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WORLD INTELLECTUAL PROPERTY ORGANIZATION

WIPO Convention

Accession

CHILE

The Government of Chile deposited on March 25, 1975, its instrument of accession to the Convention Establishing the World Intellectual Property Organization (WIPO).

Chile has fulfilled the condition set forth in Article 14(2) of the Convention by concurrently acceding to the Paris Act (1971) of the Berne Convention for the Protection of Literary and Artistic Works as provided for in Article 29bis of that Act.

Pursuant to Article 15(2), the WIPO Convention will enter into force with respect to Chile on June 25, 1975.

WIPO Notification No. 80, of April 10, 1975.

WIPO MEETINGS

Committee of Experts for the Computerization of Trademark Operations

First Session (Geneva, March 10 to 13, 1975)

Note *

The Committee of Experts for the Computerization of Trademark Operations held its first session in Geneva from March 10 to 13, 1975, on convocation by the Director General. The following member States of the Paris Union, organizations and private firms were represented:

States: Algeria, Austria, Belgium, Canada, France, Germany (Federal Republic of), Japan, Netherlands, Nigeria, Norway, Soviet Union, Spain, Sweden, United Kingdom, United States of America (15);

Intergovernmental organizations: Benelux Trademark Office, Commission of the European Communities (CEC) (2);

International non-governmental organizations: International Association for the Protection of Industrial Property (IAPIP), Council of European Industrial Federations (CEIF), International Chamber of Commerce (ICC), Union of European Professional Patent Representatives (UNEPA), Union of Industries of the European Community (UNICE) (5);

Private firms: COMPU-MARK, Antwerp, Belgium; ÖGEFA, Vienna, Austria; SKRIPTOR, Stockholm, Sweden; SODEMA, Paris, France; WORLD SEARCHES, INC., Silver Spring, Maryland, United States of America (5).

* This Note has been prepared by the International Bureau.

The list of participants follows this Note.

The Committee of Experts decided that its future studies would be concentrated on the following sectors, in the following order of priority:

- (i) computerization of trademark administration (estabblishment of registration or renewal certificates, publication of trademark journals, renewal reminders, establishment of extracts from trademark registers, financial administration, statistics, etc.); continuation of the studies on computerized searching of word marks;
 - (ii) criteria of similarity between marks;
- (iii) similarity between goods, between services, and between goods and services;
 - (iv) computerized searching of device marks.

The Committee established a Working Group to study items (i) and (ii) above; it considered that the possibilities of coordination of work and collaboration at the international level should be studied separately for each of the subjects concerned.

The progress of the studies will depend essentially on the budgetary resources available for the project.

List of Participants*

I. Member States

Algeria: F. Aït Djebbara (Mrs.). Austria: G. Mautner-Markhof; F. Neeb. Belgium: C. G. Tas. Canada: R. Carson; D. Blaxell. France: J. Norguet; F. Lagache (Mrs.). Germany (Federal Republic of): K. K. Fischer; K. H.

^{*} A list containing the titles and functions of the participants may be obtained from the International Bureau.

Bolz. Japan: S. Hayashi. Netberlands: H. de Vries. Nigeria: A. G. Adob; R. M. Nwaigwe (Mrs.). Norway: A. Guldbav. Soviet Union: Y. Kulakov; M. Plakboutine. Spain: F. Gil Serantes; N. Rodríguez Toro. Sweden: G. Deijenberg. United Kingdom: R. L. Moorby. United States of America: J. Sbeeban.

II. Intergovernmental Organizations

Benelux Trademark Office: G. J. Verweij. Commission of the European Communities (CEC): A. Thrierr.

III. International Non-Governmental Organizations

Council of European Industrial Federations (CEIF): G. Peters. International Association for the Protection of Industrial Property (IAPIP): R. Hervé. International Chamber of Commerce (ICC): D. E. Parker. Union of European Patent Agents (UNEPA): A. W. Freed. Union of Industries of the European Community (UNICE): W. Mak; D. E. Parker.

IV. Consultants

COMPU-MARK, Antwerp (Belgium): V. Gevers; F. Gevers. ÖGEFA, Vienna (Austria): M. Prónay. SKRIPTOR, Stockholm (Sweden): H. Karlgren; R. B. A. Brodda; E. Koldenhof. SODEMA, Paris (France): P. Bassard; J. F. Queffelec. WORLD SEARCHES, INC., Silver Spring, Maryland (United States of America): D. Blaxell.

V. Officers

Chairman: R. L. Moorby (United Kingdom); Vice-Chairmen: S. Hayashi (Japan); A. G. Adob (Nigeria); Secretary: C. Werkman (WIPO).

VI. WIPO

K. Pfanner (Deputy Director General); L. Egger (Counsellor, Head, International Registrations Division); C. Werkman (Counsellor, Head, International Trademarks Section, International Registrations Division); P. Maugué (Legal assistant, International Registrations Division).

LEGISLATION

BENELUX

I

Executive Rules of the Uniform Benelux Designs Law

(Brussels, November 21, 1974) *

CHAPTER I. — Benelux Deposit

Article 1

- (1) The Benelux deposit of a design shall be effected in French or Dutch by the production of a document containing:
 - (a) the applicant's name and address;
- (b) a photographic or graphic representation or photographic or graphic representations of the outward appearance of the product;
- (c) an indication of the product in which the design is or will be incorporated;
- (d) an indication of the color or colors of the design, if the applicant claims protection thereof;
 - (e) the signature of the applicant or his agent.
 - (2) The document may also contain:
- (a) a description, in not more than 100 words, of the characteristic features of the design;
 - (b) the name of the true creator of the design;
- * The Uniform Law was published in Industrial Property, 1974, p. 178.
 - ¹ See below p. 115.

- (c) a request for postponement of publication of the registration, as provided for in Article 6;
- (d) a description of the colors, in not more than 50 words, which must also indicate the parts of the design that
- (3) The applicant shall use a form, the pattern and number of copies of which shall be determined by the Administrative Regulations ¹.
- (4) Where Article 16(3) is applicable, the form shall mention the postal address.
- (5) The representation of the design shall fulfill the requirements laid down in the Administrative Regulations.
- (6) The product in which the design is or will be incorporated shall be designated in precise terms and, as far as possible, in the terms of the Alphabetical List of the International Classification provided for in the Locarno Agreement Establishing an International Classification for Industrial Designs, of October 8, 1968.

Article 2

- (1) The application shall be accompanied by the following documents:
- (a) the means of reproduction that has been used for the representation of the design. A photographic representation as provided for in Article 1(1)(b) is assimilated to a means of reproduction;
- (b) a power of attorney, if the deposit is effected by an agent;

- (c) a number, to be determined by the Administrative Regulations, of representations of the design;
- (d) proof of payment of the deposit fees and the publication or postponement fees provided for in Article 26(1)(a), (b) or (c).
- (2) The means of reproduction referred to in the foregoing paragraph must comply with the provisions of the Administrative Regulations.

Article 3

A single Benelux deposit may comprise several designs, up to a maximum of 50. In such a case Article 1(1)(b), (c) and (d), (2), (5) and (6) and Article 2(1)(a) and (c) shall apply for each design. Each design shall also bear a separate number, which shall appear on both the means of reproduction referred to in Article 2(1)(a) and the representations referred to in Article 2(1)(c). The applicant effecting a multiple deposit shall use a form, the pattern and number of copies of which shall be determined by the Administrative Regulations.

Article 4

- (1) The date of deposit shall be the date of receipt, either by the Benelux Office or by the national Office, of the complete file, provided that the requirements of Articles 1, 2, 3, 15 and 16 have been fulfilled.
- (2) Where the said requirements have not been fulfilled at the time of the deposit, the authority having received the file shall notify the person concerned without delay and prescribe a period for him to fulfill the requirements or to submit any observations he may have. This period may be extended, on request or ex officio, but it shall not exceed four months from the date on which the first notification was sent. This provision shall also apply to requests for authentication, provided for in Article 15(3).
- (3) Where the requirements of the articles referred to in paragraph (1) above have not been fulfilled within the prescribed period, the file received shall be shelved and the fees which have been paid, reduced by one-fourth, shall be refunded. In the case of a multiple deposit, this provision shall apply only to those of the designs which are not in order.

However, if the only defect is the fact that the applicant has not complied with the provisions of Article 1(2)(a) and (d), or has not paid the fee provided for in Article 26(1)(a) (iii) or (iv), or the fee provided for in Article 26(1)(b)(vi) or (vii) ², the deposit shall be treated as if no use has been made of the possibilities provided for in Article 1(2)(a) and (d).

(4) In the case provided for in paragraph (2), the date of deposit shall be that of the receipt of the documents referred to in Article 1(1), and in Article 2(1)(d) with respect to the deposit fees, and of the means of reproduction referred to in Article 2(1)(a), provided, however, that the other requirements of Articles 1, 2, 3, 15 and 16 are fulfilled within the prescribed periods.

