

# Industrial Property

Monthly Review of the  
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and the United International Bureaux for the  
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## Patent Cooperation Treaty (PCT)

### Message

from the President of the United States of America  
transmitting the PCT and Regulations to the Senate

### Letter of Transmittal

The White House, *September 12, 1972.*

*To the Senate of the United States:*

With a view to receiving the advice and consent of the Senate to ratification, I transmit herewith a copy of the Patent Cooperation Treaty, signed at Washington on June 19, 1970, together with the Regulations under the Patent Cooperation Treaty annexed thereto. I transmit also, for the information of the Senate, the report from the Department of State with respect to the Treaty.

The Patent Cooperation Treaty offers several major advantages. One is to simplify the filing of patent applications on the same invention in different countries by providing, among other things, centralized filing procedures and a standardized application format.

Another advantage offered by the Treaty is the longer period of time available to an applicant before he must commit himself by undertaking the expenses of translation, national filing fees and prosecution in each country. Today, a twelve month priority period is provided by the Paris Convention for the Protection of Industrial Property, while under the Patent Cooperation Treaty an applicant will have generally twenty months or more. This advantage should permit the applicant to be more selective of the countries in which he ultimately decides to file, by giving him more time and information to evaluate the strength of his potential patent and to determine his marketing plans. Thus, this Treaty would serve to expand established programs of industry to file foreign patent applications as well as to encourage smaller businesses and individual inventors to become more actively engaged in seeking patent protection abroad.

A third advantage is to facilitate the examining process in those member countries which examine applications for patents.

In order to carry out the provisions of the Treaty, proposed implementing legislation will be forwarded to the Congress in the near future.

I recommend that the Senate give early and favorable consideration to the Treaty submitted herewith and give its advice and consent to ratification subject to three of the declarations for which provision is made in the Convention under Article 64, paragraphs (1) (a), (3) (a), and (4) (a), respectively, as explained in the report, from the Department of State.

Richard NIXON.

### Letter of Submittal

Department of State,  
*Washington, August 15, 1972.*

The President,  
*The White House.*

The President: I have the honor to submit to you, with a recommendation for transmission to the Senate for advice and consent to ratification, a certified copy of the Patent Cooperation Treaty, done at Washington on June 19, 1970, together with the Regulations under the Patent Cooperation Treaty annexed thereto.

The Patent Cooperation Treaty traces its genesis back to 1966. At that time, at the request of the United States, the Executive Committee established under the Paris Convention for the Protection of Industrial Property unanimously approved a resolution which recommended that the Secretariat of the Paris Convention (the United International Bureau for the Protection of Intellectual Property (BIRPI) in Geneva, Switzerland) undertake a study of practical means which would reduce the duplication of effort involved, both for applicants and national patent offices, in the filing and processing of patent applications for the same invention in different countries.

Several drafts of an international agreement to that effect were prepared and intensively reviewed by a Committee of Experts from various parties to the Paris Convention prior to consideration of the final draft of the Patent Cooperation Treaty at the Diplomatic Conference held in Washington from May 25 to June 19, 1970. Seventy-seven States and a number of international organizations were represented at the Conference. On June 19, 1970, the Treaty was signed by twenty countries, including the United States, and remained open for signature until December 31, 1970, by which date a total of thirty-five countries had become signatories. The Treaty will enter into force three months after eight States have ratified or acceded to the Treaty, four of which must have certain defined major patent activity. Details regarding the qualifications of these States are set forth below. To date, four States with minor patent activity have taken such action (the Central African Republic, Senegal, the Malagasy Republic, and Malawi).

A copy of the report of the United States delegation to the Diplomatic Conference is enclosed, which includes background information and details on the organization and work of the Diplomatic Conference. Attached to that report, as Annex I, is a list of the signatories to the Treaty, and as Annex II, the text of a resolution concerning preparatory measures for its entry into force.

