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International Unions

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Ratifications

UNITED KINGDOM

The Government of the United Kingdom deposited, on September 29, 1980, its instrument of ratification of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, done at Budapest on April 28, 1977.

The said Treaty will enter into force, with respect to the United Kingdom, on December 29, 1980.

Budapest Notification No. 9, of September 30, 1980.

FEDERAL REPUBLIC OF GERMANY

The Government of the Federal Republic of Germany deposited, on October 20, 1980, its instrument of ratification of the Budapest Treaty.

The said instrument was accompanied by the following declaration: "the said Treaty shall also apply to Berlin (West) with effect from the date on which it enters into force for the Federal Republic of Germany."

The said Treaty will enter into force, with respect to the Federal Republic of Germany, on January 20, 1981.

Budapest Notification No. 10, of October 21, 1980.

WIPO Meetings

Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure

Interim Advisory Committee

Third Session
(Geneva, June 13 to 19, 1980)

NOTE*

The Interim Advisory Committee for the preparation of the entry into force of the Budapest Treaty held its third session in Geneva in June 1980.¹ Twenty-one member States of the Interim Committee were represented, and three other States in an observer capacity;

one intergovernmental organization was represented as a special observer and four international non-governmental organizations as observers. A list of participants follows this Note.

In a joint session with the Assembly of the International Patent Cooperation (PCT) Union,² the Interim Committee considered proposals for possible amendments to the Regulations under the Budapest Treaty and recommended to the Budapest Union Assembly the adoption of a new rule concerning applications filed as international applications under the Patent Cooperation Treaty. The Interim Committee also recommended the amendment of Rules concerning new deposits.

After a discussion of questions raised by the Interim Committee at its second session, agreement was reached on the decisive date of deposit of a microorganism and on the legal effect of the first viability test being negative. Preliminary views were expressed on

* This Note has been prepared by the International Bureau.

¹ A Note on the Committee's second session was published in *Industrial Property*, 1979, p. 178.

² For a Note on the PCT Union Assembly, see *Industrial Property*, October 1980, p. 217.

the minimum requirements for the establishing of the said date.

The Interim Committee gave advice on preparations for the first session of the Assembly of the Budapest Union³ and noted statements by 13 Delegations concerning the progress being made in their countries towards ratifying the Budapest Treaty.

LIST OF PARTICIPANTS*

I. Member States

Australia: D.B. Fitzpatrick. **Austria:** C. Strohal. **Bulgaria:** I. Kotzev. **Denmark:** D. Simonsen; G. Lütken. **Finland:** H.I. Lommi. **France:** P. Guérin; D. Darmon. **Germany (Federal Republic of):** U.C. Hallmann. **Hungary:** Z. Szilvássy; E. Parragh. **Italy:** G. Caggiano. **Japan:** S. Ishii; S. Uemura; Y. Masuda. **Luxembourg:** F. Schlessler. **Mexico:** Z. González y Reynero. **Netherlands:** J.D. Tak. **Norway:** P. Lossius; A. Skjødt. **Romania:** I. Marinescu; T. Melescanu. **Soviet Union:** L. Komarov; G. Gudkov; V. Dementjev; K. Saenko; V. Poliakov. **Spain:** A. Casado Cervino; R. Vazquez de Parga y Pardo. **Sweden:** E. Tersmeden; R. Wallis. **Switzerland:** J.-L. Comte; R. Kämpf. **United Kingdom:** D.F. Carter. **United States of America:** S.D. Schlosser.

³ The Budapest Treaty entered into force on August 19, 1980 (see *Industrial Property*, June 1980, p. 167). The first session of the Assembly took place from September 22 to 26, 1980.

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

II. Observer States

Canada: M.R. Leir. **Iraq:** J.R. Ahmad. **Turkey:** E. Tümer.

III. Intergovernmental Organization (Special Observer)

European Patent Organisation (EPO): G.D. Kollé; L. Gruszow.

IV. International Non-Governmental Organizations

European Federation of Agents of Industry in Industrial Property (FEMIP): F.A. Jenny. **International Association for the Protection of Industrial Property (IAPIP):** G. Horvath. **International Federation of Inventors' Associations (IFIA):** S.-E. Angert. **International Federation of Pharmaceutical Manufacturers Associations (IFPMA):** F.A. Jenny.

