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## World Intellectual Property Organization

### WIPO Convention

#### I.

#### Ratification

#### PERU

The Government of Peru deposited, on June 4, 1980, its instrument of ratification of the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967.

Peru will belong to Class C for the purpose of establishing its contribution towards the budget of the WIPO Conference.

The WIPO Convention will enter into force, with respect to Peru, on September 4, 1980.

WIPO Notification No. 112, of June 6, 1980.

#### II.

#### Accession

#### ARGENTINA

The Government of Argentina deposited, on July 8, 1980, its instrument of accession to the Convention Establishing the World Intellectual Property Organization.

The said Convention will enter into force, with respect to Argentina, on October 8, 1980.

WIPO Notification No. 113, of July 8, 1980.

## International Unions

### Paris Convention

#### Accession to the Stockholm Act (1967) (with the exception of Articles 1 to 12)

#### ARGENTINA

The Government of Argentina deposited, on July 8, 1980, its instrument of accession to the Stockholm Act of July 14, 1967, of the Paris Convention for the Protection of Industrial Property of March 20, 1883, with a declaration to the effect that its accession shall not apply to Articles 1 to 12.

The Stockholm Act (1967) of the said Convention, with the exception of Articles 1 to 12, will enter into force, with respect to Argentina, on October 8, 1980.

Paris Notification No. 100, of July 8, 1980.

### Madrid Agreement (Indications of Source)

#### Ratification of the Additional Act of Stockholm (1967)

#### CUBA

The Government of Cuba deposited, on July 4, 1980, its instrument of ratification of the Additional Act of Stockholm of July 14, 1967, to the Madrid Agreement for the Repression of False or Deceptive Indications of Source on Goods of April 14, 1891.

The Additional Act of Stockholm (1967) to the said Agreement will enter into force, with respect to Cuba, on October 7, 1980.

Madrid (Indications of Source) Notification No. 21, of July 7, 1980.

## Patent Cooperation Treaty (PCT)

### Ratification

FINLAND

The Government of Finland deposited, on July 1, 1980, its instrument of ratification of the Patent Cooperation Treaty (PCT), done at Washington on June 19, 1970.

The said instrument contains the following reservation:

"Finland enters a reservation pursuant to Article 64(2)(a)(ii) to the effect that the obligation to delay national processing, as provided for under Article 40, shall not prevent publication, by or through its national Office, of the international application or a translation thereof, it being understood, however, that it is not exempted from the limitations provided for in Articles 30 and 38."

The said Treaty will enter into force, with respect to Finland, on October 1, 1980.

PCT Notification No. 33, of July 4, 1980.

## Vienna Agreement (Classification)

### Ratification

SWEDEN

The Government of Sweden deposited, on June 5, 1980, its instrument of ratification of the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, done at Vienna on June 12, 1973.

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

Vienna (Classification) Notification No. 4, of June 9, 1980.

## WIPO Meetings

### WIPO Permanent Program for Development Cooperation Related to Industrial Property

#### Permanent Committee

Seventh Session  
(Geneva, April 28 to May 1, 1980)

#### NOTE\*

The WIPO Permanent Committee for Development Cooperation Related to Industrial Property held its seventh session in Geneva from April 28 to May 1, 1980. Forty-eight States, members of the Permanent Committee, eight States, non-members of the Permanent Committee, seven intergovernmental and eleven international non-governmental organizations were represented. The list of participants appears at the end of this Note. Colombia, El Salvador and Malawi became members of the Permanent Committee since its preceding session,<sup>1</sup> bringing the total membership to 67 States.

\* This Note has been prepared by the International Bureau.

<sup>1</sup> A Note on the sixth session of the Permanent Committee was published in *Industrial Property*, 1979, p. 151.

In accordance with the special provisions contained in the approved budget of WIPO, travel and subsistence expenses were paid by WIPO for one delegate from each of the countries represented at the session which are members of the Permanent Committee and are regarded as being among the least developed of the developing countries.

The Permanent Committee reviewed activities since its last session and plans for continuing and future activities, on the basis of the relevant program and budget items approved by the Governing Bodies of WIPO for the years 1980 and 1981.

In reviewing activities concerning *training* (individual training and training in groups), several delegations made detailed or general suggestions to be taken into account in planning and implementing the program. Most delegations congratulated the International Bureau on the program's further development since the last session of the Permanent Committee. Several delegations expressed their appreciation of the training so far received by their nationals. Several delegations announced their continued or—in the case of the Delegations of Spain, Germany (Federal Republic of), Canada, the Soviet Union, France and the United Kingdom—increased contributions to the WIPO Training Program. The Delegation of the Federal Republic of Germany announced

that its Government would most probably organize a course on marks in 1981. The Delegation of Poland stated that its country would participate in training nationals of developing countries by offering a training course at the Patent Office of Poland for a trainee from a developing country.

The Permanent Committee was invited to comment on the draft of the parts of the new *Model Law for Developing Countries on Inventions and Know-How* which remained to be published (Part I, on patents, was published in August 1979). The draft dealt with know-how, the examination and registration of contracts, inventors' certificates, technovations and, in an annex, transfer of technology patents. The draft was based on the views expressed during the last session of the Working Group on the Model Law (March 1979).