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Another advantage offered by the Treaty is the longer period of time available to an applicant before he must commit himself by undertaking the expenses of translation, national filing fees and prosecution in each country. Today, a

twelve-month priority period is provided by the Paris Convention, while under the Treaty an applicant will have generally twenty months or more. This advantage should permit the applicant to be more selective of the States in which he ultimately decides to file, by giving him more time and information to evaluate the strength of his potential patent and to determine his marketing plans. Thus, the Treaty would serve to expand established programs of industry to file foreign patent applications as well as to encourage smaller businesses and individual inventors to become more actively engaged in seeking patent protection abroad. A third advantage is to facilitate the examining process in those States which examine applications for patents.

Under Chapter I of the Treaty, an applicant files an international application with a Receiving Office, which usually is the Patent Office in the State of which he is a national or resident. The application is filed in a specified language (English for United States applicants), in a standard format, and includes the designation of those States in which the applicant desires protection. The international application is subject to an international fee at the time of filing. The payment of national filing fees and translation expenses in each of the countries where protection is desired can generally be deferred until as late as twenty months from the priority date of the international application.

An international search report is prepared by an International Searching Authority. The Patent Office is considering becoming such an Authority. Copies of the international search report are transmitted to the applicant and the International Bureau of Intellectual Property, the Secretariat of the World Intellectual Property Organization in Geneva, Switzerland (which Bureau is also BIRPI, referred to in the second paragraph of this document). The International Bureau also is the Secretariat for the Patent Cooperation Treaty and thus serves as the administrative and coordinating organ for this Treaty. After having received the international search report, the applicant is afforded one opportunity to amend the claims of his international application by filing amendments with the International Bureau within a prescribed time limit. Thereafter, copies of the international application and the international search report, together with any amendments, are forwarded by the International Bureau to each of the designated States.

The international application, search report, and amendments are published by the International Bureau eighteen months from the priority date, unless all the States which were designated in the international application have declared that, as far as they are concerned, international publication is not necessary. Only at the end of the twentieth month may the applicant be required to pay national filing fees and submit any required translations of the international application and the amendments to those designated States in which he still wishes to obtain protection. The applicant is also given the opportunity to amend his international application which is before each designated office, and, at this point, each office makes its own determination as to the patentability of the claims in the international application.

Chapter II of the Treaty provides for a further procedure whereby, under certain conditions, an applicant may demand a preliminary examination report for one or more elected States in which he intends to use the results of such report.

As permitted by Article 64(1) (a) of the Treaty, it is proposed that the United States declare that it will not be bound by the provisions of Chapter II. This Chapter, however, may be of interest to developing countries which do not have extensive patent searching and examining facilities available. States which lack sufficient resources to maintain well-staffed patent offices capable of keeping pace with current worldwide technology, but which are attempting to increase technology by developing a sound patent system to attract foreign capital and know-how, would find this Chapter of particular benefit.

Chapter IV of the Treaty establishes information services which will be of benefit to developing countries in facilitating their acquisition of technology and technical information. This Chapter also establishes a committee which would organize and supervise technical assistance to improve the patent systems of developing countries.

Use of the procedures established by the Treaty is optional for applicants. Applicants may continue to file individual patent applications in each country in which they seek protection. Furthermore, the Treaty in no way diminishes the right of priority and national treatment which applicants are accorded under the Paris Convention for the Protection of Industrial Property.

The Treaty provides that the contracting countries constitute an *International Patent Cooperation Union* for cooperating in the filing, searching and examination of applications for the protection of inventions and for rendering special technical services. It further provides that an *Assembly*, consisting of the contracting countries, will meet once a year in ordinary session.

When the number of member countries exceeds forty, the Assembly will establish an *Executive Committee*, consisting of one-fourth of the members of the Assembly. Each member of the Executive Committee will serve from the close of the session of the Assembly which elected it to the close of the next ordinary session of the Assembly. After the establishment of the Executive Committee, which will meet once a year in ordinary session, the Assembly will only meet in ordinary session every third calendar year.

