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Notifications

WIPO Convention

Accession

LEBANON

The Government of Lebanon deposited on September 30, 1986, its instrument of accession to the Convention Establishing the World Intellectual Property Organization, signed at Stockholm on July 14, 1967.

The said Convention will enter into force, with respect to Lebanon, on December 30, 1986.

WIPO Notification No. 138, of September 30, 1986.

Paris Convention

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

LEBANON

The Government of Lebanon deposited, on September 30, 1986, 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.

Furthermore, the said instrument of accession contains the reservation that, pursuant to the provisions of paragraph (2) of Article 28 of the said Paris Convention, the Government of Lebanon declares that it does not consider itself bound by the provisions of paragraph (1) of that Article.

Lebanon will belong to Class VII for the purpose of establishing its contribution towards the budget of the Paris Union.

The Stockholm Act (1967) of the said Convention, with the exception of Articles 1 to 12, will enter into force, with respect to Lebanon, on December 30, 1986.

Paris Notification No. 117, of September 30, 1986.

The Hague Agreement

Accession to the London Act (1934), the Hague Act (1960) and the Stockholm (Complementary) Act (1967)

BENIN

The Government of Benin deposited, on October 2, 1986, its instrument of accession to the London Act of June 2, 1934, to the Hague Act of November 28, 1960, and to the Complementary Act of Stockholm of July 14, 1967, of the Hague Agreement Concerning the International Deposit of Industrial Designs of November 6, 1925.

Benin has not heretofore been a member of the Union for the International Deposit of Industrial Designs ("Hague Union"), founded by the Hague Agreement.

The London Act (1934) and the Hague Act (1960) of the Hague Agreement will enter into force, in respect of Benin, on November 2, 1986, whereas the Stockholm (Complementary) Act (1967) of the said Agreement will enter into force, with respect to the said State, on January 2, 1987.

The Hague Notification No. 26, of October 2, 1986.

Budapest Treaty

I. Change in the Name, Location and in the List of Kinds of Microorganisms Accepted for Deposit

CULTURE CENTRE OF ALGAE AND PROTOZOA (CCAP)

The following notification addressed to the Director General of WIPO by the Government of the United Kingdom under Rules 4.2 and 5.2 of the Regulations under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was received on September 22, 1986, and is published by the Interna-

tional Bureau of WIPO pursuant to Rules 4(2)(d) and 5(2)(b) of the Regulations:

1. The Culture Centre of Algae and Protozoa, at present at 36 Storey's Way, Cambridge CB3 0DT, United Kingdom, with effect from January 1, 1987, is to be renamed the Culture Collection of Algae and Protozoa and relocated at:

(i) Freshwater Biological Association, Windermere Laboratory, The Ferry House, Far Sawrey, Ambleside, Cumbria LA22 0LP, United Kingdom; and

(ii) Scottish Marine Biological Association, Dunstaffnage Marine Research Laboratory, PO Box 3, Oban, Argyll PA34 4AD, United Kingdom.

The Culture Collection of Algae and Protozoa will accept:

(i) freshwater and terrestrial algae and free-living protozoa at its Freshwater Biological Association address; and

(ii) marine algae, other than large seaweeds, at its Scottish Marine Biological Association address.

2. The assurances furnished in the communication by the Government of the United Kingdom dated July 20, 1982, that the Culture Centre of Algae and Protozoa complies and will continue to comply with the requirements specified in Article 6(2) of the Budapest Treaty apply and will continue to apply to the renamed international depository authority at its new locations.

3. In accordance with Rule 5.2 of the Regulations under the Budapest Treaty, the Government of the United Kingdom notifies you that during the course of relocation from October 1, 1986 to January 1, 1987, the Culture Centre of Algae and Protozoa will be unable to receive any deposits. No alternative temporary measures are planned for this short period.

4. In accordance with Rule 4.2 of the Regulations under the Budapest Treaty, the Government of the United Kingdom also notifies you that with effect from January 1, 1987, the Culture Collection of Algae and Protozoa will not accept parasitic protozoa not pathogenic to man or domestic animals, which can be maintained by in vitro culture, so limiting the kinds of microorganisms previously accepted by the Culture Centre of Algae and Protozoa.

5. In accordance with Rule 5(1)(a)(iv) of the Regulations under the Budapest Treaty, the Government of the United Kingdom notifies that measures consequential to this limitation are unnecessary since the Culture Centre of Algae and Protozoa does not hold any deposits of such parasitic protozoa for patent purposes.

[End of text of the notification of the Government of the United Kingdom]

Budapest Communication No. 30 (this Communication is the subject of Budapest Notification No. 54 of October 3, 1986).

II. Corrigendum

NATIONAL COLLECTION OF AGRICULTURAL AND INDUSTRIAL MICROORGANISMS (NCAIM)

The Government of Hungary has informed WIPO that the title of the above-mentioned international depository authority should read as follows in Hungarian: *Mezőgazdasági és Ipari Mikroorganizmusok Magyar Nemzeti Gyűjteménye (MIMNG)*.¹

¹ See *Industrial Property*, 1986, p. 203.

Activities of the International Bureau

Celebration of the Hundredth Anniversary of the Berne Convention*

(Berne, September 11, 1986)

Celebration in Berne

The Berne Convention for the Protection of Literary and Artistic Works was signed on September 9, 1886.

The centenary was celebrated, on September 11, 1986, by four events organized by the Government of Switzerland. They took place in Berne, the capital of Switzerland.

The four events were the following:

- a gathering in the *Bundeshaus* (or *Palais fédéral* in French), the seat of both the Federal Council (*Conseil fédéral*) and the Parliament (*Assemblée nationale*);
- the opening of an exhibition devoted to the history of the Berne Convention, set up in the Archives of the Confederation (*Archives fédérales*);
- the unveiling of an artistic work in the gardens of the Archives;
- a banquet given by the Federal Council for the participants.

The participants included several of the highest and other high officials of the Swiss Confederation, the Director General and a number of staff members of the World Intellectual Property Organization (WIPO), diplomatic representatives of member States of WIPO or the Berne Union, members of the International Literary and Artistic Association (ALAI) (which held a special congress in Berne at the same time) and other personalities of the world of international copyright. Altogether, between 500 and 600 persons from some 100 countries took part.

Gathering in the Bundeshaus. This gathering took place in the meeting room of the *Conseil national*, the lower house of the Swiss Parliament.

The ceremonial gathering heard speeches—in this order— by H.E. Mr. *Alphons Egli*, President of the Swiss Confederation, *Dr. Arpad Bogsch*, Director General of the World Intellectual Property Organization, *Dr. Gyula Pusztai*, Chairman of the Assembly of the Berne Union and Delegate of Hungary in the same Assembly

and *Dr. Georges Koumantos*, President of the International Literary and Artistic Association.

Between the two last speeches, the Chairman of the Assembly of the Berne Union declared that Assembly to be in extraordinary session and invited it to adopt a solemn declaration. The declaration was adopted by acclamation. Its text follows:

"The States members of the Assembly of the International (Berne) Union for the Protection of Literary and Artistic Works,

Convened in an extraordinary session by the Director General of the World Intellectual Property Organization in order to commemorate the hundredth anniversary of the adoption of the Berne Convention for the Protection of Literary and Artistic Works, signed on September 9, 1886,

Meeting, at the invitation of the Federal Council of the Swiss Confederation in the Palais fédéral, in Berne, in the same place where the Berne Convention was adopted and signed a century ago,

Inspired by the enthusiasm, imagination, wisdom and foresight of those Governments and those individuals whose efforts brought the Berne Convention into existence,

Paying tribute to the memory of all those who contributed to the constant modernization, through the seven revisions that took place in the last hundred years, of the Berne Convention,

Reaffirming their commitment to protect the rights of authors in as effective and uniform a manner as possible:

Solemnly declare that copyright is based on human rights and justice and that authors, as creators of beauty, entertainment and learning, deserve that their rights in their creations be recognized and effectively protected both in their own country and in all other countries of the world;

Solemnly declare that the law of copyright has enriched and will continue to enrich mankind by encouraging intellectual creativity and by serving as an incentive for the dissemination throughout the world of expressions of the arts, learning and information for the benefit of all people;

Solemnly declare that international respect for the law of copyright opens paths across frontiers for works of the mind, thus contributing to a better international understanding and to the cause of peace;

Solemnly declare that the Berne Convention for the Protection of Literary and Artistic Works, by

* For a full account, including the texts of the speeches, see *Copyright*, 1986, pp. 367.

providing an outstanding, comprehensive and harmonized codification of the rights of authors, has guaranteed for a hundred years the most effective international protection of those rights;

Pledge themselves to continue to work together to safeguard the rights of authors against all forms of piracy and other unlawful acts and to ensure the effective application of those rights in the framework of new opportunities for communication between authors and the public created by economic, social, scientific and technological progress;

Urge all States that so far have not done so to join them by adhering to the Berne Convention for the Protection of Literary and Artistic Works."