Several delegations and observer organizations suggested changes in the text of the draft, and, in respect of each of its parts (except that relating to transfer of technology patents), one or more delegations expressed the view that it did not serve the interests of developing countries seeking foreign investment or transfer of technology. Two sections of the draft, dealing with rights and obligations under know-how contracts and with contracts concluded before the entry into force of the new law, were the subject of particularly strong criticism on the part of several delegations. As far as the part dealing with examination and registration of contracts is concerned, several delegations suggested that its publication should await the adoption of the International Code of Conduct on the Transfer of Technology in course of preparation in the United Nations Conference on Trade and Development (UNCTAD) since it was desirable to avoid too great differences between that Code and this part of the draft.

On the other hand, all the delegations representing developing countries said that they were generally satisfied with the Draft, found it consistent with their interests and urged its early publication. Furthermore, the Delegation of the Soviet Union said that the Group D countries found that there was no reason to delay publication.

The Director General said that most, if not all, of the criticisms made in the present session had already been made in written observations in 1978 and 1979 and those written observations had been placed before the WIPO Working Group on the Model Law at its last session. He said that careful note had been taken by the Secretariat of all the criticisms voiced in the present session and that the Secretariat would carefully consider them once more.

It was generally understood that the Model Law would be published under the sole responsibility of the Director General, that it did not necessarily express the views of any government, and that it did not bind

any State neither as far as its domestic law nor as far as its international obligations were concerned.

The Permanent Committee noted that drafts were being prepared or revised on *basic options for legislators* in connection with the Model Law on Inventions, on "*Trademarks for Development*" and on industrial property aspects of *consumer protection*, for consideration by groups of consultants or experts.

In its review of activities and plans relating to the building of *governmental institutions* for industrial property, the Permanent Committee devoted particular attention to the importance of *cooperation among developing countries*, and noted that close consultation was being maintained with the regional commissions of the United Nations and with the United Nations Development Programme (UNDP) in order to ensure that activities for the promotion and support of such cooperation were fully relevant to current policies, possibilities and needs. The Permanent Committee noted with approval activities in support of the African Intellectual Property Organization (OAPI) and its Patent Documentation and Information Center (CADIB), the Industrial Property Organization for English-Speaking Africa (ESARIPO) and the Patent Documentation and Information Centre for English-Speaking Africa (ESAPADIC), the Andean Group, the Latin American Data Service (LADS) and the Industrial Development Centre for Arab States (IDCAS).

In a discussion of meetings organized by WIPO on the encouragement of *technological innovation* in developing countries, the Delegation of the Sudan announced that its Government planned to invite WIPO to organize, jointly with that Government, a regional (Afro-Arab) meeting dealing with innovation in Khartoum, probably in January or February 1981.

The Permanent Committee examined an outline description, presented by WIPO, of a possible system for *international cooperation in the examination of patent applications*, to assist developing countries unable to justify the investment in staff, documentation and other equipment required for substantive examination.

Many delegations spoke on this matter and they all welcomed the initiative of the Director General of WIPO, including a plan for the convocation of a group of consultants preferably in 1980. The general view of the Permanent Committee was that the matter was clearly and exclusively within the jurisdiction of WIPO, that the contemplated cooperation would be extremely useful for developing countries desiring to formulate a judgment on the patentability of the inventions of their own nationals, and that the feasibility of the cooperation system should be thoroughly explored. Several delegations and observers offered their participation in the planned group of consultants.

Plans were noted with approval for cooperation with governments of developing countries for the development of the *profession* of industrial property lawyer and agent, including plans for the convening of a small group of consultants. Several delegations underlined the importance of the activity in question and welcomed the initiative of the International Bureau. Observer organizations whose membership consists of or includes industrial property lawyers and agents offered their cooperation.