The Assembly will also establish a *Committee for Technical Cooperation* whose primary purpose will consist in the constant improvement of the services provided for under the Treaty. A *Committee for Technical Assistance* will also be established by the Assembly. This Committee will organize and supervise technical assistance, on an individual or regional basis, for improving the patent systems of developing countries which are parties to the Treaty.

The Regulations annexed to the Treaty provide rules concerning such matters as administrative requirements and procedures as well as details useful in the implementation of the provisions of the Treaty.

The Treaty will enter into force three months after eight States have deposited their instruments of ratification or accession, provided that at least each of four of those States fulfills any one of the following conditions:

- (i) The number of applications filed in the State has exceeded 40,000 according to the most recent annual statistics published by the International Bureau;
- (ii) The nationals or residents of the State have filed at least 1,000 applications in one foreign country according to the most recent annual statistics published by the International Bureau;
- (iii) The national patent office of the State has received at least 10,000 applications from nationals or residents of foreign countries according to the most recent annual statistics published by the International Bureau.

The provisions of Chapter II, relating to international preliminary examination, will become applicable only when three States, each fulfilling at least one of the above-mentioned requirements, have become party to the Treaty without declaring that they do not intend to be bound by the provisions of Chapter II.

Ratification of the Treaty has now been endorsed by the National Association of Manufacturers, the United States Chamber of Commerce, the Patent, Trademark and Copyright Section of the American Bar Association, the American Patent Law Association, the Pacific Industrial Property Association, the Chicago and Milwaukee Patent Law Associations and others. However, in order to maintain the support of interested groups for the Treaty, United States ratification must be accompanied by three declarations as permitted pursuant to Article 64 of the Treaty. I recommend that the Senate's advice and consent to ratification of the Treaty be given subject to those declarations, as explained below.

The first declaration, under Article 64(1) (a), is that the United States shall not be bound by the provisions of Chapter II of the Treaty. This declaration is necessary because present divergence of the examining systems of other potential member countries from that in the United States would make application of Chapter II, which deals with preliminary examination, impracticable for the United States at this time.

The second declaration, under Article 64(3) (a), is that, as far as this country is concerned, international publication of international applications is not required. Failure to make such a declaration would conflict with an underlying philosophy of our patent system which enables an applicant to keep his invention confidential until he obtains patent protection.

The third declaration, under Article 64(4) (a), is that the filing outside of the United States of an international application designating this country is not equated to an actual filing in the United States for prior art purposes. This declaration

is necessary in order to avoid a conflict with United States patent law (35 U.S.C. 102(e)) which accords to a United States patent the effect as a prior art reference only as of its filing date in the United States.

It is the intention of the United States that the United States Patent Office will become a Receiving Office and an International Searching Authority in order to process international applications for patents filed under the Treaty.

The Patent Cooperation Treaty is of direct and immediate importance to the United States. It will provide the means not only to reduce needless duplication of effort in the United States Patent Office and the patent offices of other parties but will also facilitate the entry of United States industry into foreign markets by simplifying the obtaining of patent protection abroad.

It is hoped that the Senate will consider and approve the Treaty at an early date.

Respectfully submitted.

William P. ROGERS.

## Strasbourg Agreement

### Ratifications of the Agreement

#### DENMARK

The Government of Denmark deposited on January 9, 1973 its instrument of ratification of the Strasbourg Agreement Concerning the International Patent Classification.

Strasbourg Notification No. 6, of January 12, 1973.

#### NORWAY

The Government of Norway deposited on January 30, 1973 its instrument of ratification, dated November 17, 1972, of the Strasbourg Agreement.

Pursuant to Article 4(4)(i) of the Agreement, the instrument of ratification was accompanied by the following declaration:

"Referring to Article 4(4)(i), Norway declares that it does not undertake to include the symbols relating to groups or subgroups of the Classification in applications as referred to in Article 4(3) which are only laid open for public inspection and in notices relating thereto." (Original)

Strasbourg Notification No. 7, of January 31, 1973.

