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Contents

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Notifications Concerning Treaties

International Convention for the Protection of New Varieties of Plants

New Member of UPOV

AUSTRALIA

The Government of Australia deposited, on February 1, 1989, its instrument of accession to the International Convention for the Protection of New Varieties of Plants of December 2, 1961, as revised at Geneva on November 10, 1972, and on October 23, 1978.

Australia has not heretofore been a member of the International Union for the Protection of New Varieties of Plants (UPOV), founded by the said International Convention.

The said International Convention will enter into force, with respect to Australia, on March 1, 1989. On that date, Australia will become the 18th member of UPOV.

For the purpose of determining its share in the total amount of the annual contributions to the budget of UPOV, one contribution unit is applicable to Australia.

UPOV Notification No. 35, of February 9, 1989.

WIPO Meetings

Paris Union

Committee of Experts on Biotechnological Inventions and Industrial Property

Fourth Session
(Geneva, October 24 to 28, 1988)

NOTE*

Introduction

The Committee of Experts on Biotechnological Inventions and Industrial Property (hereinafter referred to as "the Committee of Experts") held its fourth session[1] in Geneva from October 24 to 28, 1988. The following States were represented at the session: Argentina, Austria, Brazil, Bulgaria, Cameroon, Canada, Cuba, Denmark, Egypt, El Salvador, Finland, France, German Democratic Republic, Germany (Federal Republic of), Ghana, Hungary, India, Ireland, Italy, Japan, Libya, Madagascar, Mexico, Netherlands, New Zealand, Nigeria, Norway, Peru, Republic of Korea, Soviet Union, Spain, Sweden, Switzerland, Turkey, United Kingdom, United States of America (36). In addition, representatives of five intergovernmental organizations and 20 non-governmental organizations participated in an observer capacity. The list of participants follows this Note.

A newly revised report prepared by the International Bureau of WIPO, entitled "Industrial Property Protection of Biotechnological Inventions" (document BioT/CE/IV/2), was submitted to the Committee of Experts. This document was an up-to-date version of the revised report previously prepared by the International Bureau and submitted to the third session of the Committee of Experts (documents BioT/CE/III/2 and BioT/CE/III/2 Annexes), and its contents were noted by the Committee of Experts.

After a general debate, the discussions of the Committee of Experts were devoted to consideration of a document prepared by the International Bureau and entitled "Revised Suggested Solutions Concerning Industrial Property Protection of Biotechnological Inventions" (document BioT/CE/IV/3, hereinafter referred to as "the Suggested Solutions"). The text of each of these Suggested Solutions, as submitted to the Committee of Experts, together with the corresponding portions of the report adopted by the Committee of Experts (document BioT/CE/IV/4), are set out below.

General

The portion of the report of the Committee of Experts reflecting general introductory observations on the Suggested Solutions reads as follows:

> "In the discussion of the Suggested Solutions, references were frequently made to existing provisions in national laws and treaties. It was agreed that, although the existence of such provisions might be a basis for reservations to the acceptance of a suggested solution, the purpose of the Suggested Solutions was to give guidance for future legislation and practice in industrial property offices and court proceedings. It was therefore necessary to study each problem on its merits and not by only examining whether a Suggested Solution was compatible with an existing national law or treaty.
>
> It was noted that several Suggested Solutions had the purpose of confirming that the general rules governing patent procedure applied to biotechnological inventions. In such cases, if a Suggested Solution was proposed, its purpose was to avoid doubts which might arise in the interpretation of existing laws.
>
> With respect to those Suggested Solutions which referred to animals, the question was raised whether they could apply also to human beings. It was generally agreed that, because of ethical reasons, human beings as such should never be the subject of patent protection. In this connection, it was suggested that the question of whether parts of

* Prepared by the International Bureau.

[1] For Notes on the first, second and third sessions, see *Industrial Property*, 1984, p. 413; 1986, p. 251; and 1988, p. 104, respectively.

human beings, for example, cells or genes, could be covered by patent protection would have to be examined in each case, taking into account the relevant ethical and social considerations.

It was noted that the expression 'patent protection' in some countries had to be understood as including protection by inventors' certificates."

Suggested Solutions Concerning Availability of Protection

Suggested Solution No. 1: Processes for the Production or Use of Plants, Animals, Microorganisms or Varieties or Strains Thereof

Suggested Solution No. 1 as submitted by the International Bureau to the Committee of Experts read as follows:

"(1) A process shall not be excluded from patent protection for the mere reason that it produces or is carried out with the help of, or on, living matter or biologically active material.