Exhibition. The exhibition on the history of the Berne Convention was opened by Mr. Jean-Louis Comte, Director of the Swiss Federal Intellectual Property Office.

The exhibition contained the original of the Berne Convention, bearing the signatures and seals of the plenipotentiaries of the countries that signed the Convention. It also contained documents issuing from some of the diplomatic conferences of revision, photographs of the buildings in which the Secretariat of the Berne Union had its headquarters in Berne and, since 1960, has had its headquarters in Geneva, and the portraits of its directors during the last hundred years.

Artistic Work. The artistic work is a wall, consisting of cubes in black granite and white marble, representing a chess board (some two meters long on each side and 40 centimeters deep), standing on its edge. The squares of one of the kings and one of the queens are missing, which gave the work its title of "Chess-Free Chess." The

author is a Swiss, Mr. Heinz Brand (born in 1944). The work was unveiled after the speech by Mrs. Elisabeth Kopp, Federal Councillor, in charge of the Ministry (*Département*) of Justice and Police.

Banquet. The banquet was held at the Hotel Bellevue Palace, one of the most beautiful and agreeable old hotels in Switzerland if not the world.

Speeches were made by Mrs. Elisabeth Kopp, Federal Councillor, and Dr. Arpad Bogsch, Director General of the World Intellectual Property Organization.

* * *

The events recounted above were characterized by dignified solemnity, warm hospitality and perfect organization.

The merit, to a decisive extent, is due to Mr. Jean-Louis Comte who, with some of his colleagues in the Swiss Federal Intellectual Property Office, worked for months on the preparations and actually supervised all the details. Even the weather favored the participants: Berne, an exceptionally beautiful old city, with the *Bundeshaus* on a hill overlooking the River Aare, was bathed in sunshine, with the vegetation still rich in its summer colors.

Those who had the privilege of participating in those events will always remember the elegance and dignity with which they were conducted and will be ever grateful to the Swiss Government for having given so much attention to the anniversary of the Berne Convention, an important and successful treaty born in their capital a hundred years ago.

A.B.

WIPO Meetings

Governing Bodies of WIPO and the Unions Administered by WIPO

Seventeenth Series of Meetings
(Geneva, September 8 to 12, 1986)

NOTE*

The Governing Bodies of WIPO and the Unions administered by WIPO held their seventeenth series of meetings in Geneva from September 8 to 12, 1986. Delegations from 82 States, nine intergovernmental organizations and five non-governmental organizations participated in the meetings.

This year the following 10 Governing Bodies met in ordinary or extraordinary sessions:

- WIPO Coordination Committee;
- Paris Union Assembly;
- Paris Union Conference of Representatives;
- Paris Union Executive Committee;
- Berne Union Assembly;
- Berne Union Conference of Representatives;
- Berne Union Executive Committee;
- Madrid Union Assembly;
- IPC [International Patent Classification] Union Assembly;
- PCT [Patent Cooperation Treaty] Union Assembly.

The Governing Bodies paid a minute of silent tribute to the memory of the late Mr. Klaus Pfanner, former Deputy Director General, and of the late Mr. Claude Masouyé, former Director, Public Information and Copyright Department, of WIPO.

Director General's Address on the International Year of Peace. In 1982, the General Assembly of the United Nations proclaimed 1986 to be the International Year of Peace. Last year, the Governing Bodies of WIPO decreed several measures aimed at demonstrating the profound interest of WIPO in the International Year of Peace.

Amongst these was a speech which the Director General pronounced during the 1986 Governing Bodies. In his speech the Director General sought, *inter*

alia, the answers to two questions: first, what role, if any, can the international protection of intellectual property play in securing peace; second, what can the World Intellectual Property Organization, as an organization, contribute to securing peace. To the first question, he said:

"I believe that considering the fruits of labor and imagination as objects in which their creators have certain rights—namely, intellectual property rights—is a matter of justice. Being just is an indispensable condition for the creation and preservation of peace. Thus, since the protection of intellectual property rights serves justice, and since justice serves peace, consequently, in a sense, the protection of intellectual property rights serves peace. That protection serves peace when it exists both at the national level and at the international level. Obtaining that protection efficiently and economically and as extensively as possible ensures harmonious relations within a State and across international boundaries."

To the second question, the Director General said:

"The World Intellectual Property Organization does, of course, promote the international recognition of the rights in inventions and artistic creations, and it does that in a manner which is not one-sided but well balanced. The latter means that the rights in question are not protected without limit and in perpetuity but with due regard to the legitimate interests of the consuming public and the economic goals of all governments, whether of developing or developed countries, and for limited periods of time.

"Finding this right balance is difficult enough inside each State, and national governments and legislators struggle with the problem all the time. Finding this right balance is even more difficult at the international level since the material and economic situations of the various States are widely divergent, and the cultural and economic goals of their governments are different both on account of the factual differences and on account of their different perception of values based on tradition, political ideology or religion....

"...In other words, one of the most fundamental conditions of peace is mutual understanding. Such understanding can best be created by personal contacts among individuals coming from all parts of the world.

* Prepared by the International Bureau.

"The World Intellectual Property Organization is a microcosmos in which such mutual understanding is worked for every day....

"...By promoting cooperation among people, the World Intellectual Property Organization is serving, and wishes to continue to serve, peace not only in the present International Year of Peace but in all the years thereafter."

The International Bureau also produced a special publication consisting of a collection of articles on the interrelationship between intellectual property and peace and issued a WIPO medal to commemorate the event; both the publication and the medal were distributed to the Heads of the Delegations of member States attending the Governing Bodies.

Commemoration of the Centenary of the Berne Convention for the Protection of Literary and Artistic Works. The main events which commemorated the centenary are outlined on page 433 of the present issue of *Industrial Property*.

During discussions in the meeting of the Assembly of the Berne Union, a number of delegations referred to the remarkable achievements of the Berne Convention during its first hundred years in the promotion of creativity. According to them, it was a time not only for honoring the wisdom and foresight of those whose efforts brought into existence the Berne Convention, but also for anticipating the future of the Convention with enthusiasm.

In particular, the Delegation of the United States of America informed the Assembly that the movement towards its country's adherence to the Berne Convention was stronger now than at any time in the past. The Convention had been transmitted in June 1986 by President Reagan to the United States Senate for its advice and consent. The sole remaining question was the adoption of the appropriate legislation amending the 1976 Copyright Act to bring it into full compliance with the requirements of the 1971 Paris Act of the Berne Convention.

Diplomatic Conference on the Revision of the Paris Convention for the Protection of Industrial Property. After extensive consultations and discussions, the Assembly of the Paris Union decided that two Consultative Meetings would be held in January and February 1987, and May 1987, with the possibility of a third Meeting in September 1987. Those Meetings would deal only with the possible substantive content of a number of Articles in the Paris Convention. The Assembly also decided that at its 1987 session it will consider questions concerning the revision of the Paris Convention, including possible changes in the mechanisms of consultations, and whether or not to fix a date for the resumption of the Sessions of the Diplomatic Conference for the Revision of the Paris Convention.

Preparations for a Possible Diplomatic Conference on the Conclusion of a Treaty on the Protection of Integrated Circuits. It will be recalled, in this context, that two meetings were held in 1986 (in February and in June). Consultants and experts participated in those meetings and had discussions on technical issues involved in the protection of integrated circuits.

During the Governing Bodies, preparations for a possible diplomatic conference on the conclusion of a treaty on such protection were discussed. The WIPO Coordination Committee and the Assembly of the Paris Union decided that any decision on the convocation of a diplomatic conference on integrated circuits should be postponed until the 1987 sessions of the Governing Bodies and that, in the meantime, the Director General should continue the preparations with the necessary studies and the convening of at least one session of an intergovernmental committee of experts, taking into account the necessary balance among all interested parties.