\* \* \*

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







*XX<sup>a</sup> Mostra internazionale avicola* (Varese, May 31 to June 4, 1973);

*Mercato internazionale delle pelletterie MIPEL* (Milan, June 8 to 12, 1973);

*Mostra nazionale dell'oreficeria gioielleria ed argenteria* (Vicenza, June 10 to 17, 1973);

*V<sup>a</sup> Fiera del tempo libero* (Messina, June 22 to July 1, 1973);

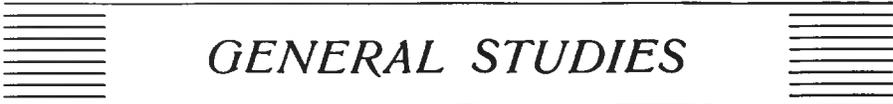
*XXXIV<sup>a</sup> Fiera di Messina — Campionaria internazionale* (Messina, August 4 to 19, 1973);

*XXIII<sup>o</sup> Salone internazionale della tecnica and X<sup>o</sup> Salone internazionale della montagna* (Turin, September 29 to October 8, 1973)

shall enjoy the temporary protection established by the decrees mentioned in the preamble<sup>1</sup>.

<sup>1</sup> Royal Decrees No. 1127 of June 29, 1939, No. 1411 of August 25, 1940, No. 929 of June 21, 1942 and Law No. 514 of July 1, 1959. (See *La Propriété industrielle* 1939, p. 124; 1940, pp. 84 and 196; 1942, p. 168; 1960, p. 23.)

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## GENERAL STUDIES

### **Why Type Faces Merit Protection by New International Law**

By John DREYFUS \*









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**“Best Mode” Requirement in the United States  
of America**

with special reference to foreign patent applications

By L. CHASAN \* and H. ECKOLDT \*\*

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*LETTERS FROM CORRESPONDENTS*

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**Letter from Australia**

By A. C. KING \*

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protection is desired and hence a limitation of the search have been obtained. Above all the system has resulted in a great reduction in the number of trademark applications comprising all types of goods in all classes.

### Industrial Designs

In the designs sector, a new Act came into operation on October 1, 1970, which amends the earlier Danish Designs Act in certain important respects<sup>2</sup>. It was drawn up in cooperation with Finland, Norway and Sweden and is in all essential respects in agreement with the new Designs Acts now in operation in these countries.

The figures relating to design applications in 1971 were:

Applications filed	Designs registered
801	470

The number of applications filed corresponds approximately to the number of applications filed under the previous legislation. The total number of registered designs at the entry into force of the new Act was about 3,800. While the previous Act was based upon a simple system of registration, the new Act involves some examination of the novelty of a design. It is however realized that it will not be possible to carry out an examination with a reasonable guarantee that the design is not known beforehand — in any case not without a very costly and lengthy novelty search — and that, consequently, an examination may easily be more misleading than instructive to the applicant; the present examination is therefore limited to designs already registered. Such a limited examination means that the Administration cannot state whether any exclusive right in the design has in fact been obtained; its object is, however, to give the owner of the design a guarantee that he is in a position to use the design in future without having any registered design rights claimed against him. An additional guarantee is provided by the fact that design applications are published and there is a possibility of opposition.

In contrast to the previous law, the design law is not restricted to *Geschmacksmuster*, but protection of a design may be granted, in respect of the shape of an article, also in cases where the shape serves a practical purpose only. However, there is no protection of the idea behind the appearance, and the protection is consequently no *Gebrauchsmuster* protection.

As can be understood, the new legislation has entailed a substantial increase in the administrative work concerning design applications. To this must be added the complications caused by the — in many respects — common Nordic legislation in that it is attempted, through contact with the other three countries, to maintain a common practice as to essen-

tials. This has especially caused trouble and delay as regards questions about the very concept of a "registrable design" and about the right granted by the Act to apply for a multiple registration of designs in accordance with the provision that several designs which are related with respect to manufacture and use may be comprised in a single application.