(2) Pending the implementation of Suggested Solutions Nos. 4 and 6, any legislative provision excluding plants, animals, microorganisms or varieties or strains thereof from patent protection shall be applied only to plants, animals, microorganisms or varieties or strains thereof per se, *and not to processes for the production or use of plants, animals, microorganisms or varieties or strains thereof."*

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 1 reads as follows:

"Both paragraphs of this Suggested Solution were generally approved. In this connection, it was underlined that the words 'for the mere reason ...' were important for the acceptance of this Suggested Solution.

Attention was drawn to the particular problem of essentially biological processes for the production of plants or animals which are excluded from patent protection under certain provisions of the European Patent Convention and several national laws. It was stated that the said provisions could be considered as compatible with the Suggested Solution, since an essentially biological process for the production of plants or animals would not be considered to be a technical invention. However, if such a process included one essential technical step, it could be considered as an invention, but then it would no longer be considered as an essentially biological process so that the provisions excluding patent protection would not apply.

Several participants pointed out that the availability of patent protection for a process whose result could be protected through a plant breeder's right should not have the consequence that certain limitations in respect of plant breeders' rights could be circumvented through the grant of patents. It was agreed that the relationship between the scope and limitations of protection by patents, on the one hand, and plant breeders' rights, on the other, should be examined in the planned joint study of WIPO and UPOV."

Suggested Solution No. 2: Industrial Applicability

Suggested Solution No. 2 as submitted by the International Bureau to the Committee of Experts read as follows:

"Any biotechnological process—like any other process—capable of being used in any way, including for research or analysis, in any kind of industry, including agriculture, shall be regarded as industrially applicable unless the process is of a kind which, according to specific legislative provisions concerning processes for the medical treatment of a human or animal body, is to be regarded as lacking industrial applicability."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 2 reads as follows:

"This Suggested Solution was generally approved, subject to the reservation made by some delegations with respect to diagnostic methods practiced on the human or animal body or other methods practiced on the human or animal body for which, according to those delegations, patents should not be available because of overriding reasons of public health. Moreover, it was noted that processes which were only used for research and analysis would not lack industrial applicability because of such use."

Suggested Solution No. 3: Enabling Disclosure (Repeatability)

Suggested Solution No. 3 as submitted by the International Bureau to the Committee of Experts read as follows:

"The requirement of enabling disclosure of a biotechnological process—like any other process—shall not be regarded as not being satisfied for the mere reason that it is difficult for a person skilled in the art to produce the desired result, unless the level of difficulty, such as the number of repetitions or trials necessary to produce that result, is too high under the circumstances of the case."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 3 reads as follows:

"This Suggested Solution was generally approved, subject to a re-drafting which would present the Suggested Solution in a positive manner, in essence stating that the requirements are the same as for other processes. Although some delegations felt that the Suggested Solution was not necessary because it did not establish any particular rule, the majority of the participants were in favor of maintaining it, since it was useful for the purposes of clarification. Moreover, it was suggested that the words 'too high' should be replaced by another expression, for example, 'unreasonable.'"

Suggested Solution No. 4: Living Matter and Biologically Active Products

Suggested Solution No. 4 as submitted by the International Bureau to the Committee of Experts read as follows:

"(1) A product shall not be excluded from patent protection or regarded as unpatentable for the mere reason that it constitutes or includes living matter.

(2) A product shall not be excluded from patent protection or regarded as unpatentable for the mere reason that it constitutes or includes biologically active material."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 4 reads as follows:

"This Suggested Solution was generally approved, on the understanding that the words 'for the mere reason' permitted exclusions for reasons other than those indicated in the Suggested Solution. Some delegations expressed reservations with respect to inventions concerning higher life forms."

Suggested Solution No. 5: Pre-existing Material

Suggested Solution No. 5 as submitted by the International Bureau to the Committee of Experts read as follows:

"A product which had not been sufficiently disclosed to the public before the filing or priority date of a patent application claiming it, but which formed an unseparated part of pre-existing material, shall not be considered as a discovery or as lacking novelty for the mere reason that it formed an unseparated part of pre-existing material."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 5 reads as follows:

"This Suggested Solution was generally approved, subject to an amendment in the French version (replacement of the term '*non dissociable*' by '*non dissocié*'). Moreover, it was pointed out that the term 'discovery' required clarification, since this term might be understood to include within its meaning patentable scientific discoveries. Futhermore, it was suggested that it should be examined whether the word 'sufficiently' could be deleted in connection with the term 'disclosure,' and whether reference should be made—among the unacceptable objections—to the occasionally used argument that a product existing in nature could not be patented.

Some delegations reserved their position because the relevant questions were currently being studied by committees set up in their countries."