Article 5

(1) Where, at the time of the deposit, a right of priority under Article 4 of the Paris Convention for the Protection of Industrial Property is claimed, the country, the date, the serial number and the owner of the deposit on which the right is based shall be indicated.

Where the applicant in the country of origin is not the same person as the applicant effecting the Benelux deposit, the latter shall attach to his deposit a document showing his title.

- (2) The special declaration of a right of priority, referred to in Article 8(4) of the Uniform Law, shall contain the applicant's name and address, his signature or that of his agent, where applicable the postal address referred to in Article 16(3), an indication of the design, and the information mentioned in paragraph (1) above. Proof of payment of the fee mentioned in Article 26(1)(f) shall be attached to the declaration.
- (3) Where paragraph (1) or (2) above and Articles 15 and 16 have not been complied with, the competent authority shall notify the person concerned without delay and prescribe a period for him to remedy the situation.

This period may be extended on request, but shall not exceed four months from the date on which the notification was sent. This provision shall apply also to requests for authentication, provided for in Article 15(3).

- (4) If, within the prescribed period, paragraph (1) or (2) above or Articles 15 and 16 have not been complied with, the right of priority shall be forfeited.
- (5) The competent authority shall be empowered to require an applicant claiming priority to supply a certified copy of the documents attesting to such priority.

Article 6

- (1) An applicant who wishes to have publication of the registration postponed shall make the appropriate request at the time of effecting the deposit, with an indication of the period for which postponement is requested and proof of payment of the fee mentioned in Article 26(1)(c).
- (2) Postponement of publication of the registration of a multiple deposit may only be requested for all the designs and for the same period.
- (3) If the applicant who has requested postponement of the registration of a multiple deposit informs the Benelux Office, at the end of the period of postponement, that he requires publication of some only of the designs, he shall indicate the numbers of the designs that he wishes to have published.
- (4) In the event of postponement, the publication fee shall be paid prior to the expiration of the period of postponement. Failure to pay this fee, or partial payment in respect of a multiple deposit, shall be treated in the same way as a request for cancellaton or limitation.

² I. e. the fee relating to the publication of the descriptions referred to in Article 1(2)(a) and (d).

(5) The applicant may at any time end the period of postponement by an appropriate request, accompanied by proof of payment of the publication fee.

Article 7

The period referred to in Article 9(4) of the Uniform Law during which the applicant may request of the Benelux Office that it make a further publication of the design shall be three months from the date of the first publication.

Article 8

In the instrument of deposit the competent authority shall mention:

- (a) the particulars referred to in Article 1 and, where applicable, the claim to priority and the information referred to in Article 5(1);
- (b) the production of the documents referred to in Article 2;
 - (c) the amount of fees;
- (d) where applicable, the fact that publication of the registration has been postponed at the request of the applicant;
 - (e) the date and serial number of the deposit.

CHAPTER II — Registration

Article 9

- (1) The Benelux Office shall register the instrument of deposit in the Register of Benelux Deposits, mentioning:
 - (a) the serial number of the registration;
 - (b) the date and number of the deposit;
- (c) the particulars referred to in Article 1 and, where applicable, the claim to priority, the information referred to in Article 6(1) and the fact that publication has been postponed;
 - (d) the date on which registration expires;
- (e) the numbers of the class and subclass of the International Classification provided for in the aforementioned Locarno Agreement in which the product, in which the design has been or is to be incorporated, is placed.
- (2) Where priority has been claimed in accordance with Article 5(2), the Benelux Office shall register the claim in the Register of Benelux Deposits, mentioning the country, the date, the number and the proprietor of the deposit on which the priority claimed is based.

Article 10

The Benelux Office shall send to the proprietor without delay a certificate of registration containing the information referred to in Article 9.

Article 11

(1) Changes affecting the design shall be recorded in the Register of Benelux Deposits, at the request of the proprietor, after the registration of the instrument of deposit. However, in the case provided for in Article 18(1), third paragraph, of the Uniform Law, the proprietor and the licensee may only act jointly.

(2) All applications for amendment of entries in the Register of Benelux Deposits shall be addressed to the Benelux Office and shall contain the registration number, the name and address of the proprietor of the design, his signature or that of his agent and, where applicable, the address referred to in Article 16(3).

If such an application, filed in respect of the registration of a multiple deposit, does not concern all the designs, it must indicate the numbers of the designs concerned.

If an assignment or transfer affects the exclusive right in one or more designs forming part of a multiple deposit, that part shall thereafter be regarded as an independent deposit.

- (3) The abstract of the instrument evidencing assignment or other transfer or a license, referred to in Article 13(3) of the Uniform Law, shall be duly certified, where applicable, by the contracting parties.
- (4) The cancellation of registration following a judicial decision against which an appeal cannot or can no longer be brought shall be effected either ex officio or at the request of the party that first applies for it.

CHAPTER III — Renewal

Article 12

Renewal of the registration shall be effected simply by payment to the Benelux Office of the fee specified in Article 26(1)(d) or (e). However, if the proprietor of a multiple deposit intends to avail himself of the possibility provided for in Article 12(3) of the Uniform Law, he must indicate the numbers of the designs in respect of which he wishes to have the registration renewed.

Article 13

- (1) The Benelux Office shall enter renewals in the Register of Benelux Deposits, mentioning the date of renewal and the date on which registration expires.
- (2) The Benelux Office shall send a certificate of renewal to the proprietor without delay.

CHAPTER IV — International Deposit

Article 14

- (1) In the case of international deposits where the applicants have asked for the effects of the deposit to extend to Benelux territory, the Benelux Office shall record in the Register of International Deposits the publications and notifications made by the International Bureau for the Protection of Industrial Property, referred to in Articles 9 and 20 of the Uniform Law.
- (2) In so far as they concern Benelux territory, decisions as to annulment and lapse of registrations, and licenses, shall also be recorded in the Register.
- (3) The recording of the operations referred to in paragraph (2) shall be effected according to the provisions of Article 11.

CHAPTER V — Administrative Provisions

Article 15

(1) All documents transmitted to the Benelux Office or to national Offices shall be legible and be written in French or Dutch. However, documents attesting to a change of name, abstracts of instruments evidencing assignment or other transfer or a license, or declarations relating thereto, shall be accepted in another language if they are accompanied by a translation into French or Dutch.

The Benelux Office may, however, waive the obligation to provide such a translation where the documents referred to above are submitted in English or German or are accompanied by a translation into one of those languages.

- (2) When a document produced for registration in the registers kept by the Benelux Office is signed in the name of a legal entity, the person signing shall specify his capacity.
- (3) Authentication of the signature on documents submitted for registration shall not be required unless the Benelux Office or a national Office considers this necessary.

Article 16

- (1) Any transaction at the Benelux Office or a national Office may be carried out through an agent. Such agent shall have his domicile or an office on Benelux territory and shall produce a power of attorney. A general power of attorney may be deposited with the Benelux Office or any national Office.
- (2) In cases where an agent has been appointed, all communications provided for in these Rules shall be addressed to him.
- (3) Persons who have neither a domicile nor an office on Benelux territory shall give a postal address on Benelux territory in the cases provided for in these Rules.

Article 17

- (1) Where the provisions of these Rules have not been complied with in respect of an application for amendment of an entry in the registers kept by the Benelux Office, or where the prescribed fees and charges have been either not paid or not paid in full, the Benelux Office shall notify the person concerned and prescribe a period for him to remedy the situation.
- (2) Where the requirements of paragraph (1) above have not been fulfilled within the prescribed period, the documents received shall be shelved and the fees and charges paid shall be refunded.

Article 18

The special declaration for the maintenance of copyright, referred to in Article 21(3) of the Uniform Law, shall contain the name and address of the owner, his signature or that of his agent, the postal address referred to in Article 16(3), where applicable, and the number of the registration.

Article 19

- (1) The request to register an action to claim a deposit, referred to in Article 5(1) of the Uniform Law, shall contain the name and address of the plaintiff, his signature or that of his agent, where applicable the postal address referred to in Article 16(3), the name and address of the owner of the deposit and the registration number of the instrument of Benelux or international deposit.
- (2) The registration of the action to claim a deposit, referred to in Article 5(1) of the Uniform Law, shall be cancelled at the request of the party that first applies for such cancellation if the latter produces either a judicial decision against which an appeal cannot or can no longer be brought and which dismisses the claim or a document proving that the action has been withdrawn.

Article 20

- (1) The competent authority shall acknowledge receipt of all documents, whether delivered by hand or by post, that are intended for recording in the registers kept by the Benelux Office.
- (2) On receipt by the competent authority, every document shall be stamped with the hour, day, month and year of receipt.
- (3) Unless proved otherwise, documents that arrive after the service has closed shall be deemed to have arrived at midnight on the same day and shall be stamped accordingly.