V. Officers

Chairman: J.-L. Comte (Switzerland). **Vice-Chairmen:** Z. Szilvássy (Hungary); S.D. Schlosser (United States of America). **Secretary:** F. Curchod (WIPO).

VI. International Bureau of WIPO

K. Pfanner (*Deputy Director General*); **L. Baeumer** (*Director, Industrial Property Division*); **F. Curchod** (*Head, Special Projects Section, Industrial Property Division*); **A. Ilardi** (*Legal Officer, Special Projects Section*).

General Studies

Policy Development in Industrial Property in Australia

F. J. SMITH*

Book Reviews

Kommentar zum Sortenschutzgesetz, by F. Wüsthoff, with the collaboration of D. Wendt. Verlag Chemie, Weinheim, 1977. — 565 pages.

Dr. Wüsthoff's Commentary (Commentary on the Plant Varieties Protection Law of the Federal Republic of Germany), the first basic commentary in German dealing with plant variety protection (and one of the very few existing throughout the world), is already well known in the Federal Republic of Germany, but perhaps less so in other countries. The number of publications in this comparatively young field is rather small and the same is true for decisions of national courts and administrative authorities. This has so far proved quite a handicap, and even the cause of a certain legal insecurity, in the practical application of plant variety protection legislation, not only in the Federal Republic of Germany but also in various other countries in which such legislation exists. With more than 3,000 plant breeders' rights granted so far in the Federal Republic of Germany alone, it was time, at least as far as the situation in that country was concerned, for plant breeders, their agents, the offices and courts to have at their disposal a systematic commentary setting out the pertinent legal provisions and giving some of the background. Since no comparable exhaustive commentary exists in most other languages, the work by Wüsthoff should, and certainly will, attract attention in countries even where German is not spoken. This is particularly so since the work also comments on the Convention which is the basis of plant breeders' rights legislation in its 12 present member States and serves as a model for such legislation in a number of other States, namely the International Convention for the Protection of New Varieties of Plants of December 2, 1961—UPOV Convention—(the Additional Act of 1972 to this Convention is also published in the Commentary, but not, of course, the Revised Text of the Convention adopted in 1978, one year after the Commentary was published).

The most impressive feature of the Commentary is its completeness. It covers not only the legal provisions of the Federal Republic of Germany and the German Democratic Republic, but also contains information on the situation in other countries and refers to important directives and decisions of the European Economic Community. All of this is not restricted to plant breeders' rights as such, but also covers other fields, seed trade legislation and aspects of German and EEC antitrust law and law on unfair competition. The commentary on the UPOV Convention has already been mentioned. In short, there is no detail of importance concerning the protection of new varieties of plants, at least in the Federal Republic of Germany, which is not mentioned, cited and in most cases reproduced. The international approach of the author is best illustrated by the fact that the Commentary contains a complete list of the genera and species to which the member States of UPOV (in 1977) applied the Convention when the Commentary appeared, and includes both their Latin or botanical names and their common German names. The index of abbreviations alone will be a valuable help for anyone working in this field. Indeed, as a source of information the Commentary by Wüsthoff cannot be surpassed.

The author has dedicated his Commentary to his well-remembered wife, Dr. Freda Wüsthoff, who died in 1956 and was, together with the author himself, one of the leading protagonists for the introduction of plant variety protection in and beyond Germany. Indeed, the author has been concerned with plant breeders' rights since 1927 and this enables him to provide firsthand information on the historical development of the concept of plant breeders' rights. The fact that the author is a patent attorney, still active in the field, enables him to draw many parallels with other sectors of industrial property protection, in particular, with patents and trademarks. His collaboration with Diethard Wendt, a lawyer working in the same field, has ensured that the legal aspects and the many legal problems still unresolved in this area have not been overlooked. Readers will find a work which, basically, has been written by a man who has grown with the system from its very start. Unlike other com-

mentaries written by pioneers in their field, the work by Dr. Wüsthoff, however, never gives too much room to the historical interpretation of legal provisions at the expense of other interpretation methods.

Dr. Wüsthoff himself mentions the difficulties encountered by anyone trying to comment on legal provisions in a rather new field in which litigation is rare and where leading decisions of competent authorities—at least published decisions—are none too numerous. In many parts of the Commentary, the author has simply had to base himself on his own judgment and on the opinions of other top experts. Dr. Wüsthoff himself would not claim infallibility as far as his views on questions of detail are concerned and a few of his opinions will certainly be contested. But here might lie the greatest merit of the publication, namely, to have started a discussion in a field that deserves more attention and a critical approach by the legal profession. Fortunately, there are already indications of increasing interest by lawyers. No one working in this special field of plant variety protection, whether concerned with its legal or other—biological, agricultural and economic—aspects, will be able to ignore this fundamental work. Unquestionably, it belongs in the hands of everybody who is concerned with this field.