#### LIST OF PARTICIPANTS\*

##### I. States

Algeria<sup>2</sup>: M.H. Kadi. Angola: S. Costa; A. Fernandes Júnior. Austria<sup>2</sup>: J. Fichte; M. Sajdik. Barbados: L.S. Hunte; D.B. Rhynd. Benin<sup>2</sup>: B. Olaye. Brazil<sup>2</sup>: A. Libert Westphalen; A.-G. Bahadian; A. Marques Porto. Bulgaria<sup>2</sup>: I. Kotzev. Cameroon<sup>2</sup>: J.-R. Booh. Canada<sup>2</sup>: F. Hay; M.R. Leir. Chile<sup>2</sup>: R. Plaza. Colombia<sup>2</sup>: A. Gomez. Czechoslovakia<sup>2</sup>: J. Čížek. Democratic People's Republic of Korea<sup>2</sup>: G. W. Jo; C.R. Pak. Egypt<sup>2</sup>: A.A. Omar. El Salvador<sup>2</sup>: N.R. Monge Lopez; C. Barahona Rivas. Ecuador: C. Izquierdo. Finland<sup>2</sup>: F. Edman. France<sup>2</sup>: G. Vianès; M. Hiance. German Democratic Republic<sup>2</sup>: O. Hugler. Germany (Federal Republic of)<sup>2</sup>: M. Aúz Castro; J. Wenzl. Hungary<sup>2</sup>: Z. Szilvássy. Indonesia<sup>2</sup>: H. Reksodiputro. Iraq<sup>2</sup>: G.A. Rafik. Israel<sup>2</sup>: I. Eliashiv. Italy<sup>2</sup>: S. Samperi; L. Spadea Dinale. Ivory Coast<sup>2</sup>: G. Doh. Japan<sup>2</sup>: K. Kujirai; H. Hayashida. Kenya<sup>2</sup>: J. N. King'Arui. Libyan Arab Jamabiriya<sup>2</sup>: M.M. Milad. Malaŵi<sup>2</sup>: M.H. Chirambo. Mexico<sup>2</sup>: O. Garrido-Ruiz. Morocco<sup>2</sup>: A. Bojji. Netherlands<sup>2</sup>: W. Neervoort. Niger<sup>2</sup>: I. Foukori. Norway<sup>2</sup>: T. Hansen. Oman: M. Hamdan. Pakistan<sup>2</sup>: S. Bashir. Poland<sup>2</sup>: A. Olszowka. Portugal<sup>2</sup>: R. Serrão. Qatar: A.R. Al Attiyah; A. Zaman. Republic of Korea<sup>2</sup>: S.H. Kim; J.H. Kum; D.N. Kim; M.G. Kang. Senegal<sup>2</sup>: A. Sène; P. Crespin; K. Koma. Soviet Union<sup>2</sup>: V. Ilyin; A. Ruban; V.N. Poliakov. Spain<sup>2</sup>: J. Delicado Montero-Ríos; L. Nagore. Sri Lanka: I.B. Fonseka. Sudan<sup>2</sup>: M.S. Abdalla; A.M.O. Yassin. Sweden<sup>2</sup>: T. Halén; J.G. Petersson. Switzerland<sup>2</sup>: R. Kämpf; J.-M. Salamolard. Turkey<sup>2</sup>: E. Tümer. United Kingdom<sup>2</sup>: P. Ferdinando. United States of America<sup>2</sup>: M.K. Kirk; S. Brattain. Upper Volta<sup>2</sup>: K.I. Yameogo. Uruguay: C.A. Barros-Oreiro. Venezuela: G. Pérez-Castillo; E. Pietri. Yemen<sup>2</sup>: A.Y. Al Modwahi. Zaire<sup>2</sup>: E. Esaki Kabeya.

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

<sup>2</sup> State member of the WIPO Permanent Committee for Development Cooperation Related to Industrial Property.

## II. United Nations Organizations

United Nations Conference on Trade and Development (UNCTAD): D. Chudnovsky. United Nations Industrial Development Organization (UNIDO): S.-P. Padolecchia. United Nations Development Programme (UNDP): N.J. Desai.

## III. Other Intergovernmental Organizations

African Intellectual Property Organization (OAPI): P. N'Goma. European Patent Office (EPO): S. Behmo; S.C. Gees. Industrial Development Centre for Arab States (IDCAS): A. Abdulhak. Organization of American States (OAS): F.E. Hurtado de Mendoza.

## IV. International Non-Governmental Organizations

Benelux Association of Trademark and Design Agents (BIMM): R.H. van Dijk. Center for the International Study of Industrial Property (CEIPI): F. Savignon. Council of European Industrial Federations (CEIF): W. Kuster. European Federation of Agents of Industry in Industrial Property (FEMIP): J.-M. Dopchic. International Chamber of Commerce (ICC): G.F. Kunze; A. Frignani; J.-M. Dopchic. International Federation of Inventors' Associations (IFIA): S.-E. Angert. International Federation of Patent Agents (FICPA): M.-P. Micheli. International Federation of Pharmaceutical Manufacturers Associations (IFPMA): W. Kuster. International Patent Documentation Center (INPADOC): G. Quarda. Union of European Practitioners in Industrial Property (UEPIP): G.E. Kirker. Union of Industries of the European Community (UNICE): C.G. Wickham.

## V. Officers

Chairman: J. King'Arui (Kenya). Vice-Chairmen: G. Vianès (France); V. Ilyin (Soviet Union). Secretary: I. Thiam (WIPO).

## VI. International Bureau of WIPO

A. Bogsch (*Director General*); K.-L. Liguier Laubhouet (*Deputy Director General*); L. Baeumer (*Director, Industrial Property Division*); M. Porzio (*Director, Office of the Director General*); I. Thiam (*Director, External Relations and Development Cooperation Policy Division*); F. Curchod (*Head, Special Projects Section, Industrial Property Division*); P.A. Higham (*Senior Patent Information Officer, Classifications and Patent Information Division*); L. Kadirgamar (*Head, Development Cooperation Policy Section, External Relations and Development Cooperation Policy Division*); F. Moussa (*Head, External Relations Section, External Relations and Development Cooperation Policy Division*).

## **General Studies**

### **The Revision of the International Treaty Provisions Dealing with Appellations of Origin and Indications of Source**

R. PLAISANT\*





















## News from Industrial Property Offices

UNITED STATES OF AMERICA

### Annual Report of the Commissioner of Patents and Trademarks Fiscal Year 1979\*

#### Introduction

The Patent and Trademark Office (hereinafter referred to as the "PTO") is a bureau of the United States Department of Commerce which administers both the patent and the trademark laws.

The patent laws of the United States are enacted pursuant to the authority found in Article 1, Section 8, clause 8 of the United States Constitution. The principal law is Title 35 of the United States Code.

The first Federal law providing for the registration of trademarks was enacted in 1870. The present law is the Trademark Act of 1946, commonly known as the Lanham Act.

The primary objectives of the Patent and Trademark Office in administering the patent laws and the Lanham Act relate to:

- Quality;
- Pendency;
- Information Dissemination;
- International Cooperation.

