examiners have received training which should enhance their examining capabilities and increase their interest in Patent Office careers.

### 5. User Demand Study

A User Demand Study, completed in May of 1971, was directed at developing basic information on the users of patent information products and user preferences on which the Patent Office can base plans for improvements in patent information dissemination. Of particular interest was the use of patent information outside the professional patent community for technical information purposes. An important question was whether the Patent Office should expand or modify its efforts to reach the technical community with patent information. The findings of this study are being evaluated for purposes of future implementation.

### 6. Technology Assessment and Forecast

One of the more exciting new initiatives taken by the Patent Office this year involves the creation of an Office of Technology Assessment and Forecast to take advantage of the wealth of statistical information generated by the Patent Office as a by-product of the process of examining and issuing patents. The reports to be disseminated by this office will show trends in technological activity across the entire

spectrum of technological disciplines. Reports will also be made of the technological status of the United States relative to that of foreign countries, possibly prior to any impact on world markets. With this information, the Government will be better able to channel its resources to stimulate areas of lagging technology, and industry will be better able to compete with foreign competitors in world markets.

7. *Public Search Room Microfilm*

In a new effort to improve service to the public, additional reels of 16 mm. cartridge film containing patents were placed in the Search Room film file. The new reels begin with Patent No. 2,000,000 and continue to Patent No. 2,499,999. In addition to providing a more rapid means for retrieving these patents, this effort will eliminate the need for almost 2,300 bound volumes from the Numeric Patent File in the Search Room. It is planned to continue this project until a complete 16 mm. film set of patents in numeric sequence is available for Search Room use.

XIV. *Operating Cost and Income*

Funds available to the Patent Office for fiscal year 1971 were \$ 56,104,000, comprised of \$ 50,000,000. regular appropriation, \$ 6,094,000 supplemental appropriation for pay act and increased printing costs, and \$ 10,000 received as a reimbursement.

Program costs for this period were \$ 55,122,519, and with the addition of \$ 950,705 for higher *net* obligations incurred for costs of other years, the total amount obligated during fiscal 1971 was \$ 56,073,224, or 99.95 percent of new obligational authority.

Compensation for an average of 2,656 employees accounted for 67 percent of total operating expenses; related costs of employee life insurance, health benefits, retirement

contributions, Federal Insurance Contribution Act taxes, awards, Employees' Compensation Fund payments, and other miscellaneous benefits for 5 percent; printing and reproduction for 21 percent; and all other operating costs for 7 percent.

The Office received \$ 27,886,126 in fees and deposits from all sources. Refund of \$ 98,822 and net increase of \$ 281,761 in the deposit fund for unapplied receipts resulted in a net income of \$ 27,505,543. This exceeds by \$ 1,227,582 the previous record-high amount of \$ 26,277,961 for fiscal 1970. Net income for 1971 was equivalent to 50 percent of operating costs.

XV. *Miscellaneous*

Due to adjustments to the printing schedule required as a result of funding difficulties, the Patent Office was forced to reschedule the issue of 675 patents scheduled for the March 9 issue and 625 patents scheduled for the March 16 issue. This necessitated the voiding of the patent numbers originally assigned these cases: Nos. 3,568,499 through 3,568,552 and Nos. 3,568,981 through 3,569,601 in the March 9 issue and 3,570,850 through 3,571,474 in the March 16 issue. This is the first time since 1836, when Patent No. 1 issued on July 13 of that year, that such a large quantity of patent numbers has been voided.

Another unusual occurrence for the fiscal year caused by substantially the same difficulty was the issuance of patents on both June 28 and 29, 1971 in an effort to catch up on the printing of patents after the earlier reduction. This was the first time patents were issued on other than a Tuesday as well as on two consecutive days since at least before 1900.

XVI. *Statistical Data and Index*

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*OBITUARY*

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**Marcel Boutet**

A leading figure in the field of international intellectual property has left us: Marcel Boutet, President of the International Literary and Artistic Association (ALAI) — this, of all his titles, was probably the one to which he was most attached — is no more. He died suddenly in Paris on December 12, 1971.