Suggested Solution No. 6: Plants, Animals, Microorganisms or Varieties or Strains Thereof

Suggested Solution No. 6 as submitted by the International Bureau to the Committee of Experts read as follows:

"An invention shall not be excluded from patent protection for the mere reason that it concerns a plant or a part of a plant, an animal or a part of an animal or a microorganism (or a plant or animal variety or a strain of microorganism)."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 6 reads as follows:

"The majority of the participants approved this Suggested Solution, subject to the deletion of the text appearing within brackets.

It was suggested that it should be studied whether Suggested Solutions Nos. 4 and 6 could be combined.

As regards the text without the part appearing in brackets, some delegations reserved their position in respect of higher life forms; one delegation reserved its position with respect to higher life forms and microorganisms. Some of those delegations drew attention to the currently existing provisions in the laws of their countries, in particular those provisions according to which plant or animal varieties could not be protected. Some of those delegations and some representatives pointed out that a distinction between plants and animals, on the one hand, and plant varieties and animal varieties, on the other, was not always possible.

As regards microorganisms and strains of microorganisms, it was indicated that a distinction was not required.

Opinions were divided in respect of the question of whether existing provisions excluding patent protection for plant and animal varieties had to be interpreted broadly or narrowly. In support of a broad interpretation, it was indicated that patents

should be considered in themselves as an exception from the general principle that technology may be freely used. In support of a narrow interpretation, it was indicated that the said exclusions from patent protection were to be considered to be exceptions from a general principle and, according to general rules of interpretation, any exception from a principle required a narrow interpretation.

In respect of the text appearing within brackets, it was agreed that questions concerning plant varieties should be examined in the planned joint study of WIPO and UPOV, and that further study was required in respect of animal varieties, taking into account in particular political, economic and ethical considerations."

Suggested Solution No. 7: Industrial Applicability

Suggested Solution No. 7 as submitted by the International Bureau to the Committee of Experts read as follows:

"Any biotechnological product—like any other product—capable of being made or used in any way, including for research or analysis, in any kind of industry, including agriculture, shall be regarded as industrially applicable."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 7 reads as follows:

"This Suggested Solution was generally approved, subject to a clarification that capability of industrial manufacture of a biotechnological product was sufficient in order to establish industrial applicability, whatever use was subsequently made of such a product."

Suggested Solutions Concerning the Scope of Protection

Suggested Solution No. 8: Extension of Process Patents to Products

Suggested Solution No. 8 as submitted by the International Bureau to the Committee of Experts read as follows:

"(1) Where, under the applicable law, patent protection for a process extends to products directly obtained by such process, a patent for a process for the production of living matter, or other matter containing genetic information permitting multiplication of the said matter in substantially identical form or in differentiated form, shall cover, for the purposes of extension of protection to the product directly obtained, products derived from the material initially obtained by the patented process, whether such derivation is through replication or differentiation on the basis of said genetic information, or through both replication and differentiation carried out in any sequence, provided that the said derived products have essentially the same genetic characteristics as the said initial material.

(2) Any extension of a process patent to the products directly obtained by the patented process shall prevail over any exclusion from patent protection of a product as such."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 8 reads as follows:

"*Paragraph (1)*

Taking into account that this Suggested Solution only applied to laws providing for extension of process patent protection to products directly obtained by using the patented process, the great majority of delegations and of representatives approved paragraph (1), subject to the suggested amendments and modifications set out below.

Several delegations reserved their position on paragraph (1) of Suggested Solution No. 8, on the basis either that their national law did not provide for an extension of process patents to products directly obtained by using the patented process, or that this matter was presently under review by their national authorities.

A number of delegations and several representatives expressed concern over the extent to which the present drafting of paragraph (1) permitted process patent protection to be extended to subsequent generations of products obtained from the multiplication of living matter produced by a patented process. In this respect, it was, on the one hand, acknowledged that the inventor in the animate area was at a disadvantage, since living material obtained from that process could be used as the vehicle for the multiplication of that material. On the other hand, the majority of delegations and representatives considered that it was necessary to draw a proper boundary to demarcate the limits of the extension of process patent protection accorded in recognition of this disadvantage. There was agreement that the words 'differentiated form' in line 5 of paragraph (1), as well as the notions of 'replication' and 'differentiation' in lines 8 and 9, afforded an insufficiently precise basis on which to draw the limits of process patent protection because they were not appropriate.

In order to meet the concerns referred to in the previous paragraph, it was proposed that paragraph (1) of the Suggested Solution be redrafted as follows:

'(1) Where, under the applicable law, patent protection for a process extends to products directly obtained by such

a process, a patent for a process for the production of living matter, or other matter containing genetic information permitting multiplication of the said matter, shall cover products derived from the material initially obtained by the patented process, provided that the said derived products have essentially the same genetic characteristics as the said initial material.'

The majority of delegations and representatives supported this amended text. The Delegation of Italy objected to the amended text.