H. Mast
UPOV

Droit de la propriété industrielle (second edition), by A. Chavanne and J.-J. Burst. Dalloz, Paris, 1980. — 658 pages.

This is the second edition of a work which first appeared in 1976 and which was already referred to advantageously in the March 1977 issue of this review.

This new edition naturally maintains the layout of the preceding edition and presents a complete, concise and clear survey of industrial property law. The need for this new version arises, at national level, from the changes made by the French Patent Law of July 13, 1978, and its Implementing Decree of September 19, 1979, and, at international level, from the entry into force, at the close of 1977 and the beginning of 1978, of both the European Patent Convention and the Patent Cooperation Treaty (PCT).

This new version therefore meets a real need and will prove indispensable for students, theoreticians and practitioners of industrial property law alike.

GRW

Trademark and Unfair Competition Law of Japan, Volume 1, by T. Doi. AIPPI Japan, Tokyo, 1980. — 276 pages.

This work, a digest of court decisions, is designed to supply lawyers and businessmen with up-to-date information on developments in Japanese trademark and unfair competition law. It commences with an outline and discussion of the applicable legislation: the Trademark Law, the Unfair Competition Prevention Law, the Antimonopoly Law and its Special Statutes, and the Commercial Code (for the protection of trade names). The volume then presents summaries (briefs) of 50 cases decided by the Japanese courts during the period of 1968 to 1977. The cases are divided into four groups: 19 deal with the registrability of trademarks, 11 with trademark infringement, nine with issues under the Unfair Competition Protection Law, and 11 with other forms of unfair competition, such as defamation, design infringement, copyright infringement, infringement of the right of publicity and importation of patented products. The digest concludes with a table of cases and a practical subject index.

It is the author's intention periodically to update the digest with additional volumes. As it is clear that the issues involved in trademark and unfair competition litigation are becoming increasingly complex, this volume as well as those that follow should serve as useful aids to all those with Japanese business dealings.

JAE

The Draft International Code of Conduct on the Transfer of Technology, by W. Fikentscher, assisted by H.P. Kunz-Hallstein, C. Kleiner, F. Pentzlin and W. Straub. Max Planck Institute for

Foreign and International Patent, Copyright and Competition Law and Verlag Chemie, Munich, 1980. — 195 pages.

This work, written in English, constitutes a volume in the series of Studies in Industrial Property and Copyright (IIC Studies) published by the Max Planck Institute for Foreign and International Patent, Copyright and Competition Law. The study fulfills a dual purpose: it provides an excellent introduction to the United Nations Draft International Code of Conduct on the Transfer of Technology and, in addition, presents a well-reasoned discussion of the questions underlying the legal and economic philosophy of Third World development.

In carrying out its first purpose, the study analyzes the history of the Draft Code, examines in detail its various provisions, in particular those dealing with restrictive business practices, and contains an interesting discussion on the interplay between the Code and the Paris Convention. With regard to its second purpose, the study examines in an objective and scholarly manner the ideologies of the New International Economic Order, the transfer of technology and economic growth, and applies the civil law concepts of "do ut des" and the subjective right to international economic development. In addition, the study contains a most useful multilingual bibliography.

This work should be of great interest to all legal scholars and practitioners interested in evaluating the Draft Code and its implications for global development.

JAE

La publicité et la loi (fourth edition), by P. and F. Greffe. Librairies techniques, Paris, 1979. — 540 pages.

The fact that P. and F. Greffe's classic is already in its fourth edition proves its value and usefulness. It treats exhaustively and with great clarity the law as it affects advertising and the related profession, in all fields, whether subject to copyright (e.g. copyright in advertising creations or the right of models in their likenesses), to competition law (e.g. disparagement or the right of criticism) or to specific regulations such as those on consumer protection and information, advertising for drinks, for pharmaceuticals or against smoking.

GRW

La publicidad de tono excluyente, by C. Lema Devesa. Editorial Montecorvo, Madrid, 1980. — 578 pages.