The sad news of President Boutet's passing came as a cruel blow to all those — and they were many — lucky enough to have known and valued his great qualities. The man who made such moving eulogies, the man who, at the general assemblies of the organization over which he presided, always had a few words of appreciation for those of its members who would never come again, who always found a personal glimpse or a fitting image for each, this is the man to whom we now owe a

resounding tribute, and it is not without emotion that I dedicate these few lines to him.

President Boutet devoted his entire career to the cause of justice and law. There are professions, just as there are places, where intellect and wit still have their part to play: that of attorney is one; Marcel Boutet chose it, and it gave him the greatest intellectual satisfaction. He was born on October 31, 1894, and, after sound training in law, went straight from university to the Bar, to be registered as an attorney at the Paris Court of Appeal. From 1949 to 1952 he was a member of the Council of the Order of Advocates, which French magistrate d'Aguesseau aptly described by saying that it was "as old as the Magistrature, as noble as

Virtue and as necessary as Justice herself". Having taken the oath in 1921 at the age of 27, he proudly celebrated the fiftieth anniversary of his registration at the Paris Bar on November 18, 1971, shortly before illness took him away from us.

In his profession, which he exercised with unparalleled integrity, Marcel Boutet specialized in cases involving the recognition and defense of intellectual property rights. His brilliant addresses brought about innumerable judgments and decisions, and French jurisprudence is greatly indebted to him. After the war his choice of speciality resulted in his being a member of the French Delegation at the many Diplomatic Conferences convened for the revision of intellectual property conventions or the drafting of new international instruments. He was at Brussels in 1948, Geneva in 1952, Lisbon in 1958, Stockholm in 1967, and Paris and Geneva in 1971, to mention only the most important events in his professional activity at the international level. Taking up his pilgrim's staff, as he liked to put it, to advocate what he, in all honesty and sincerity, considered to be the real doctrine of intellectual rights, he travelled throughout the world, attending countless meetings, working groups, congresses and conferences. Wherever he went he was present in every sense of the word, expounding with conviction his opinions and preoccupations, pointing out the possible consequences of proposed solutions, enthusiastic in his defense of positions under threat, yet always ready to hear the opposite view, sometimes with scepticism, but always with courtesy. His remarks, his opinions and his suggestions led many of us to regard him as "the conscience of the Berne Union".

Although the nature of his professional activity kept him more within the industrial property field — it should be remembered that in France he was a member of the Higher Council of Industrial Property and President of the French group of the International Association for the Protection of Industrial Property (AIPPI) — he was always more attracted to copyright, to which he devoted himself perhaps with more affection, and certainly with great skill. His intimate knowledge of the Berne Convention made him an expert whose opinion was always highly appreciated. His gift for the drafting of legal texts and his conciseness in the wording of principles and provisions more than once enabled him to play a leading part in shaping the texts of laws and conventions alike.

At the national level he distinguished himself as the rapporteur of the Intellectual Property Commission which prepared a draft law, later to result in the new Law of March 11, 1957, on literary and artistic property. He applied all his energy to this legal codification of copyright in France, and the result was a masterpiece of modern legislation.

At the international level he was always an active member of his country's delegation, seeking to avoid as far as possible situations where the development of the law and the adaptation of conventions to modern political, economic or social requirements might take place without regard for the interests of authors. On several occasions he was called upon to preside over discussions, a task which he fulfilled with grace, tact and impartiality, and with the sole aim of serving the cause of copyright.

Yet above all Marcel Boutet was the President of ALAI, the international non-governmental organization created at the instigation of Victor Hugo, which is justly proud to have been in turn the initiator of the Berne Convention. He took over the presidency from Georges Maillard, who himself had succeeded Bâtonnier Pouillet, well known to law students for his famous Manual. He was elected President in 1947 and remained in office until his death, which means that, for almost twenty-five years, he put heart and soul into this association of lawyers devoted to literary and artistic property. It was he who gave it the vitality and drive essential to any activity carried on at an international level, even though the means at his disposal were never generous. He controlled its destiny with a masterly touch, and his death is unquestionably a heavy loss to the Association. No doubt the torch of leadership will pass into good hands and continuity will be ensured, but the personality of President Boutet will have left an indelible mark on the history of ALAI.