Preparations for a Possible Diplomatic Conference on the Revision of the Madrid Agreement Concerning the International Registration of Marks. In January 1986, the Assembly of the Madrid Union met in an extraordinary session in Geneva. The only topic discussed was the giving of directions to the International Bureau concerning the preparation of a possible diplomatic conference of revision. Also in January of this year, and again in July, the Working Group on Links between the Madrid Agreement and the Proposed (European) Community Trade Mark met in Geneva. Discussions were based on a memorandum prepared by the Director General of WIPO entitled "Possible Protocols to the Madrid Agreement." It contained the drafts of two Protocols. Draft Protocol A aimed at modifying the Madrid Agreement so as to make the Agreement acceptable to the four States members of the European Community without being members of the Madrid Union (namely, Denmark, Greece, Ireland and the United Kingdom). Draft Protocol B aimed at establishing a link between the Madrid Agreement and the future Community (European) Trade Mark, enabling the simultaneous use of the two systems.

Although in the Working Group it was not possible to agree on all the issues, a degree of progress was made that would seem to be sufficient to envisage seriously the convocation of a diplomatic conference for the adoption of texts along the lines of the two proposed Protocols.

During the sessions of the Governing Bodies, the Assembly of the Madrid Union had to pronounce itself on the question of whether such a diplomatic conference should be further prepared and convened. It was decided that the Working Group should, without any change in membership, hold a meeting during the first quarter of 1987. It was also decided that the Assembly of the Madrid Union would be called upon, during its ordinary session in September 1987, to take a decision

on the desirability of holding a diplomatic conference in 1988 for the revision of the Madrid Agreement, and also on the organizational details of such a conference, should it be decided to hold it.

Simplification of the Structure and Streamlining of the Procedures of the WIPO Permanent Committee on Patent Information. The Governing Bodies endorsed the conclusions of the Permanent Committee on Patent Information (PCPI), which met in the week preceding the sessions of the Governing Bodies. The conclusions were to the effect that the PCPI would pronounce itself later on the proposal of the Director General in this regard. At that time, the PCPI would also consider new proposals as well as several other matters including, *inter alia*, whether technical cooperation in the fields of trademarks and industrial designs should be organized, and certain proposals concerning developing countries.

The Permanent Committee felt that it should be given another opportunity to pronounce itself on the proposals before the competent Governing Bodies pronounce themselves in this regard. If this is accepted, the Permanent Committee will also take a position on the question whether technical cooperation in the fields of trademarks and industrial designs should be organized.

Accession of Greece and Spain to the Patent Cooperation Treaty (PCT). The Patent Cooperation Treaty (PCT) provides, for the benefit of nationals and residents of the States party to that Treaty, a system which facilitates the obtaining of patent protection for inventions in several countries. Under the PCT, only one application must be filed instead of the filing of separate applications for each of the designated States where protection is sought. An international application has the effect of a regular national application in each State designated for protection in the application. The PCT procedure consists of an "international phase" during which an international search report and—optionally—an international preliminary examination report are established, which give a sound basis for calculating the chances of obtaining patents for an invention before major costs in foreign countries are incurred. After the international phase, there follows the "national phase," i.e., the granting procedure before the patent offices of or acting for the various designated States. The national phase starts much later than under the traditional system, at a time when the applicant has a much better knowledge of the technical and economical value of the invention and whether and where he needs patent protection. Where the applicant decides that the chances of obtaining patents and exploiting the invention commercially are not good, he can save all of the costs (for fees, translations and patent agents) in the various designated States. The number of contracting States is at present 39.

It is also possible to use the PCT for the purposes of obtaining a regional patent, such as a European patent, for all those States members of the regional system which are also PCT contracting States. The accession to the PCT by Italy, effective in 1985, permitted the filing of an international application for a European patent for all States party to the European Patent Convention (EPC).

Greece and Spain have now become party to the EPC without, however, acceding to the PCT at the same time. Consequently, a declaration of the Assembly of the PCT Union urging those two States to join the PCT Union was discussed during the Governing Bodies, in order to restore the situation described in the preceding paragraph.

The Assembly unanimously declared that it would very much welcome the early accession to the PCT of Greece and Spain as well as of all the other countries not yet party to the PCT and invited those countries to join them in the PCT Union.

Furthermore, the Assembly unanimously declared its willingness to appoint the Registry of Industrial Property of Spain as an International Searching Authority under the PCT once all the conditions prescribed by the PCT and the Regulations thereunder are fulfilled, in particular, those which must be fulfilled by any Office acting as an International Searching Authority.

Appointment of the United States Patent and Trademark Office as an International Preliminary Examining Authority under the Patent Cooperation Treaty (PCT). It was anticipated that, in October 1986, the authority to withdraw the reservation made by the United States of America under Article 64(I) of the PCT with the effect of excluding the applicability of Chapter II of the PCT, dealing with international preliminary examination, with respect to that country would be given and the necessary implementing legislation would be adopted by the United States Congress (both steps were taken in October 1986), so that the withdrawal of the reservation could be effected before the next ordinary session of the Assembly.

In order to avoid the need to convene an extraordinary session before the next ordinary session, the Assembly took the necessary measures which would allow the United States Patent and Trademark Office (USPTO) to act as an International Preliminary Examining Authority under the PCT as soon as the said withdrawal is effective.

Staff Matters. The Coordination Committee gave favorable advice on the intent of the Director General to appoint Mr. Henry Olsson (national of Sweden) to the post of Director, Copyright and Public Information Department, and Mr. Georges Yung (national of France) to that of Director of the General Administrative Division. Mr. Olsson took up his duties in October, and Mr. Yung in November.

LIST OF PARTICIPANTS**

I. States

- Algeria^{1, 2, 4, 8}: H. Redouane
- Argentina^{1, 2, 4, 5}: E. Pérez Tomas; N. Fasano; J. Viganò.
- Australia^{1, 2, 4, 5, 9, 10}: P.A. Smith; N.D. Campbell.
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- Bangladesh: M. Rahman.
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- China^{1, 2, 4}: Huang Kunyi; Qiao Dexi; *Invitees representing the National Copyright Administration of China*: Liu Gao; Shen Rengan; Zhou Suiyu; Qiu Anman; Gao Hang.
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- Kenya²: J.N. King'Arui.
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- Luxembourg^{2, 5, 8, 9, 10}: F. Schlessler.
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- Mongolia^{2, 8}: M. Dash.
- Morocco^{1, 2, 5, 7, 8}: S.A. Kandil; M.S. Abderrazik; A. Bendaoud.
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- Nigeria^{1, 3, 4}: J. Oniwon.
- Norway^{2, 5, 9, 10}: A.G. Gerhardsen; E. Liljegren.
- Pakistan⁵: A. Ezdi; Z. Akram; B. Khan.
- Panama: J. Aizpúria Pérez.

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

¹ WIPO Coordination Committee.

² Paris Union Assembly.

³ Paris Union Conference of Representatives.

⁴ Paris Union Executive Committee.

⁵ Berne Union Assembly.

⁶ Berne Union Conference of Representatives.

⁷ Berne Union Executive Committee.

⁸ Madrid Union Assembly.

⁹ IPC [International Patent Classification] Union Assembly.

¹⁰ PCT [Patent Cooperation Treaty] Union Assembly.

People's Democratic Republic of Korea^{2,8,10}: Kwon Yon Son; Kim Yu Chol; Myeung Jin Youn.

Peru: J.C. Mariategui; R. Saif.

Philippines^{1,2,4,5}: A. Catubig.

Poland^{1,2,4,6}: J. Szomański; D. Januszkiewicz; A. Kowalski; A. Kwasnik; J. Bleszynski.

Portugal^{2,5,9}: J. Mota Maia; R. Serrão; J.A. Lourenço.

Qatar: M.S. Al-Kuwari; A.G. Barre.

Republic of Korea^{2,10}: T.-C. Choi.

Romania^{2,5,8,10}: I. Marinescu; V. Faur.

Rwanda^{2,5}: B. Murekezi.

San Marino³: P. Giacomini; D. Thomas.

Senegal^{1,2,5,7,10}: S.C. Konate.