Article 21

- (1) Where the service of the competent authority is closed on the last day of a period prescribed by the Uniform Law or these Rules, such period shall be extended to the end of the first day on which the service reopens.
- (2) As far as transactions affecting the date of a Benelux deposit are concerned, the Benelux Office and the services of the national Offices shall be open on the same days and at the same hours.

Article 22

- (1) The Benelux Office shall provide interested parties with information, copies and attestations from its registers, subject to payment of the charges specified in Article 26.
- (2) The priority documents referred to in Article 4.D(3) of the Paris Convention shall be delivered to interested parties by the Benelux Office or, where applicable, by the national Offices, subject to payment of the charges specified in Article 26(4)(d).
- (3) Such documents may be delivered only where the deposit complies with Articles 1(1) and 2(1)(d) in respect of deposit fees.

Article 23

The Benelux Office and the national Offices shall place the forms referred to in these Rules at the disposal of interested parties.

Article 24

- (1) The Benelux Office shall keep a register of Benelux deposits and a register of international deposits.
- (2) The registers and the documents substantiating the entries therein may, so soon as the entries have been published, be consulted at the Benelux Office. The consultation shall be free of charge.
- (3) Copies of the registers of Benelux and international deposits shall be transmitted to the Belgian and Luxembourg national Offices, where they may be consulted free of charge.

Article 25

- (1) The publication provided for in Article 20 of the Uniform Law shall be entitled Recueil des Dessins ou Modèles Benelux Benelux Tekeningen- of Modellenblad.
- (2) The publication shall contain, in the language of registration only:
- (a) all the registered particulars relating to Benelux deposits required by Articles 9 and 11; in the case of a renewal of a registration, only the registration number and the date of expiration of the registration shall be mentioned. In the case of a limited renewal of the registration of a multiple deposit, the publication of the renewal shall mention the numbers of the designs maintained;
- (b) all the registered particulars relating to international deposits required by Article 14(2);
- (c) the registration of the declaration referred to in Article 18:
- (d) the registration of the action to claim a deposit referred to in Article 19.

CHAPTER VI — Fees and Charges

Articles 26 to 30

CHAPTER VII — Entry into Force

Article 31

These Rules shall enter into force on January 1, 1975.

Π

Administrative Regulations of the Uniform Benelux Designs Law

(The Hague, October 29, 1974)

Article 1

- (1) The pattern of the forms (in format A4) referred to in Articles 1(3) and 3 of the Executive Rules ¹ is contained in the Annexes to these Regulations ².
 - (2) The forms shall be submitted in quadruplicate.

Article 2

- (1) The photographic representation of the outward appearance of the product, referred to in Article 1(1)(b) of the Rules, shall be a direct, clear black-and-white photograph with well-defined contrasts; it shall be printed on glazed white paper of square or rectangular shape; the product shall be photographed against a neutral background.
- (2) The graphic representation of the outward appearance of the product, referred to in Article 1(1)(b) of the Rules, shall be a clear reprographic copy of the original line drawing of the appearance of the product, in black on white paper. The line drawing shall be made in indelible black ink on white paper, and shall fit inside a rectangular area of the same format as the representation submitted.
- (3) The representations referred to in paragraphs (1) and (2) shall be submitted in the format in which the applicant wishes to have them published. The width and length of the representation shall not be less than four centimeters and must not exceed sixteen centimeters and twenty-four centimeters respectively.
- (4) Each representation shall be submitted in twenty copies, four of which shall be pasted to the forms referred to in Article 1 or to their attachments.

However, if the applicant claims protection for the color or colors of the design, he shall submit twenty copies of the representation in color, four of which shall be pasted to the forms referred to in Article 1 or on their attachments; he shall also submit two black-and-white copies of the representation.

The maximum and minimum dimension of the representations referred to above shall be identical with those specified in paragraph (3).

(5) The means of reproduction to be submitted with the representation referred to in paragraph (2) shall be the original line drawing.

Article 3

The standard space referred to in Article 26(1)(a)(2) and (b)(5) of the Rules is eight centimeters in width and six centimeters in length.

Article 4

Any application for amendments or additions to the registers kept by the Benelux Office shall be submitted in triplicate.

Letters or communications addressed to the Benelux Office or to the national Offices shall be submitted in duplicate.

Article 5

The acknowledgement of receipt of any document intended for registration in the registers kept by the Benelux Office shall be effected by returning one copy of the document or of the covering letter sent with it, stamped as provided in Article 20(2) of the Rules.

¹ See above p. 111.

² These annexes are not published here.

Article 6

If a general power of attorney is exercised, a copy of such power shall be produced at the time of all transactions.

Article 7

(1) The Benelux Office and the national Offices shall be open to the public, for transactions affecting the date of Benelux deposits, from Monday to Friday inclusive, from 10 a.m. to 12 noon and from 2 p.m. to 4 p.m., except on the following days:

January 1, Good Friday, Easter Monday, April 30, May 1, Ascension Day, Whit Monday, June 23, July 21, August 15, November 1, 2, 11 and 15, and December 25 and 26.

(2) If the Benelux Office or the national Offices are also closed at hours and on days other than those indicated above, a notice shall be published in the Recueil des Dessins ou Modèles Benelux.

Article 8

These Regulations shall enter into force on the date of the entry into force of the Uniform Law.

BELGIUM

Royal Decree

Organizing the Confirmatory Deposit provided for in Article 26 of the Uniform Benelux Designs Law

(Brussels, December 27, 1974)

- 1. Industrial design deposits effected in accordance with the provisions of Royal Decree No. 91 of January 29, 1935, or under Sections 14 to 19 of the Law of March 18, 1806, as amended by the Law of December 30, 1925, and by the Royal Decree of June 30, 1933, shall cease to have evidential value on January 1, 1975, unless a confirmatory deposit, as provided for in Article 26 of the Uniform Benelux Designs Law¹, has been effected in the course of 1975 with the Industrial Property Office (hereinafter referred to as "the Office"), in accordance with the provisions of this Decree.
- 2. (1) The confirmatory deposit shall be effected by the production, in triplicate, of a form placed at the disposal of interested parties by the Office, a model of which is annexed to this Decree ².
 - (2) The form shall contain:
 - (i) the surname and given names, or trade name or corporate designation, and address, of the applicant;
 - (ii) if the applicant is a legal entity, an indication of what kind of legal entity it is;
 - ¹ See Industrial Property, 1974, p. 178.
 - ² The model is not published here.

- (iii) if the deposit is made through the intermediary of an agent, the surname, given names and address of that agent;
- (iv) the date (year, month, day, hour, minute) and the number of the prior deposit, and the court office at which that deposit was made;
- (v) an indication of the type of industry to which the previously-deposited designs related;
- (vi) if the prior deposit consisted of several designs, an indication of those of the designs included in the confirmatory deposit;
- (vii) the signature of the applicant or his agent.

A photographic or graphic representation of the previously-deposited designs shall accompany the form.

- (3) If, at the time of the prior deposit, the right of priority provided for in Article 4 of the Paris Convention for the Protection of Industrial Property was claimed, that fact may be mentioned on the form, with an indication of the date, the country and the number of the deposit on which the right of priority was based.
- (4) Each confirmatory deposit shall relate to one prior deposit only.
- 3. The photographic or graphic representation of a previously-deposited design shall be on white paper and shall show contrasts clearly. Its dimensions may not exceed eighteen by twenty-four centimeters. Each representation shall be submitted in ten copies.
- 4. The confirmatory deposit may be effected through the intermediary of an agent. The agent shall have a residence or place of business in Belgium and shall produce a general or special power of attorney. If a general power of attorney is used, a copy thereof shall be produced.

An applicant who has neither a residence nor a place of business in Belgium, and who does not effect the confirmatory deposit through the intermediary of an agent, shall state an address for service within the Kingdom.

In the cases referred to in the foregoing paragraphs, any communication from the Office relating to the deposit shall be sent to the residence or place of business of the agent or the address for service of the applicant, as the case may be.

- 5. If, at the time of the confirmatory deposit, not all the provisions of this Decree have been complied with, the Office shall inform the party concerned accordingly. The latter may complete his application by December 31, 1975, failing which the documents received shall not be processed further. The party concerned shall be notified accordingly.
- 6. All documents shall be dated on receipt by the deposit bureau of the Office, whether they are handed over directly or sent by mail. The form shall also be given a serial number.

The deposit bureau shall be open to the public on all working days except Saturdays, from 10 a.m. to 12 noon and from 2 to 4 p. m.

- 7. If the deposit complies with all the provisions of this Decree, the Director of the Office or a person delegated by him shall affix his signature to each copy of the form and its annexes; these documents shall be stamped with the stamp of the Office; each copy shall also indicate the date on which the signature was affixed to it. A copy of the form and of the representation or representations attached to it shall then be handed to the applicant or to his agent, as the case may be, and shall constitute proof that the deposit has been made.
- 8. As from the day mentioned in Article 7, the documents constituting the confirmatory deposit may be consulted by the public in the reference room of the Office.