A tribute to Marcel Boutet would not be complete without a mention of the many studies which he published in specialized reviews on subjects relating to industrial property and copyright. One such study was his excellent commentary, published in the French *Juris-Classeur*, on the provisions adopted in Brussels in 1948, at the time of the revision of the Berne Convention. His experience, combined with the academic talents of Robert Plaisant, contributed to the development of intellectual property law by leaving a work which is a welcome source of reference to practitioners.

The French Government acknowledged Marcel Boutet's merits by awarding him a number of distinctions. He was a "Chevalier de la Légion d'Honneur", "Officier de l'Ordre national du Mérite" and "Officier des Arts et Lettres". He also received honors from foreign governments.

President Boutet leaves behind him the memory of an exceptionally courteous and kind person: he had preserved the politeness and good manners of a period which, alas, is gradually disappearing into the past. He was possessed of immense learning and culture. As a speaker he was particularly eloquent, with a wonderful ability to brighten his speeches with quotations, themselves chosen with a skill all his own. One such quotation comes poignantly to mind: last November President Boutet was staying in Geneva at the time of the sessions of the intergovernmental copyright committees which were held there. When I alluded to the amount of work on the horizon of international copyright, he reminded me of the words of Fontenelle, French man of letters and nephew of the great Corneille: "Don't take life too seriously; whatever you do, you won't come out of it alive." A word of advice drawn from sound philosophy... or was it a premonition? Whatever the circumstances, President Boutet's charm had its effect and conversation immediately rose to a higher plane, leaving one with the gratifying sensation that only a strong personality can communicate.

Marcel Boutet was that. His life reminds us that we can, as the poet said,

"leave behind us, after death,  
our footprints on the sands of time".

The teachings he left behind him will not be forgotten.

Claude MASOUYÉ



know-how contracts with a foreign partner and on antitrust questions, arising from the German law and the law of the European Economic Community.

The book reproduces in its annex pertinent legal provisions, a German translation of the Guide prepared under the auspices of the UN Economic Commission for Europe and models for know-how and license contracts prepared by ORGALIME (*Organisme de liaison des industries métalliques européennes*).

The great number of explanations and clarifications given in the book will be useful in particular for practitioners in the field of licensing. Since not only questions of German law but also international aspects are considered, the book will be of interest also to readers outside Germany. For this purpose, a translation into a language more widely understood would appear to be useful.

L. B.

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### Selection of New Publications

WORLD INTELLECTUAL PROPERTY ORGANIZATION. *Bibliography of Publications of Industrial Property Offices*, 3rd edition. Geneva, WIPO, 1971. - 87 p.

BAUMBACH (Adolf) & HEFERMEHL (Wolfgang). *Wettbewerbs- und Warenzeichenrecht*. Munich, C. H. Beck, 1969-1971. - 2 vol.

BERAN (Martin J.). *An Introduction to Trademark Practice*. Silver Spring, Jefferson Law Book, 1970. - 124 p.

BIRNER (Franz). *Das Verschulden im Immaterialgüter- und Wettbewerbsrecht*. Fribourg, Universitätsverlag, 1970. - 178 p.

FISCHER (Friedrich B.). *Grundzüge des gewerblichen Rechtsschutzes*. Cologne, C. Heymann, 1971. - 236 p.

HAFT (Fritjof). *Elektronische Datenverarbeitung im Recht*. Berlin, J. Schweitzer, 1970. - 209 p.

KOKTVEDGAARD (Mogens). *Patentloven med indledning og kommentarer*. Copenhagen, Juristforbundets Forlag, 1971. - 414 p.

TERRELL *on the Law of Patents*, 12th edition by FALCONER, Douglas; ALDOUS, William; YOUNG, David. London, Sweet & Maxwell, 1971. - 706 p.

UNTERBURG (Gerd). *Die Bedeutung der Patente in der industriellen Entwicklung*. Berlin, Duncker & Humblot, 1970. - 204 p.