#### Quality

"Quality" affects confidence in the patent and trademark laws since the principal purpose of these laws is to stimulate economic development by encouraging investment in technology (patents) and by providing legal protection for trademarks used in identifying the source of new products and services. There may well be little investment based on patents and trademarks if confidence in them is low—and confidence will be low if quality is perceived to be poor.

The quality of a patent or a trademark, in a narrow sense, is the ability to withstand legal challenge. While the legality of only a very small percentage of patents and trademarks is ever involved in court decisions, the actual "quality" of those litigated patents and trademarks is only symptomatically related to the overall

quality of the PTO examination processes. The true measure of patent and trademark quality may be in the collective minds of the users and potential users of the patent and trademark systems.

The primary components of the activities of the Patent and Trademark Office which address the issue of quality can be grouped as follows:

- Quality Review;
- Regulations Concerning the Duty of Disclosure;
- Re-examination of Patents in Reissue Applications;
- Patent Search File—Reclassification and Integrity;
- Trademark Search File—Reclassification and Integrity;
- Mechanized Search Systems Development;
- Miscellaneous Procedures.

#### Quality Review

An on-going Quality Review Program evaluates the quality of the product of the patent examination process and assists in determining whether there is need for substantive or procedural adjustments in any area of the process. Generally, the objectives of the program are to prevent the allowance of unpatentable applications; improve public confidence in the certainty and reliability of issued patents; detect trends away from normal examining practice; provide feedback information to examining corps personnel; emphasize to examining corps personnel the importance of quality; and compile data on the "quality" of the patent examination process.

The Quality Review Program presently takes a random sample of four percent of all "allowed applications," i.e., applications awaiting issuance as patents, and provides data on the patentability of the invention, correctness of the technological areas searched and compliance with current Office practices and procedures.

Of those applications reviewed during fiscal year 1979, four percent were found to have been allowed in error. The Quality Review Program thus is a useful supplement to the normal quality review performed by the immediate supervisors of examining personnel.

#### Regulations Concerning the Duty of Disclosure

PTO regulations define the affirmative duty of candor and good faith which patent applicants and

\* Excerpted from the report issued under the same title.



their professional representatives owe with regard to the disclosure of information, of which they are aware, that is likely to be of importance to the PTO's patent examining personnel. During fiscal year 1979, about 60 to 65% of all applications for patents contained some patentability information supplied by applicants.

Those patent applications believed to involve a possible violation of the disclosure regulations are referred to the Office of the Assistant Commissioner for Patents for close scrutiny. During the fiscal year, 171 patent applications were so referred. Of the 45 applications disposed of by the Assistant Commissioner's Office during fiscal year 1979, 23 were abandoned, 20 were not stricken from the files, and 2 were stricken.

### Re-examination of Patents in Reissue Applications

Office regulations afford patent owners a procedural opportunity to obtain a ruling from the PTO on the pertinence of patentability evidence after their patents have been issued. This procedure involves the filing of a reissue patent application by the patent owner and "publication" of the application by the PTO for public comment. In this manner, the usual *ex parte* nature of the patent procurement process takes on some of the trappings of an *inter partes* proceeding, i.e., the PTO can rule on patentability in light of the arguments of both the patent applicant and those who have interests adverse to the applicant. Because of the usual commercial significance of the subject matter of most reissue applications, the standard four percent Quality Review sampling has been increased to a 25% sampling for all allowed reissue applications.

During the fiscal year new guidelines and procedures on the reissue practice were published. The various guidelines spelled out internal processing and handling of reissue applications in more detail and procedures intended to ensure the prompt examination of all reissue applications, especially those involved in related litigation.

### Patent Search File—Reclassification and Integrity

To facilitate access to the approximately 4.4 million United States patents, these patents have been classified into about 400 broad technological classes and 103,000 specific technological subclasses. Together, these classes and subclasses form the structure of the classified patent search file.

Presently, through the mechanism of reclassification programs, selected portions of the search file are reviewed periodically to determine the need for new classifications which better correspond to the current state of a technology and its contemporary termino-

logy, and which control the size of the subgroupings. These on-going programs constitute an in-depth analysis of all patents, old and new, in a given technology and a restructuring of the technological breakdowns so that each reclassification program increases the ease of access to, and reliability of, the patent search file. Reclassification programs during fiscal year 1979 established 6,883 new subclasses.

In fiscal year 1979, an on-going program to upgrade the integrity of the patent search file and to improve the accuracy of the computer record relating to the contents of the file was accelerated. Approximately 3,500 subclasses containing about 875,000 patents were reviewed. As a result of this review, approximately 72,000 patent copies were added to the file to replace missing or mutilated documents.

The majority of the overall "searching" in the patent file is a manual operation involving the physical review of millions of paper copies of patent documents, which are constantly being withdrawn from the search file for comprehensive analysis and photoduplication. The drawbacks to this searching program are self-evident. Annually, the search file is supplemented by the influx of over 180,000 foreign patent documents and about 150,000 "non-patent" literature items, both of which must be studied, classified, and physically filed. This annual influx, coupled with the fiscal year 1979 addition of 220,000 new "original" and "cross-reference" U. S. patents, has caused the patent search file, as of the end of the fiscal year, to double in size in just the last decade to approximately 24 million documents.

### Trademark Search File—Reclassification and Integrity

The trademark search file is also presently a paper file which is used manually by trademark examining personnel and members of the public. The search file contains registered trademarks and trademarks for which applications are presently pending. A basic purpose of the trademark search file is to facilitate enforcement of Section 2(d) of the Lanham Act, which prohibits registration of trademarks which are confusingly similar to those trademarks previously registered.