As from the same day, photocopies of those documents may be obtained at the prices fixed by the Royal Decree of November 10, 1956, on the pricing of publications and documents issued by the Industrial Property Office, as amended by the Royal Decree of August 26, 1963.

At the request of interested parties, photocopies of the aforementioned documents shall be certified, by the Director of the Office, or a person delegated by him, as being in conformity with the documents reproduced.

9. — This Decree shall enter into force on January 1, 1975.

FRANCE

Order

concerning the denominations of plant varieties in respect of which either an entry has been made in the Catalogue of Species and Varieties of Cultivated Plants or a plant variety certificate has been issued

(made on March 14, 1974, by the Minister of Agriculture and Rural Development)

1. — The denominations of plant varieties, provided for in the above texts ¹ with a view to the recording of the varieties in the Catalogue of Species and Varieties of Cultivated Plants or to the issue of new plant variety certificates, must permit those varieties to be identified without risk of error or confusion, particularly with respect to the origin, source, characteristics or value of the variety, or the identity of the breeder.

To this end, the denomination proposed by the breeder on his own responsibility must comply with the provisions set forth in Sections 3 and following of this Order.

2. — When a denomination has already been used at the time of its entry in the Common Catalogue of Varieties of Agricultural Plant Species, or at the time of the grant of a

title of protection in one of the member States of the International Union for the Protection of New Varieties of Plants, it must also be used in France for the entry in the Catalogue of Species and Varieties of Cultivated Plants, or to identify the variety in a new plant variety certificate.

However, the breeder may be authorized to propose another denomination if reasons of language or public order prevent the use of the pre-existing denomination in France.

In such a case the synonymity shall be mentioned in the Catalogue of Species and Varieties of Cultivated Plants or in the new plant variety certificate.

- 3. The denomination shall consist of one to three words with or without a pre-existing meaning and must be easy to pronounce and to remember.
- 4. Figures up to a maximum of four may be included in the denomination if they are complementary to the meaning of the preceding word or words.

A denomination may not be formed by substituting figures for other figures appearing in a denomination already in use, or by adding figures to or removing figures from a denomination.

- 5. A denomination may not contain any element liable to hinder the free use of the denomination or the free commercialization of the variety.
- 6. The provisions of Section 10 of Decree No. 71-765, referred to above ² concerning the use of a trademark in conjunction with a variety denomination shall apply to the commercialization of all the varieties entered in the Official Catalogue of Cultivated Plants or in the Common Catalogue.
- 7. Notwithstanding the foregoing Sections, when a variety serves solely for the production of reproductive material for other varieties, the denomination of that variety may consist of a combination of letters and figures if that type of denomination corresponds to an established custom at the international level for the species concerned.
- 8. Denominations entered in the Catalogue of Species and Varieties of Cultivated Plants as of the date of this Order shall retain their validity. However, the breeder may be authorized to substitute for the existing denomination a denomination complying with the provisions of Sections 3 and following of this Order.
- 9. The Director of Production, Markets and Foreign Trade and the Director General of Administration and Financing (Department for the Repression of Fraud and for Quality Control) shall each be responsible, within his sphere of interests, for the application of this Order, which shall be published in the *Journal Official* of the French Republic.

¹ I. e. in the preamble, which is not published here.

² I. e. the Decree Fixing the List of Plant Species for which new plant variety certificates may be issued as well as the scope and duration of breeders' rights in the case of each plant species, *Industrial Property*, 1971, p. 340.

NEW ZEALAND

Plant Varieties Act 1973 *

(1973, No. 37)

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Short Title and commencement

- 1. (1) This Act may be cited as the Plant Varieties Act 1973.
- (2) This Act shall come into force on a date to be appointed for the commencement thereof by the Governor-General by Order in Council ¹.

Interpretation

- 2. In this Act, unless the context otherwise requires, -
- "Appeal Authority" means the Appeal Authority constituted under section 25 of this Act:
- "Breeder" means the breeder or discoverer of a new plant variety, his duly authorised agent, or his successor in title:
- "Gazette" means the New Zealand Gazette; and includes the Plant Varieties Journal:
- "Grant of plant selectors' rights" or "grant" means a grant of plant selectors' rights made under this Act:
- "Minister" means the Minister of Agriculture and Fisheries:
- "Plant Varieties Office" means the Plant Varieties Office established under section 5 of this Act:
- "Plant variety" or "variety" means any cultivar, clone, line, stock, or hybrid which is capable of cultivation:
- "Registrar" means the Registrar of Plant Varieties appointed in accordance with paragraph (a) of subsection (1) of Section 7 of this Act; and, to the extent specified in subsection (3) of that section, includes an Assistant Registrar of Plant Varieties appointed in accordance with that section:
- "Reproductive material" means reproductive material of plant varieties; and includes seeds for sowing, vegetative propagating material, and whole plants, and parts of plants where such parts may be used as propagating material:
- "Sale" includes any disposition for valuable consideration and any offer for sale; and "Sell" and "sold" have corresponding meanings.

Act to bind the Crown

3. — This Act shall bind the Crown.

Application of Act

4. — This Act shall apply to all plant varieties, groups of plant varieties, and species of plants to which the Governor-General, by Order in Council that is for the time being in force, declares that this Act shall apply.

Plant Varieties Office

- 5. (1) The Minister may from time to time, by notice in the *Gazette*, appoint a place to be the Plant Varieties Office.
- (2) The Minister, from time to time by notice in the Gazette, may fix the hours during which the Plant Varieties Office shall be open for the transaction of public business under this Act, and may authorise the closing of the Plant Varieties Office for the transaction of public business on any day.
- (3) Where the time prescribed for doing any act or taking any proceeding expires on a day on which the Plant Varieties Office is not open and by reason thereof the act or proceeding cannot be done or taken on that day, the act or proceeding shall be deemed to be in time, if it is done or taken on the next day on which the Plant Varieties Office is open.

^{*} Short title

¹ By Order in Council made on September 23, 1974, this Act came into force on October 1, 1974.

Seal of Plant Varieties Office

- 6. (1) There shall be a seal of the Plant Varieties Office which shall be authenticated by the signature of the Registrar.
- (2) Notice shall be taken judicially without further proof of $\,$
 - (a) The seal of the Plant Varieties Office; and
 - (b) The appointment and signature of the Registrar.

Registrar and other officers

- 7. (1) There may from time to time be appointed under the State Services Act 1962
 - (a) A Registrar of Plant Varieties:
 - (b) Such other officers and employees as may be necessary for carrying out the provisions of this Act.
- (2) All such appointees shall be officers or employees of the Plant Varieties Office and as such shall be officers or employees of the Ministry of Agriculture and Fisheries. Any such appointment may be held either separately or in conjunction with any other office in that Ministry.
- (3) In the event of any person being appointed in accordance with paragraph (b) of subsection (1) of this section to be an Assistant Registrar of Plant Varieties, that person, while he retains that office, shall have and may exercise, subject to the control and direction of the Registrar, all the powers, duties, and functions of the Registrar; and all references in this Act to the Registrar shall, so far as may be necessary for the purpose of giving effect to the provisions of this section, be deemed to include a reference to every Assistant Registrar of Plant Varieties.

Committees

- 8. (1) The Minister may from time to time, by notice in the *Gazette*, appoint advisory committees to assist the Registrar for such purposes and during such periods as the Minister considers desirable.
- (2) It shall be the duty of a member of an advisory committee who is in any way, whether directly or indirectly, interested in any application being considered by the committee to declare to the Registrar the nature of his interest.

Officers and employees of Plant Varieties Office not to acquire interest in grant of plant variety rights

- 9. (1) Every officer and employee of the Plant Varieties Office shall be incapable, during the period for which he holds his appointment and for one year thereafter, of applying under this Act for a grant of plant variety rights or of acquiring directly or indirectly, except under a will or on an intestacy, any right or interest in any such grant.
- (2) Every person who acts in contravention of this section commits an offence and is liable on summary conviction to a fine not exceeding \$ 500.

Delegation

10. — (1) The Registrar may from time to time, by writing under his hand, either generally or particularly, delegate

- to such officer or officers or employee or employees of the Plant Varieties Office as he thinks fit all or any of the powers conferred on him by or under this Act or any other Act, including any powers delegated to him under any other Act, but not including this present power of delegation.
- (2) Subject to any general or special directions given or conditions attached by the Registrar, the officer or employee to whom any powers are delegated under this section may exercise those powers in the same manner and with the same effect as if they had been conferred on him directly by this section and not by delegation.
- (3) Every person purporting to act pursuant to any delegation under this section shall be presumed to be acting in accordance with the terms of the delegation in the absence of proof to the contrary.
- (4) Any delegation under this section may be made to a specified officer or employee or to officers or employees of a specified class, or may be made to the holder or holders for the time being of a specified office or class of offices.
- (5) Every delegation under this section shall be revocable at will, and no such delegation shall prevent the exercise of any power by the Registrar.
- (6) Any such delegation shall, until revoked, continue in force according to its tenor, notwithstanding the fact that the Registrar by whom it was made may have ceased to hold office, and shall continue to have effect as if made by the successor in office of that Registrar; and in the event of the holder of a specified office to whom any such delegation has been made ceasing to hold office, it shall continue to have effect as if made to the person for the time being holding that office.