VIDA (Alexander), FÖLDES (Iván), PÁLOS (Georg). *Die Neuregelung des gewerblichen Rechtsschutzes und Urheberrechts in Ungarn* (with the collaboration of Bognár, Martha, and Palágyi, Robert). Weinheim/Bergstr., Vg Chemie, 1971. - 135 p.

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## CALENDAR

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### WIPO Meetings

March 6 to 16, 1972 (Washington) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

March 13 to 17, 1972 (Geneva) — Committee of Experts on the Protection of Type Faces

*Object:* Discussion of a draft Agreement and draft Regulations — *Invitations:* Member countries of the Paris Union — *Observers:* Intergovernmental and international non-governmental organizations concerned

March 20 to 24, 1972 (Munich) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

April 6 and 7, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Standing Subcommittee of the Interim Committee for Technical Cooperation  
*Members:* Austria, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — *Observer:* Brazil

April 10 to 14, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization

April 17 to 21, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems

April 17 to 21, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems

April 24 to 26, 1972 (Geneva) — ICIREPAT — Subcommittee on Organic Chemistry

May 2 to 8, 1972 (Geneva) — Committee of Experts on the International Registration of Marks

*Object:* Preparation of draft texts for the Vienna Diplomatic Conference in 1973 (see below) — *Invitations:* Member countries of the Paris Union; organizations concerned

May 9 to 17, 1972 (Paris) — Committee of Governmental Experts on Problems in the Field of Copyright and of the Protection of Performers, Producers of Phonograms and Broadcasting Organizations Raised by Transmission Via Space Satellites

*Object:* Study of the problems — *Invitations:* Member countries of the Berne Union, Member countries of the Paris Union and Member States of the United Nations or of a Specialized Agency — *Observers:* Intergovernmental and non-governmental organizations concerned — *Note:* Meeting convened jointly with Unesco

May 29 to June 2, 1972 (The Hague) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee

June 5 to 9, 1972 (The Hague) — International Patent Classification (IPC) — Joint ad hoc Committee

June 26 to July 7, 1972 (The Hague) — International Patent Classification (IPC) — Working Group I of the Joint ad hoc Committee

July 5 to 7, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee

July 10 to 14, 1972 (The Hague) — International Patent Classification (IPC) — Working Group III of the Joint ad hoc Committee

September 4 to 8, 1972 (London) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee

September 11 to 15, 1972 (London) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee

September 20 to 22, 1972 (Geneva) — ICIREPAT — Plenary Committee

- September 25 to 29, 1972 (Berne) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee
- September 25 to 30, 1972 (Geneva) — Coordination Committee of WIPO, Executive Committees of the Paris and Berne Unions, Assemblies of the Madrid and Locarno Unions
- October 2 to 6, 1972 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees and Standing Subcommittee of the Interim Committee for Technical Cooperation  
*Members of the Interim Committees: Signatory States of the PCT — Observers: Intergovernmental organizations and international non-governmental organizations concerned; Members of the Standing Subcommittee: Austria, Germany (Fed. Rep.), Japan, Netherlands, Soviet Union, Sweden, United Kingdom, United States of America, International Patent Institute — Observer: Brazil*
- October 9 to 13, 1972 (Geneva) — Committee of Experts on a Model Law for Developing Countries on Appellations of Origin  
*Object: To study a Draft Model Law — Invitations: Developing countries members of the United Nations — Observers: Intergovernmental and international non-governmental organizations concerned*
- October 9 to 13, 1972 (Geneva) — ICIREPAT — Technical Committee for Standardization
- October 16 to 20, 1972 (Geneva) — ICIREPAT — Technical Committee for Computerization
- October 23 to 27, 1972 (Geneva) — ICIREPAT — Technical Committee for Shared Systems
- October 23 to 27, 1972 (Geneva) — ICIREPAT — Advisory Board for Cooperative Systems
- November 20 to 24, 1972 (Geneva) — International Patent Classification (IPC) — Bureau of the Joint ad hoc Committee
- November 27 to December 1, 1972 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee
- December 13 to 15, 1972 (Geneva) — ICIREPAT — Technical Coordination Committee
- May 7 to June 2, 1973 (Vienna) — Diplomatic Conference on: (a) the International Registration of Marks, (b) the International Classification of the Figurative Elements of Marks, (c) the Protection of Type Faces
- September 24 to October 2, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Nice and Lisbon Unions (Assemblies, Conferences of Representatives, Executive Committees)