If all trademark registration certificates and applications had to be searched before a new registration could be issued, the examination of each trademark application by the PTO would entail a search through over three million documents. The trademark search file is therefore organized alphabetically, and in many areas by classes of goods and services, to facilitate searching.

The integrity of the search file is maintained by placing new trademark applications and registrations into the file, as well as by removing cancelled and

expired ones. Late in fiscal year 1978 a special project was started to remove from the file a portion of the cancelled and expired trademark registrations. Such a purge had not been conducted in over a decade. In fiscal year 1979 substantial progress was made on the project and completion is expected in the first half of fiscal year 1980. A total of over half a million documents were removed from the trademark file.

### Mechanized Search Systems Development

PTO efforts in the development of mechanized search systems are presently concentrated in the areas of an on-line computer-based patent searching system and a Computer Controlled Microform Search System ("CCMSS").

The on-line searching system provides subject matter access to the U. S. patent classification system and thus increases the capability for subject matter searching of the patent file. The on-line system, or the so-called "mini-computer system," was expanded in fiscal year 1979. Users of the system's video terminals can now key in a word or combination of words relating to the subject matter for which they are searching and have displayed a list of the subclasses which have those words in their titles. This not only provides those unfamiliar with the U. S. patent classification system with a new means of determining where to start searching, it also serves as a tool used by experienced searchers in expanding their searching into areas which might be otherwise overlooked. The mini-computer system was used during the fiscal year to reprint in its entirety an up-to-date Manual of Patent Classification—for the first time in ten years. Subsequently, two revisions to the Manual were prepared to keep it current with the on-going reclassification programs.

CCMSS is utilized by Office examining personnel for searching indexed files on an experimental basis. A relatively recent upgrading and expansion of the system has extended its use to the searching of document files classified according to subject matter.

### Miscellaneous Procedures

Some relatively new internal Office procedures which enhance the quality and completeness of the patent examining process, and, accordingly, of issued patents, are: statements by examining personnel of the reasons for allowing a patent; remand of appealed patent applications from the PTO's Board of Patent Appeals to examining personnel for further consideration of allowed portions of an application; appear-

ance at oral hearings before the Board of Patent Appeals by examining personnel at the request of the Board or of such personnel; and recordation in the official patent file of the substance of oral interviews between patent applicants and examining personnel; and more complete recordation of the areas of the patent search file and the specific documents of the file reviewed by such personnel during the examination process.

### Pendency

Since fiscal year 1971, yearly patent application filings have remained relatively stable—varying between about 107 and about 109 thousand. From fiscal year 1971 to fiscal year 1976, trademark application filings were also relatively stable, although to a lesser degree than patent applications. After fiscal year 1976, a marked increase in trademark filings has taken place, though this increase appeared to level off in fiscal year 1979.

The total number of patents issued annually by the PTO has fallen progressively since fiscal year 1976. The total reached a 15-year low of 55,418 in fiscal year 1979. In a somewhat similar fashion, there was an abrupt drop in registered trademarks experienced in fiscal year 1979 from the prior year—from 28,921 to 22,210.

In 1964, patent pendency stood at about 34.8 months. This delay was widely regarded as an impediment to the orderly and prompt development and marketing of new technology. The PTO developed a plan to reduce patent pendency to the lowest level that was believed consistent with efficient operations—18 months average pendency. Although this level was practically attained at the end of fiscal year 1976, the downward trend in average pendency reversed direction in fiscal year 1977 and fiscal year 1978. Despite an increase in the total number of patent applications pending before the Office in fiscal year 1979, average pendency dropped. However, the fiscal year 1979 patent pendency figure of 19.4 months is artificially low due to an anomalous situation in the latter third of the fiscal year, occasioned by a limited number of issued patents, and an abnormally low issuances-to-abandonments ratio.

The net result of these two factors is believed to be a temporary understatement of up to about two months in the fiscal year 1979 pendency figure.

The gradual decline in trademark pendency experienced since fiscal year 1972 began to change direction in fiscal year 1977. Since that time the total number of trademark applications pending before the PTO, the total number of trademark application filings, and the total number of trademark applications awaiting action by examining personnel have increased dramatically.

### Information Dissemination

The public knowledge secured through the incentives of the patent grant has been a significant contributor to the base of science and technology upon which the United States' economy is built. Patents provide unique information which cannot be obtained in any other way. In fact, a very large majority of patents disclose technology not available in other publications. The patent search file represents one of the largest collections of organized and structured technological literature in the world. The potential uses of the information contained in this file are many and intriguing.

Trademark information dissemination also contributes to the national economy. One of the major reasons for maintaining a Federal register of trademarks is to promote order and certainty in the marketplace. Accordingly, the introduction of new products and services is made easier and less risky by the availability of information concerning trademarks in current use by others.

The primary components of the activities of the Patent and Trademark Office which concern patent and trademark information dissemination can be grouped as follows:

- Patent Disclosures and Search Facilities;
- Trademark Disclosures and Search Facilities;
- Technology Assessment and Forecast Program;
- Cooperative Dissemination Efforts;
- Accelerated Examination.

### Patent Disclosures and Search Facilities

The sale and distribution of printed copies of U. S. patents contribute in a major way to the fulfillment of the information dissemination objectives of the PTO. During the fiscal year 6.3 million copies of these patents were ordered by the general public, and were also distributed to libraries, foreign exchange programs and archives.