Soviet Union^{1,2,4,8,9,10}: I.S. Nayashkov; N.A. Yevsin; S.A. Gorlenko; V.N. Roslov; B.S. Rozov; V. Blatov.

Spain^{2,5,8,9}: J. Delicado Montero-Rios; W.R. Martínez Díez; A. Casado Cervino; E. de la Puente García; M. Pérez del Arco.

Sri Lanka^{2,5,10}: P. Nagaratnam; P. Kariyawasam.

Sudan^{2,8,10}: A.M.A. Hassan; M.E. Abdel Moniem; Y. Abdel-Galil Mahmoud.

Sweden^{1,2,5,7,9,10}: S. Niklasson; A.-K. Wegmann; H. Olsson; K. Hokborg.

Switzerland^{1,2,4,5,7,8,9,10}: J.-L. Comte; J.-M. Souche; W. Frei.

Thailand⁵: S. Visessurakarn; S. Kanchanalai; S. Mongkolphantha; P. Larpkesorn; Y. Phuangrach; P. Limpaphayom; N. Punyakij; K. Phutragool; C. Moodhitaporn.

Togo^{2,5,10}: K.A. Kato.

Tunisia^{1,2,5,7}: B. Zgaya; T. Ben Slama.

Turkey^{1,2,6,7}: S. Tokat; M. Cetin; A. Arsin.

Ukrainian SSR: A. Ozadovski.

United Kingdom^{1,2,5,7,9,10}: P.J. Cooper; A. Sugden; M. Todd; T. David; A. Toothe; F.W. Wheeler.

United Republic of Tanzania^{1,2,4}: S.J. Asman.

United States of America^{1,2,4,9,10}: D.J. Quigg; H.J. Winter; R. Oman; L.J. Schroeder; J.P. Richardson.

Uruguay^{1,2,4,5}: S. Pacheco-Egea; R. González-Arenas.

Venezuela^{1,5,7}: H.C. Azocar; L.D. Ruiz.

Viet Nam^{2,8}: Nguyen Van Vien; Vu Huy Tan.

Yugoslavia^{1,2,4,5,8}: B. Pajković.

Zambia²: A.R. Zikonda.

II. Intergovernmental Organizations

United Nations (UN): T. Zoupanos; A. Djermaakoye; R.S. Dhanjee; E. Bonev; G. Pérez-Arguello. **United Nations Educational, Scientific and Cultural Organization (UNESCO)**: A. Amri. **Secretariat of the General Agreement on Tariffs and Trade (GATT)**: P.J. Williams. **African Regional Industrial Property Organization (ARIPO)**: J.H. Ntaggoba. **Benelux Designs Office (BBDM)**: P. Rome. **Benelux Trademark Office (BBM)**: P. Rome. **European Patent Organisation (EPO)**: P. Braendli; G. Gall. **Interim Committee for the Community Patent**: H.W. Kunhardt. **Organization of African Unity (OAU)**: H.M. Tunis.

III. Non-Governmental Organizations

European Association of Industries of Branded Products (AIM): G.F. Kunze. **European Broadcasting Union (EBU)**: M. Burnett. **International Association for the Protection of Industrial Property (AIPPI)**: G.E. Kirker. **International Chamber of Commerce (ICC)**: J.M.W. Burzas. **International Federation of Translators (IFT)**: D. Schmidt.

IV. Officers

WIPO Coordination Committee

Chairman: D.J. Quigg (United States of America). *Vice-Chairmen*: J. Hemmerling (German Democratic Republic); S. Asman (United Republic of Tanzania).

Paris Union Assembly

Chairman: Huang Kunyi (China). *Vice-Chairmen*: O. Leberl (Austria); J. Hemmerling (German Democratic Republic).

Paris Union Conference of Representatives

Chairman: (Syria). *Vice-Chairmen*: S.A. Hachemi (Iran (Islamic Republic of)); A.F. Okoh (Nigeria).

Paris Union Executive Committee

Chairman: K. Iliev (Bulgaria). *Vice-Chairmen*: W.Z. Kamil (Egypt); A. Kuroda (Japan).

Berne Union Assembly

Chairman: Gy. Pusztai (Hungary). *Vice-Chairmen*: S. Niklasson (Sweden); N. Vejajiva (Thailand).

Berne Union Conference of Representatives

Chairman: P. Verdoux (Madagascar). *Vice-Chairmen*: A.M. Bracegirdle (New Zealand); J. Szomański (Poland).

Berne Union Executive Committee

Chairman: B. Zgaya (Tunisia). *Vice-Chairmen*: P.J. Cooper (United Kingdom); M. Bělohávek (Czechoslovakia).

Madrid Union Assembly

Chairman: M. Fortini (Italy). *Vice-Chairmen*: M. Albane (Algeria); I.S. Nayashkov (Soviet Union).

IPC [International Patent Classification] Union Assembly

Chairman: D.J. Quigg (United States of America). *Vice-Chairmen*: P.R. França (Brazil); I.S. Nayashkov (Soviet Union).

PCT [Patent Cooperation Treaty] Union Assembly

Chairman: P.A. Smith (Australia). *Vice-Chairmen:* K. Iliev (Bulgaria); I. Marinescu (Romania).

V. International Bureau of WIPO

A. Bogsch (*Director General*); M. Porzio (*Deputy Director General*); L.E. Kostikov (*Deputy Director General*); G. Ledakis (*Legal Counsel*); S. Alikhan (*Director, Developing Countries Division (Copyright)*); L. Baeumer (*Director, Industrial Property Division*); P. Claus (*Director, Classifications and Patent Information Division*); F. Curchod

(*Director, PCT Division (Patent Cooperation Treaty)*); M. Ficsor (*Director, Copyright Law Division*); K. Idris (*Director, Development Cooperation and External Relations Bureau for Arab Countries*); L. Kadrigamar (*Director, Development Cooperation and External Relations Bureau for Asia and the Pacific*); T.A.J. Keefer (*Director, Administrative Division*); E. Pareja (*Director, Development Cooperation and External Relations Bureau for Latin America and the Caribbean*); I. Thiam (*Director, Development Cooperation and External Relations Bureau for Africa*); C. Fernández Ballesteros (*Assistant Legal Counsel*); P. Maugué (*Senior Counsellor, Industrial Property (Special Projects) Division*); B. Davoudi (*Head, Conference and General Services Section*); I. Pike-Wanigasekara (*Special Assistant, Office of the Director General*); G. Yu (*Special Assistant, Office of the Director General*); A. Damond (*Head, Registry, Documents and Meetings Service*).

Activities of Other Organizations

International Association for the Protection of Industrial Property

XXXIIIrd Congress
(London, June 8 to 13, 1986)

NOTE*

Introduction

The International Association for the Protection of Industrial Property (AIPPI) held its XXXIIIrd Congress in London (United Kingdom) from June 8 to 13, 1986. Mr. Edward Armitage, C.B., President of the AIPPI, presided over the Congress, which was opened by Mr. Geoffrey Pattie, Minister of State for Industry and Information Technology of the United Kingdom. The work of the Congress was followed by around 2,000 members of AIPPI; 16 governments, as well as several intergovernmental organizations and international non-governmental organizations, were represented. The World Intellectual Property Organization (WIPO) was represented by its Director General, Dr. Arpad Bogsch, by Dr. Klaus Pfanner, Deputy Director General, by Dr. Ludwig Baeumer, Director, Industrial Property Division and Mr. François Balleys, Head, Industrial Property (Special Projects) Division.

At the opening ceremony, the Director General of WIPO delivered an address, which is reproduced below.

The Congress dealt in plenary sessions with the following questions: the international registration of trademarks; the legal and economic importance of utility models; obtaining evidence of the infringement of industrial property rights; measures against counterfeiting of branded goods; protection of computer software and integrated circuits. Several workshops were held; they dealt with the protection of functional design, biotechnological inventions, character merchandising/franchising, and harmonization of patent laws.

During the same period, the Executive Committee of AIPPI and the Council of Presidents of AIPPI held several meetings.

The work of the Congress culminated with the ratification, by the Executive Committee of AIPPI, of a certain number of resolutions the essential contents of which are also reproduced below.

Address by the Director General of WIPO

"Your Excellency, Minister Geoffrey Pattie, Mr. President of the International Association for the Protection of Industrial Property, Edward Armitage, Mr. Executive President, Donald Vincent, Ladies and Gentlemen,

The World Intellectual Property Organization, in whose name I have the honor to address myself to you, wishes to congratulate the International Association for the Protection of Industrial Property on the work accomplished by your Association since its last Congress.