Publication of certain matters

- 11. (1) The Registrar shall publish in the Gazette all such particulars of applications for and grants of plant selectors' rights as are prescribed by regulations made under this Act and all such other matters as are directed by this Act or otherwise by law to be published therein and such other matters and information as may appear to him to be useful or important.
- (2) The Registrar may prepare and publish, in such form as he thinks expedient, such indexes, particulars, abridgments of particulars, catalogues, and other works relating to plant varieties and grants of plant selectors' rights, as he thinks fit.
- (3) The Registrar may maintain and revise from time to time a classification by variety of details filed in the Plant Varieties Office and open to public inspection and of such printed publications relating to plant selectors' rights as may be necessary or useful for the purpose of determining with readiness and accuracy the novelty of varieties for which applications for grants of plant selectors' rights are filed.
- (4) All persons shall be deemed to have notice of an application for or grant of plant selectors' rights when the application or grant is notified in the *Gazette* as provided in this Act.

Provision for publication of Plant Varieties Journal

- 12. (1) While the volume of matters to be published in the Gazette pursuant to this Act warrants their inclusion in a separate journal, the Registrar may issue periodically a journal, to be called the Plant Varieties Journal, which shall contain those matters.
- (2) At least 28 days before the Registrar commences to issue the Plant Varieties Journal, he shall publish in the Gazette notice of his intention to do so.
- (3) If at any time the Registrar proposes to cease issuing the Plant Varieties Journal, he shall, at least 28 days hefore doing so, publish in that Journal notice of his intention to do so.
- (4) For the purposes of this Act publication in the Plant Varieties Journal shall be deemed to be publication in the Gazette, and references in this Act to the Gazette shall be construed accordingly.

Application for grant

- 13. (1) An application for a grant of plant selectors' rights in respect of any new plant variety to which this Act applies that has not previously been sold in New Zealand, and that has not been sold overseas for more than 4 years before the date of the application, may be made to the Registrar by or on behalf of any person claiming to be the breeder of a new plant variety, and may be made by any such person either alone or jointly with any other person.
- (2) An application for a grant of plant selectors' rights may be withdrawn by the applicant at any time before the grant is made. The withdrawal of an application shall not affect the liability of the applicant for fees that have become payable up to the date of the withdrawal.

Requirements of application

- 14. Every application to the Registrar for a grant of plant selectors' rights under this Act shall be in writing, and shall be accompanied by
 - (a) Details of whether the plant variety was bred or discovered, or whether it resulted from a natural or induced mutation:
 - (b) A description upon a form provided for the purpose by the Registrar detailing the botanical features of the variety in addition to diagrams and coloured photographs, as required by the Registrar:
 - (c) Details of the features and qualities of the variety which the applicant considers distinguish it from known varieties of the same species:
 - (d) A proposed name or other form of identification of the variety which, if approved, will form part of the grant of plant selectors' rights:
 - (e) Details of any application for, or approval of a grant of rights for, the variety in an overseas country:
 - (f) Such fees as may be prescribed from time to time by regulations made under this Act.

Prerequisites to grant

- 15. (1) Before the Registrar may make a grant of plant selectors' rights pursuant to any application, he shall be satisfied that the plant variety to which the application relates conforms with the criteria contained in the Schedule to this Act.
- (2) The Registrar may require that any plant variety in respect of which an application for a grant of plant selectors' rights is made be test grown for such period, and in such place (whether in New Zealand or elsewhere), and subject to such conditions, as he thinks fit before he makes the grant, and may require that reproductive material and information necessary for the trials shall be supplied.
- (3) If the Registrar considers that a plant variety does not comply with the criteria referred to in subsection (1) of this section, he may—
 - (a) Refuse to make a grant of plant selectors' rights in respect of the variety; or
 - (b) Make the grant subject to such conditions as he thinks fit.
- (4) Any application which has been deferred for want of information, fees, or reproductive material for trial for one year from the date of application, may be declared null and void, or lose priority, as the Registrar sees fit.

Application to be notified

16. — Every application for a grant of plant selectors' rights shall be notified in the *Gazette*, and shall thereafter be open to public inspection.

Restriction upon publication before notification

- 17. (1) An application for a grant of plant selectors' rights, and any document or instrument which accompanies it, shall not, except with the consent of the applicant, be published by the Registrar or be open to public inspection at any time before it is notified in the Gazette pursuant to section 16 of this Act.
- (2) The reports made by an advisory committee and the Registrar and his officers and employees in relation to any application for a grant of plant selectors' rights shall not be liable to production or inspection in any legal proceeding unless the Court or officer having power to order discovery in the proceeding certifies that the production or inspection is desirable in the interests of justice, and ought to be allowed.

Protective direction

- 18. (1) Any hreeder who has duly deposited an application for protection of a new plant variety may apply to the Registrar for a protective direction while the application is being considered.
- (2) Every breeder applying for a protective direction shall undertake not to sell or offer for sale plants of that variety while the application is being considered, unless the sale is for scientific purposes or of non-reproductive material:

Provided that the sale of the subsequent rights or the sale of reproductive material for the purposes of bulking up of stock for subsequent resale to the applicant shall be exempt from the provisions of this subsection.

- (3) If the applicant satisfies the requirements of subsection (2) of this section, the Registrar may grant a protective direction, and while such a protective direction is in force anything which, if the plant selectors' rights to which the application in question relates had been granted, would have constituted an infringement of those rights shall he actionable under this section as if it were such an infringement.
- (4) If the Registrar has reason to suspect that an applicant for a protective direction is not the breeder of the plant in respect of which application is made, he may refuse to grant a protective direction.
- (5) The Registrar may withdraw a protective direction if requested to do so hy the applicant or if he is satisfied that
 - (a) The applicant has given an undertaking, whether or not for consideration, not to institute proceedings under this section; or
 - (b) A breach of the provisions of subsection (2) of this section has occurred.
- (6) As soon as the Registrar has made a decision pursuant to section 15 of this Act to make a grant or to refuse to make a grant of plant selectors' rights, the protective direction in respect of that plant shall lapse.
- (7) An appeal shall lie to the Appeal Authority in accordance with section 26 of this Act against any decision of the Registrar under this section, and notwithstanding subsection (6) of this section, until a decision has been made by the Appeal Authority in respect of the appeal, any protective direction that has been granted to the appellant in respect of that plant shall continue in force.

Objections

- 19. (1) If any interested person considers that he is likely to he unfairly affected by any application for a grant of plant selectors' rights which has been notified in the Gazette as aforesaid, he may lodge an objection to the application with the Registrar within 2 months from the date of the notification of the application in the Gazette. Where an objection is so lodged, the objector shall, as soon as practicable thereafter, serve a copy thereof on the applicant for the grant.
- (2) Every such objection shall specify the reasons for the objection, and shall he accompanied by the fee prescribed by regulations made under this Act.
- (3) Where an objection to an application has been lodged with the Registrar, the Registrar shall not make any grant of plant selectors' rights pursuant to the application until he has considered the objection and given the objector and the applicant for the grant a reasonable opportunity to he heard in respect thereof.

Date and term of grant

20. — (1) Every grant of plant selectors' rights shall be dated with the date of the completion of the granting of the application.

- (2) Except as otherwise expressly provided in this Act, the term of every grant shall he,
 - (a) In the case of a grant in respect of any fruit trees, vines, or forest or ornamental trees to which this Act for the time heing applies, a term of 18 years:
 - (b) In the case of every other grant, a term of 15 years.
- (3) The Registrar shall enter the date of every grant in a register which he shall keep for the purpose.
- (4) A grant shall cease to have effect, notwithstanding anything therein or in this Act, on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within that period.
- (5) The holder of a grant of plant selectors' rights may at any time make an application to the Registrar offering to surrender his grant; and if, after notice of the application has been given in the manner prescribed by regulations under this Act, and after the procedure so prescribed for hearing any person on whom the right to object is conferred hy such regulations has heen followed, the Registrar is satisfied that the grant may properly he surrendered, he may accept the offer and terminate the period for which the grant shall have effect.

Extension of term of grant

- 21. If on an application made hy the holder of a grant of plant selectors' rights the Registrar is satisfied that the holder of the grant has not been adequately remunerated hy it, the Registrar may, by order, subject to such restrictions, conditions, and provisions (if any) as may be specified in the order,—
 - (a) Extend the term of the grant for a period not exceeding 5 years; or
 - (b) In exceptional cases, notwithstanding that the term of of the grant has been previously extended or has expired, grant extension for a further term not exceeding 5 years.