### Administrative Matters

As far as administrative matters are concerned, for the fiscal year 1971-1972 the total expenditure of the Danish Patent Office, relating to the patent section as well as to the trademark and design section, was 15,311,000 Danish kroner, of which 12.8 million went to the payment of wages and salaries. The receipts for the same period were 14,161,000 Danish kroner. The principle underlying the fees charged is that they must cover the expenses with a certain safety margin.

The total number of employees in the Office is 223: 13 lawyers, 94 engineers and other employees belonging to the technical staff, and 116 employees belonging to the clerical staff.

### International Cooperation

Under this heading, it might be mentioned that Denmark has acceded to the 1967 Stockholm Act of the Paris Convention.

In the field of patents at the international level, Denmark has signed the Patent Cooperation Treaty adopted in Washington on June 19, 1970 and consequently participates in the work being done with a view to implementing the Treaty. Moreover, Denmark takes part in the work concerning the drawing up of a Convention Establishing a European System for the Grant of Patents and — after its decision to become a member of the European Communities — also in the work concerning a Convention for a European Patent for the Common Market. In addition, Denmark has signed the Strasbourg Agreement Concerning the International Patent Classification and has always taken part in the patent cooperation within the Council of Europe.

In the field of trademarks, Denmark has acceded to the 1967 Nice Agreement and consequently participates in the committees of experts set up under it. Denmark has also taken part in the work concerning the international registration of trademarks whose object is the preparation of a draft convention to be considered at the Diplomatic Conference to be held in Vienna this year and in the discussions concerning the international classification of the figurative elements of marks.

In the field of designs, Denmark has ratified the 1968 Locarno Agreement and is represented in the Committee of Experts. It took part in the most recent session of the Committee held in Geneva in September 1971.

<sup>2</sup> *Industrial Property*, 1971, p. 223.



- November 5 to 9, 1973 (Geneva) — International Patent Classification (IPC) — Working Group V of the Joint ad hoc Committee
- November 14 to 16, 1973 (Geneva) — ICIREPAT — Plenary Committee (PLC)
- November 19 to 27, 1973 (Geneva) — Administrative Bodies of WIPO (General Assembly, Conference, Coordination Committee) and of the Paris, Berne, Madrid, Nice and Locarno Unions (Assemblies, Conferences of Representatives, Executive Committees)  
*Invitations:* States members of WIPO, or of the Paris or Berne Union — *Observers:* Other States members of the United Nations or of a Specialized Agency; intergovernmental and international non-governmental organizations concerned
- November 26 and 27, 1973 (Geneva) — Lisbon Union — Council  
*Members:* States members of the Lisbon Union — *Observers:* Other States members of the Paris Union
- November 28 to 30, 1973 (Geneva) — Working Group on Scientific Discoveries  
*Invitations and observers:* To be announced later
- December 3 to 5, 1973 (Paris) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee  
*Note:* Meeting convened jointly with the International Labour Organisation and Unesco
- December 3 to 7, 1973 (Geneva) — International Patent Classification (IPC) — Working Group II of the Joint ad hoc Committee
- December 3 to 7, 1973 (Geneva) — ICIREPAT — Technical Committee for Shared Systems (TCSS)
- December 5 to 11, 1973 (Paris) — Executive Committee of the Berne Union — Extraordinary Session  
*Note:* Some meetings with the Intergovernmental Copyright Committee established by the Universal Copyright Convention
- December 10 to 14, 1973 (Paris) — ICIREPAT — Technical Committee for Standardization (TCST)
- December 17 to 21, 1973 (Geneva) — Working Group for the Mechanization of Trademark Searches  
*Object:* Report and recommendations to a Committee of Experts on mechanized trademark searches — *Invitations:* Australia, Austria, Belgium, Canada, France, Germany (Federal Republic of), Ireland, Japan, Luxembourg, Netherlands, Soviet Union, Spain, Sweden, United Kingdom, United States of America — *Observers:* Colombia, Benelux Trademark Office