In addition to patent copy sales, the PTO issues a weekly publication, the *Official Gazette for Patents* (the "O.G."), which contains a brief description and a drawing (if applicable) taken from each of the 900 to 1,500 patents issued each week. During the fiscal year 3,500 subscription copies of the O.G. were sold to the public.

The Public Patent Search Room of the PTO, located in Arlington, Virginia, contains the *only* complete collection of patent literature in the country filed according to subject matter. On an average day during fiscal year 1979, over 800 members of the public used this facility.

A significant element of the patent dissemination process consists of public patent depository libraries

located throughout the country. During fiscal year 1979 three patent depository libraries were added, bringing the national total to 32. These new libraries were the Memphis and Shelby County Public Library and Information Center, the California State Library in Sacramento and the Pennsylvania State University Library.

### Trademark Disclosures and Search Facilities

Copies of trademark registrations and applications are provided by the PTO to the public in furtherance of the trademark information dissemination objectives of the Office. During fiscal year 1979 about 215,000 copies of trademark applications and registrations were provided by the PTO.

The Trademark Search Room at the PTO contains the *only* complete publicly available system of U. S. trademark registration and application information in the world. Use can be made of the indices and organizational system of the Trademark Search Room to effectively go through the almost three million documents on file to ensure that trademarks chosen are not confusingly similar to those already adopted by others.

In addition to trademark copy sales and search file accessibility, the PTO makes trademark information available through the weekly publication of the *Official Gazette for Trademarks*, which contains information concerning pending trademark applications, issued registrations, and other trademark matters.

### Technology Assessment and Forecast Program

The purpose of the Technology Assessment and Forecast Program is to stimulate the use of the patent file and assemble, analyze, and make available meaningful data about the file and trends in patented technology. In carrying out this purpose the PTO's Office of Technology Assessment and Forecast ("OTAF") has assembled a master data base covering all U. S. patents and the patents of selected foreign countries. OTAF uses the data base in two principal ways, to issue periodic general distribution reports and prepare special reports tailored to individual needs.

In fiscal year 1979 the ninth in a series of OTAF general distribution reports was published. The report identified the most patent-active technologies and those technologies in which foreign resident inventors were receiving the highest share of U. S. patents. The report also contained extensive technical discussion of the activity, as evidenced by patenting, in ferrous metal technologies. Also reviewed were recent domestic and independent inventor patenting trends, and efforts to use patents as a resource for appropriate

technology transfer to small businesses and developing countries. In addition to the ninth report, 172 special technology assessment reports were prepared by OTAF during the fiscal year for public and private organizations.

As a supplement to the type of information found in the OTAF ninth report, an analysis of the inroads made on the United States patent system by foreign resident inventors indicates that in fiscal year 1979, 38% of all patents issued by the United States went to residents of foreign countries.

### Cooperative Dissemination Efforts

The Patent and Trademark Office is involved in several cooperative patent information dissemination arrangements which result in the more efficient and economic availability of a variety of patent information products and services. Various commercial organizations, in cooperation with the PTO, offer to industry patented technological information in specialized form, e.g., patents on microfilm, patent abstract services, special "alerting" services in given technologies, etc.

During fiscal year 1979 plans were completed for publishing patent classification definitions in microfiche and offering them for sale through the Superintendent of Documents. In this manner, this essential tool of the U. S. patent classification system will be available to the public at much lower cost and will permit cost-free distribution through the regular government depository library system.

### Accelerated Examination

"Special" status has been accorded to all patent applications for inventions which materially enhance the quality of the environment or contribute to the discovery, development, or efficient utilization and conservation of energy resources. In fiscal year 1979 such "special" status was accorded in 34 environmental-related and in 68 energy-related patent applications.

### International Cooperation

The broad objective of U. S. foreign policy in the industrial property field is to provide more effective protection of the industrial property rights of United States nationals throughout the world. In conjunction with the Departments of State and Commerce, the PTO pursues this objective on a number of fronts.

PTO efforts have been directed toward developing simpler and less expensive means for U. S. business to secure and maintain protection of their industrial

property rights internationally, especially with the significant foreign trading partners of the United States. Fiscal year 1979 activity in this regard included the Patent Cooperation Treaty, the Trademark Registration Treaty, Revision of the Paris Convention, the Budapest Treaty and miscellaneous cooperative activities.

### The Patent Cooperation Treaty (PCT)

The United States Patent and Trademark Office entered its second year as a receiving Office under the PCT in fiscal year 1979. Since the inception of the PCT, monthly filings of international applications in the U. S. receiving Office have increased almost continuously. During the fiscal year, 971 international applications were received by the Office.

Under the PCT, the Patent and Trademark Office also serves as an International Searching Authority for international applications filed in the United States and Brazil. In this capacity, the PTO completed 471 PCT search reports during fiscal year 1979. Eleven of these search reports were made for PCT applications filed in Brazil.

Provisions of the Treaty allow a discretionary refund of patent search fees by International Searching Authorities due to reliance by the Authorities on an earlier patent search made in a national application. Of the 460 PCT search reports completed during fiscal year 1979 by the Patent and Trademark Office on international applications filed in the United States, 355 (77%) received a \$270 refund of the \$300 patent search fee, 67 (15%) received a \$135 refund, three (1%) received refunds which included part of supplemental search fees paid because of more than one claimed invention in an application, and 35 (7%) received no refund.