Rights of grantee

- 22. (1) Every person who is for the time being the holder of a grant of plant selectors' rights shall, during the term of the grant or any extension thereof granted under section 21 of this Act have the exclusive right to—
 - (a) Reproduce for sale, sell, or offer for sale whole plants or reproductive material of the plant variety to which the grant relates:
 - (b) License others to reproduce or sell, or to hoth reproduce and sell, plants and reproductive material of that plant variety, subject to such conditions as he may impose including the payment of a royalty.
- (2) Notwithstanding anything in this section, where it is necessary in the public interest to restrict the holder of a grant of plant selectors' rights from freely exercising those rights, the Minister may impose such restrictions on the exercise of those rights as he thinks fit.
- (3) Notwithstanding subsection (1) of this section, any person may, without the authority of the holder of a grant of plant selectors' rights,—

- (a) Propagate, grow, and use plants of the variety to which the grant relates for non-commercial purposes:
- (b) Hybridise any such plant or otherwise produce new varieties from it:
- (c) Use plants or parts of plants to which the grant relates for human consumption or other non-reproductive purposes.
 - (4) Nothing in this Act shall prevent --
- (a) The holder of a grant of plant selectors' rights from assigning, mortgaging, or otherwise disposing of his grant; or
- (b) The devolution of any such grant by operation of law.

Obligations of grantee, and compulsory licences

- 23. (1) Notwithstanding anything in section 22 of this Act, the holder for the time being of a grant of plant selectors' rights shall ensure that plants of reasonable quality of the variety to which the grant relates are available to the public in reasonable quantities and at a reasonable price.
- (2) Upon the application of any person, if the Registrar considers that the provisions of subsection (1) of this section have not been complied with by the holder of any grant, and after the Registrar has done whatever may be practicable to give the holder notice of the application and an opportunity of being heard, the Registrar may issue to the applicant a compulsory licence for the reproduction and sale of plants of the variety to which the grant relates in accordance with the provisions of subsection (1) of this section and subject to such conditions as the Registrar may impose, including the payment of a royalty.
- (3) Subject to the provisions of this Act, upon the application of any person, the Registrar may, if he thinks fit, extend, limit, or vary in any other respect, or revoke, a compulsory licence.

Revocation of a grant

- 24. (1) If at any time during the term of a grant the Registrar is satisfied that the criteria set out in the Schedule to this Act were not effectively complied with at the time of the application for the grant, he may declare the grant to be null and void.
- (2) At any time commencing with the date of making a grant of plant selectors' rights, until the term of the grant expires, the Registrar may declare the grant null and void if he is satisfied that the breeder is no longer in a position to provide the Registrar, within a reasonable period, with reproductive material capable of producing the new variety with its morphological, physiological, and other characteristics as defined when the grant was made.
- (3) Where the Registrar revokes any grant under this section, or refuses to renew any grant on an application for its renewal, the grant shall (notwithstanding the Registrar's decision) be deemed to be only suspended while it is still open for any person to appeal to the Appeal Authority, and thereafter while any appeal to that Authority has not been disposed of or withdrawn:

Provided that the Registrar may, in his discretion, direct that a grant which he has revoked or suspended shall remain valid pending the disposal or withdrawal of any appeal and while it is still open for any person to appeal to the Appeal Authority.

Appeal Authority

- 25. (1) There shall be an Appeal Authority to be known as the Plant Varieties Appeal Authority.
- (2) The Appeal Authority shall consist of 3 members, of whom one, being a barrister of not less than 7 years' practice, shall be appointed as Chairman.
- (3) Every member of the Appeal Authority shall be appointed by the Minister of Justice with the concurrence of the Minister of Agriculture and Fisheries, and (except as otherwise provided in this Act) shall hold office for a term of 3 years, but may from time to time be reappointed.
- (4) Nothing in this Act shall make it necessary for any appointment to the Appeal Authority to be made before the Minister of Justice is advised by the Registrar under subsection (1) of section 27 of this Act of the receipt of the first appeal.
- (5) Any member of the Appeal Authority may at any time be removed from office by the Minister of Justice for disability, bankruptcy, neglect of duty, or misconduct, proved to the satisfaction of that Minister, or may at any time resign his office by writing addressed to that Minister.
- (6) If any member of the Appeal Authority dies, resigns, or is removed from office, the vacancy so created shall be filled by the appointment by the Minister of Justice with the concurrence of the Minister of Agriculture and Fisheries of a qualified person. Every member appointed under this subsection shall hold office for the residue of the term for which his predecessor was appointed.
- (7) Unless he sooner vacates office as provided in subsection (6) of this section, every member of the Appeal Authority shall continue in office until his successor comes into office, notwithstanding that the term for which he was appointed may have expired.
- (8) The powers of the Appeal Authority shall not be affected by any vacancy in the membership thereof.
- (9) The Appeal Authority may seek advice and assistance from competent persons in respect of any particular plant under appeal. Where the Appeal Authority receives any such advice in connection with any appeal, it shall give particulars thereof to every party to the appeal.
- (10) The Secretary for Justice shall designate an officer of the Department of Justice to be the Secretary of the Appeal Authority, and shall provide such secretarial, recording, and clerical services as may be necessary to enable the Appeal Authority to discharge its functions.

Right of appeal to Appeal Authority

26. — (1) Any person affected by a decision of the Registrar withholding any grant of plant selectors' rights or protective direction may, within 28 days after the date on which

notice of the decision is given to him by the Registrar, appeal to the Appeal Authority against the decision on the ground that the grant or direction was improperly withheld and should have been made or given.

- (2) Any person affected by any grant of plant selectors' rights or protective direction may, at any time, appeal to the Appeal Authority against the grant or direction upon the ground that—
 - (a) The grant or direction infringes some existing right of the original breeder; or
 - (b) The grant or direction was made or given in contravention of the requirements of this Act.
- (3) Any person affected by any other decision of the Registrar
 - (a) Relating to an application for a grant of plant selectors' rights or for the renewal of such a grant; or
- (b) Imposing any condition in respect of any such grant—may, within 28 days after the date on which notice of the decision is given to him by the Registrar, appeal to the Appeal Authority against the whole or any part of the decision.
- (4) In any case where a compulsory licence is issued, extended, or varied under section 23 of this Act, the holder of the grant immediately before the issue, extension, or variation of the compulsory licence, or any person claiming through or under him, may, within the period specified in subsection (6) of this section, appeal to the Appeal Authority against the issue, extension, or variation, of the licence.
- (5) In any case where a compulsory licence is limited, varied, or revoked under section 23 of this Act, the holder of the licence immediately before the limitation, variation, or revocation of the compulsory licence, or any person claiming through or under him, may, within the period specified in subsection (6) of this section, appeal to the Appeal Authority against the limitation, variation, or revocation of the licence.
- (6) No appeal under subsection (4) or subsection (5) of this section shall lie after the expiration of 28 days from the first of the following dates:
 - (a) The date on which any person who is entitled to appeal under the subsection is served with notice, or otherwise becomes aware, of the issue, extension, limitation, variation, or revocation (as the case may be) of the compulsory licence; or
 - (b) The date on which notice of the issue, extension, limitation, variation, or revocation (as the case may be) is first published in the *Gazette*.
- (7) Every appeal to the Appeal Authority shall be made in writing and shall be lodged with the Registrar.

Hearing of appeals

- 27. (1) On receipt of the first appeal after the commencement of this Act, the Registrar shall immediately inform the Minister of Justice, who shall, with the concurrence of the Minister of Agriculture and Fisheries, thereupon make the prescribed appointments to the Appeal Authority.
- (2) On receipt of a notice of appeal, the Registrar shall appoint a day and place for the hearing of the appeal, and

shall notify the appellant and the Appeal Authority of the day and place so appointed.

- (3) The Appeal Authority may adjourn the hearing of any appeal from time to time and from place to place.
- (4) All appeals shall be heard in public unless the Appeal Authority in any particular case, due regard being had to the interests of all persons concerned and to the public interest, considers that the hearing or any part of it should take place in private.
- (5) At the hearing of any appeal, the Appeal Authority may hear all evidence tendered and representations made by or on behalf of the appellant, the Registrar, and other persons, being evidence which it considers relevant to the appeal, whether or not the evidence would be otherwise admissible in a Court of law:

Provided that, at any time during the hearing, if the Appeal Authority considers that it has sufficient evidence to arrive at a decision on the appeal, it may decide not to receive further evidence or representations which would support the proposed decision.

- (6) At the hearing of any appeal, the Registrar may, after the presentation of evidence by the appellant, furnish to the Appeal Authority reasons for the decision appealed against and all available evidence on which the decision was based.
- (7) At the hearing of any appeal, the appellant, the applicant or holder of the right (if other than the appellant), and the Registrar may each be represented by counsel or any advocate.
- (8) Subject to the provisions of this Act and any regulations made under this Act, the Appeal Authority may regulate its procedure in such manner as it thinks fit, and for that purpose may make such rules as it thinks fit.