The three years since the Congress of Paris—of which we still cherish the memory—have been particularly active and particularly effective in furthering your Association's main objective, which is the promotion of the protection of industrial property through international cooperation.

You have been examining and expressing views and advice on all the issues that are under international discussion in order to adjust national legislation to the changing needs of our times and in order to secure or improve international arrangements in respect of the same.

Those issues can be divided into three groups.

The first group of issues is a consequence of technological developments. They are mostly in the field of patent law, at least as far as your Association is concerned. They are also in the field of copyright law and, sometimes, they straddle both patent law and copyright law. Maybe your Association will wish to become active also in the field of copyright law since in more and more instances the issues are of a mixed, industrial property and literary and artistic property, nature.

One of the said first group of issues, issues flowing from technological development, is the protection of computer programs. Does the Berne Convention really oblige States to grant copyright protection to computer programs, and do the minimum requirements of protection provided for in that Convention apply to computer programs? If so, all is in order. If not, or if not quite clearly so, one should do something about it because the intellectual creativity going into the making of computer programs deserves secure protection and because the economic value of computer programs is enormous and should be exploited also in international trade relations.

Another issue in the field of technological developments is the issue of integrated circuits or microchips. The World Intellectual Property Organization presented the first draft of a possible multilateral treaty on their protection to a meeting of a committee of experts in February 1986, and it prepared and published a second

* Prepared by the International Bureau of WIPO.

draft intended for a further meeting of that committee that will be held later this month.

Still another issue is biotechnology. In my view, there are inventions made in the field of biotechnology which should be afforded patent protection but, in fact, are not afforded such protection. The aim is, or should be, to make protection available to all kinds of biotechnological inventions. Without such extension of patent protection, the patent system risks losing much of its relevance in the decades to come.

Your Association and the World Organization are both active in trying to find solutions to the said issues. We follow your discussions and welcome your advice. We are pleased that you delegate representatives to our meetings. They are always listened to with attention.

The second group of issues concerns the enforcement of industrial property rights. It is not enough that industrial property rights exist on paper, in theory. If such rights are menaced by infringement, prevention should be promptly available, and if they are infringed, the sanctions should truly compensate the right holder for the damage suffered and should deter the infringer from repeating his criminal activity.

The plenary session of this Congress will deal with two questions falling within this group, namely, "Obtaining Evidence of the Infringement of Industrial Property Rights" and "Measures Against Counterfeiting of Branded Goods."

The World Organization does not yet deal with the first, although probably it should do so, following the example of your Association. It would not be for the first time in the history of your Association that the initiative comes from it. It is a good thing if it does because it is evidence of the existence of a need, noted by those who are fully involved in the everyday application of industrial property laws and inventions.

As to counterfeiting, the World Organization convened a first meeting of a committee of experts in May 1986; it plans to convene a second meeting next January and a third meeting a year from now. The representatives of your Association will be welcome in those meetings and their contribution will doubtless be valuable as it was in the first meeting.

The third group of issues could be called issues of simplification. National patent and trademark laws frequently differ from each other for no economical, legal, logical or other good reasons but merely for historical reasons, namely, that national laws developed without much effort at coordination. Such diversity makes the life of the applicant or owner of industrial property rights unnecessarily difficult. Complexity causes legal uncertainty and unnecessary expenses.

The World Organization is working towards the conclusion of a new multilateral treaty, provisionally called a treaty on the harmonization of certain provisions of patent law. Three international meetings on the subject of harmonization have been held by the World Organization in the last two years, and several others are planned at the approximate rate of one meeting every six

months. They should lead to the so-called harmonization treaty.

Among the efforts of the World Intellectual Property Organization directed at simplifying the securing of protection, the efforts concerning the international registration of marks are particularly important. There are three questions that are tackled simultaneously. Could the Madrid Agreement be made attractive to the United Kingdom and the other countries members of the European Community but not party to the Madrid Agreement? Could one establish a link between international registrations under the Madrid Agreement and European registrations under the future Community trade mark system? Could one establish a global system for the centralized filing of trademark applications and the centralized renewal and modifications of national registrations?

These are the questions—in the field of simplification—on whose solution the World Organization has been working for the last year or two and on which it will continue to work in the years to come. Your Congress will discuss, in plenary, the question entitled "The International Registration of Marks." Its decisions will be of consequence on future developments in this field.

I have mentioned these examples of the activities of your Association and of the World Organization to show how similar our objectives are and to ask that you continue to give your advice and participate in the meetings of the World Organization.

We have always benefited by such advice and participation. I wish to express appreciation for them. My thanks go to all of you, particularly the chairmen and members of the national groups and the working groups dealing with the said subjects. My thanks go, naturally, also to the permanent officers of your Association, in particular to your Secretary General, Mr. Alfred Briner, your Reporter General, Mr. Geoffroy Gaultier, and your Treasurer General, Mr. Gabriel Frayne.

And my particular thanks go to your Executive President, Mr. Donald Vincent and—most importantly—to your President, Mr. Edward Armitage. The term of office of these two distinguished gentlemen, my esteemed friends, Edward and Donald, has been a particularly brilliant one in the history of your Association. They did not consider their office as an honorary function. They worked hard, and successfully, on your Association being pragmatic—in the best British tradition—and active and effective in the shaping of the future of international industrial property protection. They were indefatigable. They were assisted by their lovely wives, Mrs. Marjorie Armitage and Mrs. Hazel Vincent.

Now, in this Congress, they will enjoy the fruits of their labor. They, and all the other British organizers of this Congress—which promises to be both useful and elegant—should receive the thanks and congratulations of all participants.

It is my great pleasure, as one of the participants, to offer to Mr. Edward Armitage, and to his British colleagues, my thanks and congratulations."

Resolutions Adopted

Protection of Computer Software and Integrated Circuits

RESOLUTION

AIPPI found, at its Executive Committee Meeting in Rio de Janeiro in May 1985, that the protection of integrated circuits is necessary and urgent.

The institution of a new specific treaty appears necessary in order to assure that an integrated circuit protected in one country can be protected in another country under the same conditions as applicable to integrated circuits of nationals of that other country.

AIPPI is of the opinion that this new treaty should contain the following essential rules:

I. Definition of Subject Matter of Protection Provided for by the Treaty

...[T]he treaty ought to protect the layout-design of an integrated circuit, which may be defined to mean the three-dimensional disposition of the active elements, interconnections and passive elements, if any, of a semiconductor integrated circuit, which integrated circuit is intended to perform an electronic function, in whichever form such disposition is fixed or encoded.

This definition allows for protection of the layout-design of the integrated circuit, whatever the means of its manufacture.

II. Conditions for Protection

AIPPI is of the opinion that neither technical progress nor novelty should be taken into consideration as a condition for protection.

AIPPI is of the opinion that to be the subject of protection the layout-design of an integrated circuit must be original.

The notion of originality of a layout-design of integrated circuits is interpreted to mean:

- the layout-design or the integrated circuit must not be a copy of another layout-design;
- it must be the result of an intellectual effort;
- it must not be commonplace to interested persons.

III. Rights

1. AIPPI approves the provisions of Article 3(1)(a) of the second draft treaty prepared by WIPO (document IPIC/CE/II/2), and proposes to consider unlawful the following acts if committed without authorization:

- (a) copying of the layout-design or a material portion thereof (in this regard AIPPI supports the view expressed by WIPO in note 49 to Article 3 of the draft treaty, which refers to copying of less than the totality as requiring authorization, provided such copying is of an essential and/or substantial portion of the layout-design);
- (b) incorporating the copied layout-design in an integrated circuit and incorporating the copied integrated circuit in an industrial article;
- (c) importing, offering for sale, selling or otherwise dealing with such integrated circuits or industrial articles or the layout-designs in whatever mode they may appear.

2. AIPPI is of the opinion that a person who, without authorization, has copied the layout-design or has incorporated it in an integrated circuit should always be held to have infringed, regardless of whether that person has acted in good faith or in bad faith.

On the other hand, AIPPI takes the view that the Contracting States may foresee less strict sanctions for those who in good faith merely import, offer for sale, sell or otherwise deal with integrated circuits

and/or industrial articles containing an integrated circuit made according to a copy of an original layout-design.