## UPOV Meetings

- March 13 and 14, 1973 (Geneva) — Technical Steering Committee
- March 15, 1973 (Geneva) — Symposium Working Party
- April 2 and 3, 1973 (Geneva) — Working Group on Variety Denominations
- April 4 and 5, 1973 (Geneva) — Consultative Committee
- June, 1973 (Avignon) — Technical Working Party for Vegetables
- July 2 to 6, 1973 (London) — Symposium on Plant Breeders' Rights
- October 9 to 12, 1973 (Geneva) — Council

## Meetings of Other International Organizations concerned with Intellectual Property

- March 5 and 6, 1973 (London) — International Confederation of Societies of Authors and Composers — Legal and Legislative Commission
- March 13 to 15, 1973 (Rijswijk) — International Patent Institute — Administrative Council
- March 19 to 30, 1973 (Brussels) — European Economic Community — "Community Patent" Working Party
- March 30, 1973 (Paris) — International Chamber of Commerce — Industrial Property Commission
- April 28 to May 1, 1973 (Valencia) — International League against Unfair Competition — Study meetings
- May 3 to 5, 1973 (Brussels) — Union of European Patent Agents — General Assembly
- May 7 to 11, 1973 (London) — International Federation of Musicians — Congress
- May 20 to 26, 1973 (Rio de Janeiro) — International Chamber of Commerce — Congress
- May 21 to 25, 1973 (Paris) — Unesco International Copyright Information Centre
- May 22 and 23, 1973 (Malmö) — International Plant Breeders Association for the Protection of New Varieties — Congress
- June 26 to July 17, 1973 (Washington) — Organization of American States — Committee of Governmental Experts on Industrial Property and Technology Applied to Development
- September 10 to 14, 1973 (Stockholm) — International Federation of Actors — Congress
- September 10 to October 6, 1973 (Munich) — Munich Diplomatic Conference for the Setting Up of a European System for the Grant of Patents, 1973
- September 24 to 28, 1973 (Budapest) — International Association for the Protection of Industrial Property — Symposium
- October 28 to November 3, 1973 (Jerusalem) — International Writers Guild — Congress

## VACANCY IN WIPO

*Competition No. 204**Counsellor*

(or "Legal Assistant"\*)

*General and Periodicals Section*

(Industrial Property Division)

*Category and grade:* P. 4/P. 3 according to qualifications and experience of the selected candidate.

*Principal duties:*

The incumbent will assist the Head of the General and Periodicals Section in carrying out various tasks which fall under the competence of the above-mentioned Section. His particular duties will be the following:

- (a) undertaking studies on questions relating to industrial property protection;
- (b) undertaking studies concerning international conventions in the above-mentioned field, including the revision of existing conventions and the setting up of new conventions;
- (c) dealing with correspondence relating to questions mentioned under (a) and (b);
- (d) participating in WIPO meetings and representing the latter in meetings of or with other international organizations dealing with questions referred to under (a) and (b);
- (e) as necessary, assisting in other tasks within the jurisdiction of the Section (including preparatory work relating to industrial property Seminars).

*Qualifications required\*\*:*

- (a) University degree in law or qualifications equivalent to such a degree.

\* Title applicable if appointment at P. 3 level.

\*\* The full range of these qualifications corresponds to an appointment at the P. 4 level.

- (b) Wide experience in industrial property law (including its international aspects).
- (c) Ability to prepare legal studies and to draft texts of international arrangements.
- (d) Ability to act as a representative of WIPO in specialized meetings relating to the above-mentioned duties.
- (e) Excellent knowledge of either English or French and at least a good knowledge of the other.

*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.

*Type of appointment:*

Probationary period of two years, after satisfactory completion of which a permanent appointment will be offered.

*Age limit:*

Candidates must be under fifty 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:* March 30, 1973.