Of the 35 applications which received no refund, five did not have a prior application, eight had a prior application but had not yet had a patent search made in that application, and 22 had earlier searches considered to be of no value.

During the fiscal year the PTO received notification that it had been "designated" in 1,327 international applications filed in other PCT receiving Offices around the world.

### The Trademark Registration Treaty (TRT)

During the fiscal year, the PTO continued its participation in the international efforts towards implementation of the TRT; however, the Treaty has yet to be ratified by the United States, and the implementing legislation for the TRT has yet to be introduced into the Congress.

### Revision of the Paris Convention

The Office continued to participate in discussions directed at revising the Paris Convention for the Protection of Industrial Property in a Diplomatic Conference, the first session of which took place in 1980.

### The Budapest Treaty

In the latter stages of the fiscal year, the United States deposited with the Director General of WIPO an instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The United States was the third State to ratify this Treaty. Under the Budapest Treaty, patent applications for microbiological inventions will be able to utilize a designated depository in any of the member countries to the Treaty. Thus, there will be no need to make more than one microbiological deposit in order to enforce patents in the countries which adhere to the Treaty.

### Miscellaneous Cooperative Activities

In joint cooperation with the Departments of State and Commerce, WIPO and others, the PTO attempts to facilitate the effective protection of industrial property rights in developing countries and the efficient administration of various systems which regulate the protection and exercise of these rights. In this regard, during fiscal year 1979 the Patent and Trademark Office:

- assisted in the drafting of the operating patent regulations necessary for the implementation of the new Patent Act of Thailand, and in the establishment of a national Patent Office in Bangkok;
- assisted with negotiations held in Budapest to partially resolve the complaints of U. S. agricultural chemical manufacturers concerning the alleged disregard of their patent rights by the Government of Hungary;
- participated in negotiations for developing an International Code of Conduct on the transfer of technology to developing countries, under the auspices of the United Nations Conference on Trade and Development;
- participated in the completion of the second revision of the International Patent Classification;
- received representatives from China, Ghana, Kenya, Korea, and Thailand for training and briefing on the operations of the PTO;

- continued its cooperation with the development of the Brazilian Patent Office by sending two Office personnel to Brazil to serve as instructors for a period of six months each.

### Other Activities of the Patent and Trademark Office

#### Administrative Affairs

##### *New Computer System*

The Office accepted and placed into operational status a new computer system with the capacity for 2.5 billion characters of on-line disk storage. The new computer has approximately five times the capacity of the former system and will be used to meet the PTO five-year data processing needs. Currently, long-term automatic data processing development is underway in several major areas, such as patent application processing support, trademark processing support, automation of patent and trademark ownership records, and a PTO office-wide integrated resource management system.

More specifically, a system to locate and monitor the status of all pending patent applications is presently being implemented. The system will use a network of about 275 computer terminals scattered throughout the PTO. All patent application files will carry bar code labels, which can be "read" electronically by hand-held instruments connected through the network to the Office computer. By using keyboard entries at each terminal, the computer will be "informed" of status and location changes of all patent applications. The new system should improve internal management control and provide for better overall service to the public.

#### Legal Affairs

The legal affairs of the PTO are administered by the Office of the Solicitor, which represents the Patent and Trademark Office and the Commissioner before various judicial tribunals. The business of the Office of the Solicitor is diverse, and fiscal year 1979 produced several noteworthy activities.

The patentability of living organisms as manufactures or compositions of matter under the present patent law remained an unsettled question. Raised for the second time when the U. S. Court of Customs and Patent Appeals (the "CCPA") vacated its original decisions in *In re Bergy* and *In re Chakrabarty*, the Court, on rehearing, again reversed the decisions of the Patent and Trademark Office. It was held, as previously, that living organisms are patentable as

manufactures or compositions of matter under the present patent law. A combined petition for certiorari to review the decision of the CCPA in the two cases was filed in the Supreme Court.

The United States Court of Appeals for the District of Columbia Circuit ruled in *Irons & Sears v. Dann* that the Freedom of Information Act does not require the PTO to make available to the public decisions in pending or abandoned patent applications which relate to the filing date of the application. In another case, *Matsui v. Banner*, the same Court upheld the practice of the Office in refusing to accept the date of receipt of a patent application as its filing date if the application is received without a valid oath or declaration.

### Legislative Affairs

Legislative revision of the patent and trademark laws, as well as legislation affecting various other legal aspects of industrial property, are within the province of the PTO's Office of Legislation and International Affairs ("OLIA"). Working with the Department of Commerce, OLIA formulates and implements the legislative programs of the Office. Fiscal year 1979 produced activity in the areas of the statutory fees charged by the PTO, the Trademark Trial and Appeal Board and the re-examination of patents.

#### *Statutory Fees Charged by the PTO*

Following the publication of a report prepared by the General Accounting Office recommending higher patent fees, the Office began drafting the legislation necessary to accomplish this recommendation. The patent fees charged by the PTO are statutory and have not been changed since 1965. The constancy in the income generated from patent fees over the last 15 years has led to a significant gap relative to the operating costs of the Office. The form of PTO fee legislation was to be determined during the President's Domestic Policy Review of Industrial Innovation, which was conducted under the leadership of the Department of Commerce during fiscal year 1979.

#### *Trademark Trial and Appeal Board*

The PTO's Trademark Trial and Appeal Board (the "TTAB") hears appeals from the decisions of trademark examining personnel in refusing the registration of trademarks. The Board also tries "adversary proceedings" under the Lanham Act. There are four types of "adversary proceedings" under the Act: interferences, oppositions, cancellations and concurrent use proceedings.