However, AIPPI affirms that in any case it must be possible to stop these unlawful acts in order not to end up in a non-voluntary license.

3. AIPPI believes that the treaty should not consider unlawful the following acts:

- use of a concept behind the layout-design of the integrated circuit;
- copying of the layout-design solely for educational purposes, provided the results of such copying are not incorporated in an integrated circuit;
- copying of the layout-design solely to analyze and evaluate it for the purposes of reverse engineering, provided that the result of the reverse engineering is an original layout-design.

AIPPI notes that reverse engineering is understood by industry to refer to the situation where a later layout-design results from the extraction and use of the circuits, logic flow, ideas and methodology embodied in the earlier layout-design.

IV. Compulsory License

AIPPI is of the opinion that the question whether the treaty should allow compulsory licenses specifically in the interest of national security should be studied.

However, AIPPI is of the opinion that, given the possibilities of independent development and reverse engineering of competing integrated circuits, technical progress in integrated circuits will not be hindered by the absence of compulsory licenses.

V. Sanctions

AIPPI approves the provisions of Article 3(1)(b) of the draft treaty according to which any Contracting State should provide for measures to ensure the prevention and repression of acts considered unlawful.

VI. Formalities

AIPPI is of the opinion that any Contracting State may make protection conditional upon the deposit of material allowing the identification of original layout-designs.

However, AIPPI takes the view that this deposit should be kept secret at the request of the depositor.

A secret deposit should, however, be available for inspection for anyone accused of committing an infringement provided that appropriate measures are taken to preserve the depositor's rights (such as a trade secret) and, in any event, the deposit should be available to the public at the end of the term of protection.

VII. Duration of Protection

AIPPI is of the opinion that the minimum duration of protection for a layout-design of an integrated circuit should be 10 years.

AIPPI wishes that the starting point of this duration be the same in all Contracting States, and that this starting point be established with certainty.

Legal and Economic Significance of Protection by Utility Models

RESOLUTION

A. AIPPI favors establishing a utility model system for the following reasons:

1. Utility models can encourage inventors and investors to invest in and protect technical developments which do not fulfill the requirements of patentability and to obtain protection both at a lower cost and more quickly.

Consequently, utility models are of particular interest to small and medium-sized industries and can promote technical development in developing countries.

2. Utility models can fill a gap in the protection of inventions which occurs when the requirements relating to inventive step for patents mean that certain inventions which do not comply with those requirements cannot be protected. Moreover, this form of protection prevents the patent system from being devalued by being applied to minor technical inventions.

....

3. When a utility model is applied for at the same time as a patent, it may, if national law so permits, give the inventor protection during the prosecution time of the patent application when the latter gives no effective protection. This has a particular advantage when the patent application has been published so that the invention has been revealed to competitors.

B. AIPPI appreciates that any utility model system which is established must benefit society as a whole. AIPPI therefore declares itself in favor of introducing utility model systems under the following terms and conditions:

1. Subject Matter to be Protected

Utility models should protect at least three-dimensional articles but, although it should be left to the national laws to include other subject matter, there can be good reasons to extend the protection to all patentable subject matter specifically where a substantive examination is carried out.

Such protection should not, however, protect more than it is possible to protect by means of a patent.

Subject matter covered by utility models shall not be precluded from patent protection.

2. Prerequisites for a Valid Utility Model

- (a) novelty;
- (b) furthermore an additional requirement, chosen by national law, which preferably should be: the result of a creative effort in the sense of going beyond the state of the art but may be less than the inventive step necessary for the subject of a patent;
- (c) written description and one or more claims.

3. Grace Period

The same international grace period as for patents, calculated back from the priority date.

4. Disclosure

The disclosure of the subject matter of the utility model should be as complete in describing the embodiments as for patents.

5. Examination

There must at least be an examination as to formal requirements, i.e., compliance with formal regulations and with the definition of subject matter.

The utility model need not be the subject of substantive examination before grant or registration.

But after grant or registration, there should at least be the possibility of obtaining a search report from an official agency at the request of either a third party or the proprietor.

In infringement proceedings the proprietor must always produce such a report.

If there is substantive examination it shall be carried out so as not to detract from the objects set out in paragraph A, above.

6. Cancellation

Provision for complete or partial cancellation procedure at the request of third parties.

7. Duration

Not less than five years from the national filing date and, if not exposed to substantive examination, not more than 10 years from the national filing date.

8. Scope of Protection

The scope of protection shall be as determined by national law but shall not exceed the following.

The extent of the protection shall be determined by the terms of the claim(s). Nevertheless, the description and drawings serve to interpret the claim(s).

9. Effect and Remedies

Same as for patents, as determined by national law. However, no remedy shall be available before publication.

10. Multiple Protection for the Same Subject Matter

Patents and utility models may be allowed to supplement each other provided, however, that an infringer is not in a worse situation as a consequence of overlapping protection, and provided that patents and utility models filed on the same day do not invalidate each other.

11. Co-existence of Utility Models and Designs

Utility models and designs can co-exist in relation to the same article.

Measures Against Counterfeiting of Branded Goods

RESOLUTION

AIPPI

— Considering that the counterfeiting of trademarks today poses a serious problem where such counterfeiting consists of the unauthorized identical reproduction of the authentic trademark or such a reproduction that cannot be distinguished from the authentic trademark, used on products which are identical or similar to those protected by the authentic trademark, and so as to give deliberately the impression that the products bearing the counterfeit trademark come from the owner of the authentic trademark,

— Considering that this deliberate intention to give such an impression can especially be determined from the following circumstances:

the authentic trademark consists of words or elements of such complexity that their reproduction could be achieved only through knowledge of the authentic trademark, the authentic trademark is so well known that its reproduction could be achieved only through knowledge of the authentic trademark,

the appearance of the authentic product or its packaging is reproduced in addition to the reproduction of the authentic trademark,

the trade name of the owner of the authentic trademark or other characteristic signs of the authentic product are reproduced, in addition to the reproduction of the authentic trademark,

— Considering that the measures referred to below should apply to all acts of counterfeiting and particularly to acts of manufacture, importation, distribution and offers to distribute,

— Considering that such acts of counterfeiting constitute serious economic offenses tantamount to theft,

— Considering that such counterfeiting is no longer just an occasional phenomenon but has become an international trade and now causes real systematic unfair competition with and the discrediting of marks of national or international reputation,

— Considering that the effects of such counterfeiting on business enterprises, on the reliability of business transactions and even on the equilibrium of national trade balances are now substantial,

— Considering the protection of the legitimate interests of consumers,

— Considering that national procedures have frequently been found ineffective for dealing with the new dimensions of counterfeiting operations, especially because the producer of the counterfeit goods is usually not located in the jurisdiction where the product is sold,

— Considering that strengthened measures, and even new solutions, need to be sought for preventing and suppressing such counterfeiting,

1. *recalls* that, in accordance with its resolution adopted in Munich in 1978 (see the Resolution of AIPPI on Question 70—Annuaire 1978/II, page 160), rights in trademarks constitute exclusive property rights and that their proprietor, whether a person or a group of persons, has to be protected by the law against any form of infringement and emphasizes that all acts of counterfeiting must be prohibited in all circumstances, including those where the products concerned are openly presented as reproductions;

2. *stresses* the negative effect of this counterfeiting:

- on the distinctive character of the authentic trademark,
- on the development of national economies and businesses,
- on the reliability of business transactions,
- on health, hygiene, safety and the environment,
- on the legitimate interests of consumers;

3. *notes*, then, that there exists a real economic problem presented by counterfeiting, necessitating strengthening of the prevention and suppression of same;

4. *coosequently*:

- (a) *welcomes* initiatives which on a national or international level aim to suppress counterfeiting activities and especially welcomes the initiatives of WIPO, the European authorities and GATT;
- (b) *recommends* that international cooperation in the field of police and customs action should be strengthened with a view to eliminating the international trade in goods which bear such a counterfeit mark;
- (c) *recommends* particularly that internal legislation and its application ensure:
- the strengthening of detection measures in order to promote and speed up the seizure and confiscation of goods bearing such a counterfeit mark;
 - the facilitating of the establishment of proof of counterfeiting, of origin and of the destination of such products so as to discover and deter those responsible for all the acts of counterfeiting and to establish the damage caused to the victims;
 - the improvement of the procedures for provisional or final injunctions;
 - the adoption of sanctions, both penal and civil, such as to have a dissuasive effect and make counterfeiting lose its reputation of being an offense or crime involving little risk;
- (d) *recommends*
- (i) to pursue the detailed study of two particular points:
- the action of police and customs in the detection of and dealing with counterfeiting, and their participation in its suppression;
 - the administrative or judicial procedure likely to provide adequate information to victims of counterfeiting operations; this latter point should cover the procedures of investigation and examination by customs officials and police departments and also injunctions such as the "Anton Piller Order" in Anglo-Saxon law;
- (ii) to follow the evolution of work undertaken by various international and intergovernmental organizations;
- (iii) to extend the study to the problem posed by the slavish copy of a product, even in the absence of a counterfeit trademark, where the form or appearance of this product is perceived by the customer as characteristic of the goods of a certain enterprise.