Decisions of Appeal Authority

- 28. (1) The Appeal Authority, after hearing any appeal, may—
 - (a) Confirm the decision of the Registrar; or
 - (b) Modify or reverse the decision or any part of the decision of the Registrar; or
 - (c) Order a grant to be made to the applicant, or order a protective direction to be given or cancelled, or order any grant that has expired or is due to expire to be renewed, or order a grant to be restored to its holder, or order the reversal of any decision of the Registrar revoking or suspending the grant or issuing a compulsory licence, or make such other order as the case may require:

Provided that nothing in this subsection shall give the Appeal Authority power to review any part of the Registrar's decision other than the part against which the appellant has appealed.

- (2) The decision of not fewer than 2 members of the Appeal Authority shall be the decision of the Authority.
- (3) The Appeal Authority shall in each case state reasons for its decision, which decision and reasons shall, if so

requested by the appellant or the Registrar, be delivered in writing.

(4) On any appeal to it, the Appeal Authority may make an order for the payment by or to the Registrar, as the case may be, of the costs incurred in respect of the appeal, including the costs and expenses of the Appeal Authority; and in any such case the costs so awarded may be recovered as a debt due from the party against whom they have been awarded to the party in whose favour they have been awarded.

Appeal Authority deemed to be Commission of Inquiry

29. — On any appeal the Appeal Authority shall be deemed to be a Commission of Inquiry under the Commissions of Inquiry Act 1908, and all the provisions of that Act, except sections 2 and 4A and sections 11 to 15 shall apply accordingly. For the purposes of this subsection, the power to issue summonses requiring the attendance of witnesses before the Appeal Authority, or the production of documents, or the doing of any other act preliminary or incidental to the hearing of any matter by the Appeal Authority, may be exercised by the Chairman, or by the Registrar purporting to act by the direction or authority of the Chairman.

Appeal to Supreme Court

- 30. (1) Where any person who is entitled to appeal under subsection (3) of this section is dissatisfied with any decision of the Appeal Authority as being erroneous in point of law, he may appeal to the Supreme Court by way of case stated for the opinion of the Court on a point of law only.
- (2) Every such appeal shall be heard and determined by the Administrative Division of the Supreme Court.
- (3) The following persons and no others may appeal under this section:
 - (a) The person in respect of whose application the decision of the Appeal Authority was given:
 - (b) Any other person affected by the decision.
- (4) Within 1 month after the date of the decision appealed against, the appellant shall lodge a notice of appeal with the Secretary of the Appeal Authority. The appellant shall forthwith deliver or post a copy of the notice to every other party to the proceedings in which the decision was given.
- (5) Within 14 days after the lodging of the notice of appeal, or within such further time as the Chairman of the Appeal Authority may in his discretion allow, the appellant shall state in writing and lodge with the Secretary of the Appeal Authority a case setting out the facts and the reasons given by the Appeal Authority for its decision, and specifying the question of law on which the appeal is made. The appellant shall forthwith deliver or post a copy of the case to every other party to the proceedings.
- (6) As soon as practicable after the lodging of the case, the Secretary of the Appeal Authority shall submit it to the Chairman of the Appeal Authority.
- (7) The Chairman shall, as soon as practicable, and after hearing the parties if he considers it necessary to do so, settle

the case, sign it, send it to the Registrar of the Supreme Court at Wellington, and make a copy available to each party.

- (8) The settling and signing of the case by the Chairman shall be deemed to be the statement of the case by the Appeal Authority.
- (9) If within 14 days after the lodging of the notice of appeal, or within such further time as may be allowed, the appellant does not lodge a case pursuant to subsection (5) of this section, the Chairman of the Appeal Authority may certify that the appeal has not been prosecuted.
- (10) The Supreme Court or a Judge thereof may in its or his discretion, on the application of the appellant or intending appellant, extend any time prescribed or allowed under this section for the lodging of a notice of appeal or the stating of any case.
- (11) Subject to the provisions of this section, the case shall be dealt with in accordance with rules of Court.

Suspension of decision while appeal pending

31. — Where any decision of the Registrar or the Appeal Authority is appealed against, the operation of that decision shall be suspended until the final decision of the appeal.

Service of notices, etc.

- 32. (1) Where any notice has to be given or any document has to be served under this Act, it may be given or served by —
- (a) Delivering it to the person to whom it has to be given or on whom it has to be served; or
- (b) Leaving it at the usual or last known place of abode in New Zealand of that person; or
- (c) Sending it by post in a registered letter addressed to that person at his usual or last known place of abode in New Zealand.
- (2) Where a notice or document is sent by post in the manner prescribed by paragraph (c) of subsection (1) of this section, it shall be deemed to have been given or served at the time at which the letter would have been delivered in the ordinary course of post.
- (3) For the purposes of this section every applicant for a grant of plant selectors' rights shall nominate an address for service within New Zealand.

Remuneration and travelling allowances

- 33. (1) The Appeal Authority, and every committee appointed under section 8 of this Act, is hereby declared to be a statutory Board within the meaning of the Fees and Travelling Allowances Act 1951.
- (2) There may be paid to the members of the Appeal Authority and any such committee remuneration by way of fees, salary, or allowances, and travelling allowances and expenses, in accordance with the Fees and Travelling Allowances Act 1951, and the provisions of that Act shall apply accordingly.

Fees

- 34. (1) Subject to the provisions of this Act, there shall be paid in respect of the grant of plant selectors' rights and application therefor, and in respect of other matters relating to such grants arising under this Act, such fees as may be from time to time prescribed by regulations made under this Act, and all such fees shall be paid into the Public Account to the credit of the Consolidated Revenue Account.
- (2) Any sum paid to the Registrar by mistake, and any sum the payment of which is not required by regulations made under this Act, may be refunded by the Registrar, and all money so refunded shall be paid out of the Consolidated Revenue Account without further appropriation than this Act.

Offences

- 35. (1) Every person who makes or causes to be made a false entry in the register kept under this Act, or a writing falsely purporting to be a copy of an entry in that register, or who produces or tenders or causes to be produced or tendered in evidence any such writing, knowing the entry or writing to be false, commits an offence, and is liable on conviction on indictment to imprisonment for a term not exceeding 2 years.
- (2) Every person who falsely represents that he or another person is the holder of a grant of plant selectors' rights, or that he or another person has applied for such a grant, commits an offence and is liable on summary conviction to a fine not exceeding \$ 200.
- (3) Every person who falsely represents that a plant sold by him is of a variety that is the subject of a grant of plant selectors' rights or the subject of an application for such a grant commits an offence and is liable on summary conviction to a fine not exceeding \$ 100.
- (4) Every person who, by using on his place of business or on any document issued by him or otherwise the words "Plant Varieties Office" or any other words, suggests that his place of business is or is officially connected with the Plant Varieties Office commits an offence and is liable on summary conviction to a fine not exceeding \$ 200.
- (5) Every person who commits a breach of any undertaking given in accordance with subsection (2) of section 18 of this Act commits an offence and is liable on summary conviction to—
 - (a) A fine not exceeding \$ 100 for a first offence; and
 - (b) A fine not exceeding \$200 for a second or subsequent offence.
- (6) The Summary Proceedings Act 1957 is hereby amended by inserting in Part II of the First Schedule, in its appropriate alphabetical order, the following item:

"The Plant Varieties Act | Section 35(1) | Falsification of register, etc."

Act to be administered by Ministry of Agriculture and Fisheries

36. — The Ministry of Agriculture and Fisheries Act 1953 is hereby amended by inserting in the Schedule, in their appropriate alphabetical order, the words "The Plant Varieties Act 1973".

Regulations

- 37. The Governor-General may from time to time, by Order in Council, make regulations for all or any of the following purposes:
 - (a) Regulating the business of the Plant Varieties Office:
 - (b) Regulating all matters which are by this Act placed under the direction or control of the Registrar:
 - (c) Prescribing the form and manner of applications for grants and the surrender of grants, and the form of diagrams, photographs, and other documents which may be filed in the Plant Varieties Office; and requiring copies to be furnished of any such applications, diagrams, photographs, and documents:
 - (d) Regulating the procedure to be followed in connection with any application or request to the Registrar and in connection with any proceeding before the Registrar, and authorising the rectification of irregularities of procedure:
 - (e) Prescribing classes of persons whom the Registrar may refuse to recognise as agents in respect of proceedings under this Act:
 - (f) Authorising the preparation, publication, sale, and exchange of copies of diagrams, photographs, and documents in the Plant Varieties Office, and of indexes to and abridgments of them:
 - (g) Prescribing the mode of publishing any matters which by this Act are required to be published:
 - (h) Prescribing fees and charges for anything authorised by this Act:
 - (i) Providing for the testing and treatment of plant varieties to which applications under this Act relate:
 - (j) Providing for the naming of varieties and prescribing the criteria to be met in selecting such names:
 - (k) Providing for such matters as are contemplated by or necessary for giving full effect to the provisions of this Act and for the due administration thereof.