At the request of the PTO, a bill was reintroduced into the Congress during the fiscal year to ease the unnecessary eligibility restrictions for appointments of members to the TTAB. The bill was still pending at the end of the year.

#### *Re-examination of Patents*

During the President's Domestic Policy Review of Industrial Innovation, the PTO helped formulate a proposal for legislation to authorize the Office to re-examine issued patents. Under the proposal, a patent could be re-examined at any time during its 17-year life at the request of any person who complied with certain requirements and paid a fee. A private sector advisory committee also urged enactment of such legislation as a part of the Domestic Policy Review. This work led to a Presidential recommendation to Congress shortly after the end of the fiscal year for enactment of re-examination legislation.

### Financial Affairs

In fiscal year 1979, the funds available to the Patent and Trademark Office totaled \$96,708,516—consisting of a regular appropriation of \$96,654,000, and reimbursements of \$54,516. By the end of the fiscal year, all but a minor fraction of these funds were obligated.

Under the accrual basis of accounting, or cost accounting, the total operating costs for the PTO in fiscal year 1979 were \$96,229,182.

The fees collected by the PTO are deposited directly into the general fund of the United States Treasury, and do not accrue directly to the benefit of the Patent and Trademark Office. In fiscal year 1979, \$27,111,713 in fees were collected.

As a public service, deposit accounts are maintained at the Patent and Trademark Office to facilitate the transfer of funds from the public. At the end of the fiscal year, the balance in these accounts totaled \$2,501,851.

### Miscellaneous Activities

#### *National Inventor's Day*

This annual event included the dedication of new exhibits for the National Inventor's Hall of Fame. The 1979 inductees into the Hall of Fame, located in the Patent and Trademark Office, were:

- Jay W. Forrester, for his "Multi-Coordinate Digital Storage Information Device";

- Robert H. Goddard, posthumously, for his "Control Mechanism for Rocket Apparatus"; and
- Charles J. Plank and Edward J. Rosinski, for their "Catalytic Cracking of Hydrocarbons with a Crystalline Zeolite Catalyst Composite."

#### *Patentee Index on Microfilm*

The Public Patent Search Room of the PTO installed a new computer-generated microfilm system

for accessing patentee information, beginning with patents issued after January 3, 1978.

#### *Classified Patents on Solar Energy*

Due to public demand for access to patents on solar energy these patents have been microfilmed and made available for public use.

## News Items

### COLOMBIA

*Head of the Office for Intellectual  
Property and Publications*

We have been informed that Dr. Luz Myriam Montañes de Lorduy has been appointed Head of the Office for Intellectual Property and Publications.

## Calendar

### WIPO Meetings

(Not all WIPO meetings are listed. Dates are subject to possible change.)

#### 1980

- September 8 to 16 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Planning
- September 22 to 26 (Geneva) — Governing Bodies (WIPO Coordination Committee; Assemblies of the Paris, Budapest, PCT and TRT Unions; Conference of Representatives of the Paris Union; Executive Committees of the Paris and Berne Unions)
- October 6 to 10 (Geneva) — Locarno Union — Committee of Experts
- October 14 to 17 (Geneva) — Permanent Committee on Patent Information (PCPI) — Working Group on Patent Information for Developing Countries
- October 20 to 24 (Geneva) — Permanent Committee on Patent Information (PCPI) and PCT Committee for Technical Cooperation
- November 17 to 21 (Geneva) — Berne Union and Universal Copyright Convention — Working Group on the overall problems posed for developing countries concerning access to works protected under copyright conventions (convened jointly with Unesco)
- November 24 to 28 (Vienna) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information — Subgroup on IPC Class B 60
- November 24 to December 5 (Geneva) — Nice Union — Committee of Experts
- December 1 to 3 (Lomé) — Development Cooperation — African Regional Seminar on Copyright (convened jointly with Unesco)
- December 1 to 5 (Paris) — Permanent Committee on Patent Information (PCPI) — Working Group on Search Information — Subgroup on IPC Class G 01, etc.

**December 4 and 5 (Lomé) — African Regional Seminar on Neighboring Rights** (convened jointly with ILO and Unesco)

**December 8 to 12 (Geneva) — International Patent Classification (IPC) — Committee of Experts**

**December 15 to 19 (Paris) — Berne Union — Committee of Governmental Experts on Problems Arising from the Use of Computers**  
(convened jointly with Unesco)

## **UPOV Meetings**

### **1980**

**September 16 to 18 (Lund) — Technical Working Party for Ornamental Plants**

**September 23 to 25 (Lund) — Technical Working Party for Vegetables**

**October 14 (Geneva) — Consultative Committee**

**October 15 to 17 (Geneva) — Council**

**November 10 to 12 (Geneva) — Technical Committee**

**November 13 and 14 (Geneva) — Administrative and Legal Committee**

## **Meetings of Other International Organizations Concerned with Industrial Property**

### **1980**

#### **European Patent Organisation:**

*Inauguration of the New Building and Administrative Council (Special Session):* September 18 and 19 (Munich)

*Administrative Council:* December 8 to 12 (Munich)

**International Association for the Protection of Industrial Property:** November 16 to 21 (Buenos Aires) — 31st Congress

**Pacific Industrial Property Association:** October 22 to 24 (Tokyo) — 11th International Congress