International Registration of Marks

RESOLUTION

AIPPI

1. *Takes note* that, since the meeting of the Executive Committee of AIPPI at Rio de Janeiro in May 1985, the World Intellectual

Property Organization has published drafts of two Protocols to the Madrid Agreement (Protocol A and Protocol B: document MACT/II/2), *notes* that each of these Protocols would, legally speaking, constitute a new treaty;

affirms that the first priority for achieving an international trademark registration system with a wider membership should be by way of revising the Madrid Agreement;

believes that Protocol A could form the basis for such a revision or else could constitute an entirely new treaty if a revision of the Madrid Agreement cannot be achieved;

believes that the relationships between countries party to the Madrid Agreement, on the one hand, and countries party to a new treaty, on the other, would be very complex;

adopts the following Resolution after studying Protocols A and B:

- on Protocol A (paragraphs 2 to 6 of this Resolution),
- on Protocol B (paragraph 7 of this Resolution).

2. *Notes* that in countries that examine *ex officio* on absolute and on relative grounds (hereinafter referred to as "examination countries"), trademark owners can be disadvantaged by the need for a home registration, in particular because of the length of time needed for an application to mature into a registration;

confirms the Resolution passed by the Executive Committee at Rio de Janeiro (AIPPI Annuaire 1985/II) that an international registration could be based not only upon a home registration, but also upon a home application, which might already have been subjected to an examination of the absolute grounds of refusal, provided that this application eventually matures into a registration;

believes that an application for international registration should continue to be made through the national office of the home country and that a self-designation of the home country should continue to be excluded;

notes that some examination countries (such as Australia, Canada, Finland, Israel, Japan and the United States of America) are of the opinion that no national basis should be required.

3. *Considers* that even though some of the difficulties with central attack and national dependency which are anticipated by certain countries might be eased by introducing a system whereby the owner of an international registration that has lost its home base could have the option of filing national applications in the previously designated countries, all of which would retain the priority of the international registration; nevertheless *believes* that such a system would create further difficulties, in particular because:

- (a) it will be necessary to amend many of the national trademark laws to allow for such a "transformation," as it is called;
- (b) it could jeopardize one of the principal advantages of central attack, namely, that *inter partes* conflicts may be dealt with in the home country without a multiplicity of opposition or cancellation proceedings;

further believes that a period of 12 months to apply for such a "transformation" is, in any case, too long;

notes that certain countries that are not party to the Madrid Agreement would be ready to accept the temporary (i.e., five years) dependency rule and central attack, provided that it is attenuated by this proposed "transformation" system;

notes also that even some countries party to the Madrid Agreement could overcome their reservations about this solution if the accession of further countries to the Madrid Agreement depended on it.

4. *Considers* that the present time limit of 12 months for notifying a provisional refusal is sufficient, and prefers that this time limit be maintained. Indeed, such period has been found to be workable in countries such as Spain and Portugal where not only is an examination carried out on absolute and relative grounds, but there also exists the possibility of opposition by third parties;

takes note, however, of the apprehensions of some countries that a 12-month period may be too short for administrative reasons. The AIPPI could therefore accept a longer period if it led to a wider membership of the Madrid Agreement, but is strongly of the opinion that the period should not be more than 18 months.

5. *Prefers* the uniform rate system of fees as presently operated in the Madrid Agreement because a change to a system of different fees for different countries would detract from its simplicity, which is one of its main advantages.

However, recognizing that examination countries may be reluctant to accede to a system which does not fully compensate for the work carried out in the national offices, the AIPPI *realizes* that it may not be possible to maintain a uniform rate system and would accept that such countries could be compensated by granting them a supplement to the designating country fee paid by the applicant. The AIPPI also *accepts* that such a supplement should be set at a rate which would procure for the applicant a substantial financial advantage over filing nationally, and believes that once a fee is set it should only be changed at fixed intervals.

6. *Believes* that the present system of having only one language for operating the Madrid Agreement gives rise to no problems and that any proposal to add another language would only give rise to demands that further languages be added. However, if it were a sticking point for attracting new countries to the Madrid Agreement, the AIPPI would accept English as a second official language, but this should be done only on the clear understanding that no more languages should be introduced.

7. *Confirms* the Resolution adopted by the Executive Committee at Rio de Janeiro that any system should provide for a link with the proposed Community trade mark system (AIPPI Annuaire 1985/III);

recalls that the issues involved in providing such a link have already been the subject of a detailed study by the AIPPI;

decides that this study should be pursued in respect of the proposed Protocol B, referred to in paragraph 1.

8. *Resolves* to continue the study of all solutions which could result in a more universal system for the international registration of marks, including the TRT and the global treaty presently contemplated by the WIPO.

Obtaining of Evidence of Infringement of Industrial Property Rights

RESOLUTION

AIPPI

(A)

(B) *Considers* that an effective procedure to obtain evidence of infringement should permit the execution of orders for inspection, taking of samples, etc., without prior notice in appropriate cases, since the element of surprise makes it possible to prevent the removal of evidence.

(C) *Recognizes*, however, that in seeking to provide a solution to the above problems, it is necessary fully to protect the rights and interests of third parties, especially with regard to their trade secrets.

AIPPI accordingly *resolves* that:

1. There is a need to provide a system to enable the proprietor of an industrial property right to obtain evidence of infringement from the alleged infringer (where it is not otherwise reasonably obtainable) before formal institution of legal proceedings.

II. Under such a system:

1. The proprietor would be entitled to apply to a court or other competent authority (hereafter referred to as "the court") for an order for obtaining evidence (for example, but without limitation, for inspection of premises, examination and copying of documents and taking of samples).

2.

3.

4.

5.

6.

General Studies

Genetic Engineering and Industrial Property*

F.-K. BEIER** and J. STRAUS***

The Japan Patent Information Organization

H. SAITO*

Obituary

Heribert Mast †

The Union created by the International Convention for the Protection of New Varieties of Plants (UPOV) is independent of the Unions administered by the World Intellectual Property Organization. But the cooperation between UPOV and WIPO is a very close one and the headquarters of both organizations are under the same roof in Geneva. These circumstances, as well as the fact that many delegates to WIPO meetings knew Heribert Mast for a long time, justify the announcement, in this periodical of WIPO, of the untimely death, on August 15, 1986, of Heribert Mast, Vice Secretary-General of UPOV for more than 12 years.

It is in order to recall his memory that the words of the Secretary-General of UPOV, Dr. Arpad Bogsch, pronounced to the staff of WIPO and UPOV, shortly after the death of the lamented Heribert Mast, are published hereafter:

"Our dear colleague, Vice Secretary-General, Heribert Mast, is no longer.

"He was operated on in June and died on August 15, 1986, in his home, surrounded by his wife and four children.

"I saw him for the last time a few days before the end. He was perfectly lucid, and not a word of complaint passed his lips, although his physical condition showed that his forces could not last much longer. But he kept his composure perfectly and suffered as a real stoic.

"His passing away fills me and, I am sure, fills all of us, with the deepest sorrow. He was a thoroughly lovable human being. And his passing away is an enormous loss for UPOV. He was an exemplary servant and promoter of the cause for which the International Union for the Protection of New Varieties of Plants was founded and continues to exist.

"He was born in Bochum, in Germany, on October 28, 1925. He studied law in Germany, the United States of America and The Hague, and obtained his doctor's degree at the University of Freiburg. He was in government service, mainly in the Ministry of Justice of the Federal Republic of Germany, until he became, on March 1, 1974, Vice Secretary-General of UPOV.