SCHEDULE

Section 15

Criteria for a Grant of Plant Selectors' Rights

- 1. The variety shall be distinguishable by one or more important characteristics from any other variety whose existence is a matter of common knowledge at the time when protection is applied for. A new variety may be defined and distinguished by morphological, physiological, or other characteristics. In all such cases, such characteristics must be capable of precise description and recognition.
- 2. The new variety shall be sufficiently homogeneous, having regard to the particular features of its sexual reproduction or vegetative propagation.
- 3. The new variety shall be stable in its essential characteristics, that is to say, it shall remain true to its description after repeated propagation or reproduction, or where the breeder has defined a particular cycle of reproduction or multiplication, at the end of each cycle.

ROMANIA

Communication

concerning the Temporary Protection of Inventions, Trademarks and Service Marks Exhibited at the International Exhibition TIBCO '75 — Bucharest 1975 *

The International Exhibition TIBCO '75 will be held in Bucharest from May 11 to 18, 1975.

Inventions, trademarks and service marks exhibited shall enjoy the temporary protection provided by Law No. 62/1974 on Inventions and Law No. 28/1967 on Trademarks and Service Marks ¹.

The Administration of the International Exhibition TIBCO '75 will issue certificates of guarantee, upon request, until the closing date of the exhibition.

¹ Industrial Property, 1968, p. 279.

Communication

concerning the Temporary Protection of Inventions,
Trademarks and Service Marks Exhibited at the International
Exhibition TEHNOEXPO '75 — Bucharest 1975*

The first International Exhibition TEHNOEXPO '75 will be held in Bucharest from October 12 to 21, 1975.

Inventions, trademarks and service marks exhibited shall enjoy the temporary protection provided by Law No. 62/1974 on Inventions and Law No. 28/1967 on Trademarks and Service Marks ¹.

The Administration of the International Exhibition TEHNOEXPO '75 will issue certificates of guarantee, upon request, until the closing date of the exhibition.

1 Industrial Property, 1968, p. 279.

GENERAL STUDIES

Some Aspects of the Benelux Convention and the Uniform Benelux Designs Law

L. J. M. van BAUWEL *

^{*} Communication from the Romanian State Office for Inventions.

^{*} Communication from the Romanian State Office for Inventions.



Letter from the Federal Republic of Germany

By Friedrich-Karl BEIER * and Paul KATZENBERGER **

This is the second part of this Letter. The first part, which dealt with Legislation, Reform Efforts and Practice was published in the March issue of this review. This second part covers jurisprudence.

NEWS ITEMS

COLOMBIA

Head, Industrial Property Division

We have heen informed that Dr. Gonzalo López Ospina has heen appointed Head, Industrial Property Division, Superintendencia de Industria y Comercio, Ministry for Economic Development. He succeeds Mrs. M. Eugenia Orozco de Correa.

We take this opportunity of congratulating Dr. López Ospina on his appointment.

CALENDAR

WIPO Meetings

May 26 to 30, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (2nd session)

June 3 to 6, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

Jnne 9 to 13, 1975 (Geneva) - International Patent Classification (IPC) - Working Group V of the Joint ad hoc Committee

June 16 to 21, 1975 (Washington) — Sub-Committee on Reprographic Reproduction of the Executive Committee of the Berne Union (Meeting held jointly with the Sub-Committee of the Intergovernmental Copyright Committee established by the Universal Copyright Convention)

June 16 to 27, 1975 (Rijswijk) — International Patent Classification (IPC) — Working Group IV of the Joint ad hoc Committee

June 23 to 27, 1975 (Geneva) - Protection of Computer Programs - Advisory Group

August 28 and 29, 1975 (Geneva) — Hague Union — Conference of Plenipotentiaries

September 8 to 12, 1975 (Geneva) — International Classification of Goods and Services for the Purposes of the Registration of Marks — Preparatory Committee and Committee of Experts

September 17 to 19, 1975 (Geneva) — ICIREPAT — Plenary Committee (PLC)

September 22 and 23, 1975 (Geneva) — Trademark Registration Treaty (TRT) — Interim Advisory Committee

September 23 to 30, 1975 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions — Ordinary Sessions

October 1 to 3, 1975 (Geneva) — Scientific Discoveries — Committee of Experts

October 1 to 3, 1975 (Geneva) - International Patent Classification (IPC) - Bureau

October 6, 1975 (Geneva) — International Patent Classification (IPC) — Joint ad hoc Committee

October 7 to 9, 1975 (Geneva) - International Patent Classification (IPC) - Assembly and Committee of Experts

October 13 to 17, 1975 (Geneva) — ICIREPAT — Technical Committee for Search Systems (TCSS)

October 20 to 24, 1975 (Washington) — ICIREPAT — Technical Committee for Standardization (TCST)

October 27 to 31, 1975 (Mexico City) — Latin American and Caribhean Seminar on the Rights of Performers, Producers of Phonograms and Broadcasting Organizations

(Meeting organized jointly with ILO and Unesco)

October 27 to November 3, 1975 (Geneva) — Patent Cooperation Treaty (PCT) — Interim Committees

November 3 to 14, 1975 (Berne) — International Patent Classification (IPC) — Working Gronp II

November 10 to 14, 1975 (Geneva) — Revision of the Model Law on Inventions — Working Group (3rd session)

December 1 to 5, 1975 (Geneva) — International Protection of Appellations of Origin and Other Indications of Source — Committee of Experts

December 1 to 12, 1975 (Munich) — International Patent Classification (IPC) — Working Group III

December 8, 9 and 16, 1975 (Geneva) — International Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations — Intergovernmental Committee — Ordinary Session (jointly organized with the International Labour Organization and Unesco)

December 10 to 12, 1975 (Geneva) — ICIREPAT — Technical Coordination Committee (TCC)

December 10 to 16, 1975 (Geneva) — Executive Committee of the Berne Union (Extraordinary Session)

December 15 to 19, 1975 (Geneva) — International Classification of the Figurative Elements of Marks — Provisional Committee of Experts

December 15 to 22, 1975 (Geneva) — Revision of the Paris Convention for the Protection of Industrial Property — Group of Governmental Experts

March 15 to 19, 1976 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (3rd session)

September 27 to October 5, 1976 (Geneva) — WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Nice, Lisbon, Locarno, IPC and Berne Unions; Conferences of Representatives of the Paris, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Council of the Lisbon Union — Ordinary Sessions

March 14 to 18, 1977 (Geneva) — WIPO Permanent Legal-Technical Program for the Acquisition by Developing Countries of Technology Related to Industrial Property — Permanent Committee (4th session)

September 26 to October 4, 1977 (Geneva) — WIPO Coordination Committee and Executive Committees of the Paris and Berne Unions — Ordinary Sessions

UPOV Meetings

Council: October 7 to 10, 1975 — Consultative Committee: October 6 and 10, 1975 — Technical Steering Committee: November 6 and 7, 1975 — Committee of Experts on International Cooperation in Examination: November 3 to 5, 1975 — Committee of Experts on the Interpretation and Revision of the Convention: December 2 to 5, 1975; February 17 to 26, 1976

Note: All these meetings will take place in Geneva at the headquarters of UPOV

Technical Working Parties: (i) for Vegetables: May 28 to 30, 1975 (Lund - Sweden); (ii) for Agricultural Crops: June 4 to 6, 1975 (Cambridge - United Kingdom); (iii) for Fruit Crops: June 17 to 19, 1975 (Bordeaux - France); (iv) for Forest Trees: August 19 and 20, 1975 (Hannover - Federal Republic of Germany); (v) for Ornamental Plants: September 9 to 11, 1975 (Hornum - Denmark)

Meetings of Other International Organizations concerned with Intellectual Property

June 2 and 3, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Intergovernmental Copyright Committee established by the Universal Copyright Convention (as revised at Paris in 1971)

June 12 and 13, 1975 (Stockholm) — Union of European Professional Patent Representatives — Executive Committee

June 15 to 22, 1975 (Madrid) — International Chamber of Commerce — Congress

Jnne 18 to 20, 1975 (Rijswijk) — International Patent Institute — Administrative Board

September 16 to 19, 1975 (Budapest) - International Federation of Musicians - Executive Committee

September 17 to 20, 1975 (London) — Union of European Professional Patent Representatives — General Assembly

October 1 to 3, 1975 (Berlin) — International Literary and Artistic Association — Working Session

November 17 to 26, 1975 (Paris) — United Nations Educational, Scientific and Cultural Organization (UNESCO) — Committee of Governmental Experts on the Double Taxation of Copyright Royalties

May 25 to June 1, 1976 (Tokyo) — International Publishers Association — Congress