This work deals with what is known variously in German writings as "Allcinstellungswerbung" or "Superlativwerbung" or again "Superlativreklaime." Its first part therefore describes the regulations governing this type of advertising in German law and its second part, the corresponding regulations under Spanish law, with each of the two parts divided into three chapters treating concept, legislation and practice, respectively. This layout of the material facilitates comprehension of the similarities and differences between the two systems and gives the work its great interest.

GRW

Les perspectives d'un droit communautaire en matière de dessins et modèles industriels. International Round Table held by CNRS. CUERPI, Grenoble, 1978. — 253 pages.

This work contains the papers presented at a Round Table held in Grenoble on December 12 and 13, 1977, under the aegis of the European Communities.

As pointed out by the Director of CUERPI, Mrs. Perot-Morel, in the foreword, the problem of adopting a Community system of law in respect of industrial designs is rendered particularly difficult by the "disparity of legislation" and the "hybrid nature" of these creations "which leave them strewn across various legal statuses." The Round Table, attended by highly-qualified specialists from the Member States and the Commission of the European Communities, should help to give an extra impetus to work in this field by raising the various questions that are posed, such as the need and feasibility of Community action, the harmonization of Member States' laws, cumulative or separate protection, use and marketing of designs within the EEC, etc.

GRW

Calendar

WIPO Meetings

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

1980

- 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)

1981

- January 12 to 20 (Geneva) — Budapest Union (Microorganisms) — Assembly (Extraordinary Session)
- January 19 to 30 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information
- February 2 to 6 (Rijswijk) — Permanent Committee for Patent Information (PCPI) — Working Group on Planning
- February 9 to 13 (Paris) — Working Group on Intellectual Property Aspects of Folklore Protection (convened jointly with Unesco)
- March 23 to 25 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
- March 23 to 27 (Geneva) — Development Cooperation — Working Group on the Establishment of a Guide on the Organization of Industrial Property Activities of Enterprises in Developing Countries
- March 25 to 27 (Geneva) — Worldwide Forum on Piracy of Phonograms and Audiovisual Works
- March 31 to April 3 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Patent Information for Developing Countries
- April 6 to 10 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on General Information
- June 15 to 26 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Search Information
- June 22 to 26 (Geneva) — Development Cooperation — Group of Consultants on Consumer Protection and Trademarks for Development
- June 22 to 26 (?) (Geneva) — International Patent Cooperation (PCT) Union — Assembly (Extraordinary Session)
- September 10 to 18 (Geneva) — Permanent Committee for Patent Information (PCPI) — Working Group on Planning
- September 24 and 25 (Nairobi) — Treaty on the Protection of the Olympic Symbol — Diplomatic Conference
- September 28 to October 24 (Nairobi) — Revision of the Paris Convention — Diplomatic Conference
- November 9 to 13 (Geneva) — Permanent Committee for Patent Information (PCPI) and PCT Committee for Technical Cooperation
- November 11 to 13 (Geneva) — Rome Convention — Intergovernmental Committee (convened jointly with ILO and Unesco)
- November 16 to 24 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee, Assemblies of the Paris, Madrid, Hague, Nice, Lisbon, Locarno, IPC, PCT, Budapest, TRT and Berne Unions; Conferences of Representatives of the Paris, Hague, Nice and Berne Unions; Executive Committees of the Paris and Berne Unions; Committee of Directors of the Madrid Union; Council of the Lisbon Union)
- November 30 to December 7 (New Delhi) — Berne Union — Executive Committee — Extraordinary Session (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
- December 7 to 11 (Geneva) — International Patent Classification (IPC) — Committee of Experts

UPOV Meetings

1981

- May 6 (Geneva) — Consultative Committee
- May 6 to 8 (Geneva) — Administrative and Legal Committee
- June 2 to 4 (Wädenswil) — Technical Working Party for Vegetables
- June 23 to 25 (Edinburgh) — Technical Working Party for Agricultural Crops
- September 22 to 25 (Wageningen) — Technical Working Party for Fruit Crops
- October 6 to 8 (Antibes) — Technical Working Party for Ornamental Plants
- October 13 (Geneva) — Consultative Committee

October 14 to 16 (Geneva) — Council

November 9 to 11 (Geneva) — Technical Committee

November 11 to 13 (Geneva) — Administrative and Legal Committee

Meetings of Other International Organizations Concerned with Industrial Property

1980

European Patent Organisation: December 8 to 12 (Munich) — Administrative Council