"During his service in Bonn, he represented the Federal Republic of Germany in many international meetings. I myself met him for the first time in a preparatory committee of the European patent system. He was an excellent delegate, defending and promoting the policy of his Government with skill, courtesy and

tenacity and with a profound knowledge of the subject matter. He was always meticulously prepared for the discussions of each meeting. And he did all this with equal ease in German, French and English.

"When the post of Vice Secretary-General became vacant, it was obvious to me, on the basis of what I had seen from his performance as a German delegate, that he would be the ideal man for Vice Secretary-General. And he was appointed to that post exactly three months after I became Director General of WIPO and Secretary-General of UPOV.

"During his mandate as Vice Secretary-General, which lasted 12 and a half years, he did all and more than could be expected in that important position. He completely identified himself with UPOV and put his brilliant intelligence, solid legal background and exemplary assiduity at work entirely at the disposal of UPOV, at the disposal of international cooperation in the field of the protection of the rights of those who create new plant varieties and thereby constantly improve the food situation or, as far as flowers and other ornamental plants are concerned, thereby beautify the surroundings in which we live.

"The professional erudition of Heribert Mast was exceptional. He was one of the most outstanding, if not the most outstanding, specialists in that field of law. His erudition played a particularly important role when, in 1978, the UPOV Convention was revised since he was also a skillful diplomat, a forger of compromises where the views of the member States differed.

"Heribert Mast saw the number of the member States of UPOV grow by 200% during his tenure. He employed all his powers of persuasion and negotiation to bring about this spectacular result.

"His merits were recognized by the member States, who, on my proposal, in 1982, elevated the rank of the UPOV Vice Secretary-General to the same level as that of an Assistant Secretary-General in the United Nations or Deputy Director General in WIPO.

"The human qualities of Heribert Mast were as excellent as his professional qualities. His relations with his staff were characterized by fairness and understanding. He solved the problems which arose from time to time thanks to that fairness and patience.

"His humor delighted us all. It was a sign of his sense of proportion and of the warmth of his heart.

* * *

“We shall all miss Heribert Mast. He was a warm human being, a fair superior, an efficient public servant. It is a real tragedy that he left us when, normally, he should have directed the Office of UPOV for several years more. It is equally a tragedy for his wife and his children. Our thoughts today are with Mrs. Doris Mast

and with Stephan, Cristoph, Isabel and Verena Mast, as well as with Heribert Mast, whom we shall never forget.”

Arpad Bogsch

Book Reviews

Unfair Competition and Unfair Trade Practices, by B.W. Pattishall and D.C. Hilliard. Matthew Bender, New York, 1985.—468 pages.

In the forward to this comprehensive work on unfair competition and unfair trade practices law in the United States of America, the authors point out that they have sought to provide for both students and practitioners in these areas of law an organized guide to the pertinent opinions, treatises, and commentary, as well as a delineation of the principal questions and problems which arise in these areas and a synthesis of the current law.

The book is divided into 11 chapters covering: (1) the principles of trade identity unfair competition law; (2) the creation and maintenance of trade identity rights; (3) the loss of rights (e.g., with respect to trademarks and their goodwill); (4) infringement; (5) special defenses and limitations; (6) the expanding scope of trade identity law; (7) jurisdiction and remedies; (8) principles of unfair trade practices law; (9) federal regulation of unfair trade practices; (10) State and municipal regulation; and (11) private unfair trade practices litigation.

This work will certainly be widely appreciated by all those interested in unfair competition and unfair trade practices law.

HL

News from Industrial Property Offices

CHAD

*Head, Industrial Property and
Technological Exchanges Division*

We have been informed that Mr. André N'Djeboua Nekodjimbaye has been appointed Head of the Industrial Property and Technological Exchanges Division.

COLOMBIA

*Superintendent of Industry and Commerce
and
Head, Industrial Property Division*

We have been informed that Mrs. Fidelia Villamizar de Pérez has been appointed Superintendent of Industry and Commerce and that Mr. Alvaro Atienze has been appointed Head of the Industrial Property Division.

JORDAN

Registrar of Patents, Designs and Trade Marks

We have been informed that Mr. Iyad Sukhon has been appointed Registrar of Patents, Designs and Trade Marks.

Calendar of Meetings

WIPO Meetings

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

1986

- November 24 to December 5 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
 December 8 to 12 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
 December 16 to 19 (Paris) — Committee of Governmental Experts on Works of Visual Art (convened jointly with Unesco)

1987

- January 12 (Geneva) — Information Meeting for Non-Governmental Organizations on Intellectual Property
 January 26 to 31 and February 3 (Geneva) — Consultative Meeting on the Revision of the Paris Convention (Second Session)
 February 23 to 27 (Geneva) — Nice Union: Preparatory Working Group
 March 9 to 13 (Geneva) — Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights
 March 23 to 27 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Third Session)
 March 31 to April 4 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on General Information
 April 6 and 7 (Geneva) — Permanent Committee on Patent Information (PCPI)
 April 27 to 30 (Geneva) — Committee of Experts on Intellectual Property in Respect of Integrated Circuits (Third Session)
 May 4 to 19 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Search Information
 May 5 to 8 (Geneva) — Permanent Committee for Development Cooperation Related to Industrial Property
 May 11 to 13 (Geneva) — Vienna Union: Working Group on the International Classification of the Figurative Elements of Marks
 May 11 to 15 (Paris) — Committee of Governmental Experts on Dramatic, Choreographic and Musical Works (convened jointly with Unesco)
 May 18 to 23 and 26 (Geneva) — Consultative Meeting on the Revision of the Paris Convention (Third Session)
 May 25 to 29 (Geneva) — Committee of Experts on the Protection Against Counterfeiting (Second Session)
 June 1 to 4 (Geneva) — Madrid Union: Working Group on Links Between the Madrid Agreement and the Proposed (European) Community Trade Mark
 June 11 to 19 (Washington) — Permanent Committee on Patent Information (PCPI): Working Groups on Special Questions and on Planning
 June 22 to 30 (Geneva) — Berne Union: Executive Committee (Extraordinary Session) (sitting together, for the discussion of certain items, with the Intergovernmental Committee of the Universal Copyright Convention)
 June 29 to July 3 (Geneva) — Paris Union: Committee of Experts on Biotechnological Inventions and Industrial Property (Third Session)
 July 1 to 3 (Geneva) — Rome Convention: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)
 July 6 to 8 (Geneva) — Budapest Union: Assembly (Extraordinary Session)
 September 7 to 11 (Geneva) — Permanent Committee on Patent Information (PCPI): Working Group on Patent Information for Developing Countries
 September 14 to 19 and 23 (Geneva) (to be confirmed) — Consultative Meeting on the Revision of the Paris Convention (Fourth Session)
 September 21 to 30 (Geneva) — Governing Bodies (WIPO General Assembly, Conference and Coordination Committee; Assemblies of the Paris, Madrid, Hague, Nice, Lisboa, Locarno, IPC, PCT, Budapest, TRT, Vienna 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): Ordinary Sessions
 October 5 to 9 (Geneva) — Committee of Governmental Experts on Works of Applied Art (convened jointly with Unesco)
 November 2 to 6 (Geneva) — Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Fourth Session)
 December 1 to 4 (Geneva) — Committee of Governmental Experts on the Printed Word (convened jointly with Unesco)

UPOV Meetings

1986

- December 1 (Paris) — Consultative Committee
 December 2 and 3 (Paris) — Council

Other Meetings Concerned with Industrial Property

1986

- December 1 to 5 (Strasbourg) — Center for the International Study of Industrial Property: Seminar on the Drafting of Patent Claims and Appeals
- December 1 to 5 (Munich) — European Patent Organisation: Administrative Council

1987

- January 26 to 30 (Strasbourg) — Center for the International Study of Industrial Property: Seminar on Legal Problems Concerning the European Patent Convention, the Paris Convention for the Protection of Industrial Property, the Patent Cooperation Treaty and the Community Patent Convention
- June 1 to 5 (Vienna) — European Patent Organisation: Administrative Council
- July 20 to 22 (Cambridge) — International Association for the Advancement of Teaching and Research in Intellectual Property: Annual Meeting
- December 7 to 11 (Munich) — European Patent Organisation: Administrative Council