## UPOV Meetings

- April 13 and 14, 1972 (Geneva) — Consultative Working Committees
- May 23 and 24, 1972 (Cambridge) — Technical Working Party for Cross-fertilized Agricultural Crops
- May 25 and 26, 1972 (Antibes) — Technical Working Party for Ornamental Plants
- September 13 and 14, 1972 (Geneva) — Working Group for Variety Denominations
- November 7 and 10, 1972 (Geneva) — Diplomatic Conference  
*Object: Amendment of the Convention*
- November 8 and 9, 1972 (Geneva) — Council
- July 2 to 6, 1973 (London/Cambridge) — Symposium on Plant Breeders' Rights

## Meetings of Other International Organizations concerned with Intellectual Property

- March 27 to 29, 1972 (The Hague) — International Patent Institute — Administrative Council
- April 24 to 28, 1972 (Cannes) — International Association for the Protection of Industrial Property — Council of Presidents
- April 26 to 28, 1972 (Helsinki) — International Writers Guild — Executive Council
- May 15 to 19, 1972 (Paris) — International Publishers Association — Congress
- May 21 to 25, 1972 (Geneva) — International League Against Unfair Competition — Congress
- July 3 to 7, 1972 (Paris) — International Literary and Artistic Association — Working Session
- July 4 to 6, 1972 (The Hague) — International Patent Institute — Administrative Council
- October 16 to 21, 1972 (Mexico) — International Confederation of Societies of Authors and Composers — Congress
- October 23 to 26, 1972 (The Hague) — International Patent Institute — Administrative Council
- November 12 to 18, 1972 (Mexico) — International Association for the Protection of Industrial Property — Congress
- December 11 to 15, 1972 (The Hague) — International Patent Institute — Administrative Council
- May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress

### Intergovernmental Conference for the Setting Up of a European System for the Grant of Patents (Luxembourg):

- April 24 to 28, 1972 — Working Party II
- April 24 to 28, 1972 — Working Party III
- May 15 to 19, 1972 — Coordination Committee
- June 19 to 30, 1972 — Intergovernmental Conference

## VACANCY IN WIPO

*Competition No. 175**Head, IPC Section*

(Industrial Property Division)

Applications are invited for the following post:

*Category and grade: P. 4**Principal duties:*

Under the supervision of the Head of the Industrial Property Division, the incumbent will be responsible for the implementation of WIPO's program in the field of International Patent Classification (IPC).

His duties in particular will be the following:

- (a) preparation of long range and short range draft programs for the IPC;
- (b) preparation of reports on the work performed and plans concerning the IPC;
- (c) preparatory work and assistance in the Secretariat for meetings of the IPC Interim Committee and its subsidiary bodies and, after the entry into force of the Strasbourg Agreement concerning the International Patent Classification, of the bodies and technical committees to be set up under that Agreement;
- (d) execution of those parts of the IPC program which are within the competence of the International Bureau of WIPO;
- (e) assistance in coordinating the work of the Offices of the participating countries and the International Patent Institute in execution of the IPC program;
- (f) contacts with industry and private organizations to ensure harmonization of efforts in patent classification;
- (g) participation in meetings of other international organizations having an interest in patent classification.

*Qualifications:*

- (a) university degree in a relevant field of science or technology or qualifications equivalent to such degree;
- (b) wide knowledge and experience in the field of patent classification;
- (c) excellent knowledge of English and at least a good knowledge of French.

*Nationality:*

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

*Age limit:*

Candidates must be less than 50 years of age at date of appointment.

*Date of entry on duty:*

To be agreed.

*Applications:*

*Application forms* and full information regarding the *conditions of employment* may be obtained from the Head of the Administrative Division, WIPO, 32 chemin des Colombettes, 1211 Geneva, Switzerland. Please refer to the number of the Competition.

*Closing date:*

April 14, 1972.