Certain delegations also expressed the view that paragraph (1) might erode plant variety rights. In this respect, it was stated that, where a patented process could be used for obtaining a plant variety, the application of paragraph (1) would result in the plant variety coming under patent protection because of the extension of process protection to subsequent generations of the plant variety.

Concern was also expressed by certain delegations and one representative that the words 'have essentially the same genetic characteristics' in the last two lines of paragraph (1) might not be sufficiently clear. In this regard, it was stated that paragraph (1) ought to be directed at extending process patent protection to products which were the same as, or changed in only trivial respects from, the product obtained directly from the patented process.

Several delegations and representatives expressed the view that Suggested Solution No. 8 should also provide for the reversal of the burden of proof in cases where it was a question of ascertaining whether a product had been obtained by the patented process. It was considered that the reversal of the burden of proof in cases where products of the kind obtained from the patented process were put on the market was a measure which was of great assistance to owners of process patents, particularly in the area of biotechnology. On the other hand, it was pointed out that, since the said reversal of the burden of proof should apply to all process patents, there was no need for a suggested solution in respect of biotechnological inventions.

Finally, it was suggested that the title of Suggested Solution No. 8 should be amended to read 'Extension of Effects of Process Patents to Products.'

Paragraph (2)

A majority of delegations and representatives approved paragraph (2) in principle, emphasizing, in particular, that such a provision was necessary in order to afford proper protection to process patents, especially against importations of products directly obtained by a patented process to countries which did not permit product patents in respect of the relevant subject matter.

The Delegation of the Netherlands expressed a reservation concerning paragraph (2) on the basis that it was contrary to the provisions of its national law. The Delegation of Canada stated that the matter was presently under review by its national authorities.

Several delegations and a number of representatives expressed concern over the impact of paragraph (2) on plant variety rights, pointing out that, if extension of process patent protection to products were to result in patent protection being extended to a plant variety, a conflict between patents and plant variety rights could arise.

One representative suggested replacing the second part of paragraph (2), with a view to clarifying the legal relationship between this part and the first part of the paragraph, as follows: 'shall apply even if such subject matter is excluded from patent protection as such.'

It was agreed that, in view of the implications of both paragraph (1) and paragraph (2) of Suggested Solution No. 8 on plant variety rights, it would be desirable that Suggested Solution No. 8 be examined in the planned joint WIPO/UPOV study."

Suggested Solution No. 9: Genetic Information as an Essential Feature of the Patented Product

Suggested Solution No. 9 as submitted by the International Bureau to the Committee of Experts read as follows:

"Patent protection for a product that consists of, or contains, particular genetic information as an essential feature of the invention shall extend to any matter containing the patented product or obtained from the patented product provided that the said genetic information is contained and expressed in the said matter."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 9 reads as follows:

"A number of delegations and representatives considered that Suggested Solution No. 9 addressed a problem which was specific to biotechnology, and which required a solution which could serve as a guideline or recommendation for legislators and judges. While they considered that the present wording of the Suggested Solution raised problems, and that the task of finding satisfactory wording was an extremely difficult one, these delegations and representatives expressed the view that, nevertheless, an attempt should be made to find a solution.

A number of delegations and representatives, in contrast, considered that the problem dealt with by the Suggested Solution ought to be treated according to ordinary principles of patent law. In their view, the Suggested Solution should be deleted, and the problem should be dealt with by judges through an

interpretation of the ordinary principles of patent law.

Several delegations and a number of representatives considered that the Suggested Solution may have an unintended effect of providing for the domination of patent protection over plant variety rights. In this regard, it was indicated that the words 'patent protection for a product ... shall extend to' might be interpreted so as to allow the owner of a patent for a substance containing genetic information to exercise patent rights in respect of a plant variety in which that substance was contained. These delegations and representatives considered that the solution should form part of the joint discussions between WIPO and UPOV. On the other hand, it was pointed out that the solution was broader than the issue of plant varieties, and operated on the basis that a solution would have been obtained to the question of the appropriate interface between patents and plant variety rights.

It was pointed out by a number of delegations that the scope of patent protection for a product should be determined by the wording of the claims. It was stated that, if an invention claimed a DNA sequence and it was desired to obtain protection in respect of any microorganisms containing that sequence, protection should be claimed for all microorganisms. On the basis of the Suggested Solution, however, protection would be obtained for all microorganisms by merely claiming the DNA sequence.

Concerning the present wording of the Suggested Solution, several delegations considered that the words 'or obtained from the patented product' in lines 3 and 4 should be deleted on the basis that the desired scope of protection was already achieved by the preceding words 'containing the patented product.'

A number of delegations and representatives also considered that the words 'expressed in' in lines 4 and 5 presented difficulties. It was pointed out that these words added a separate condition to the requirement that genetic information be contained in a particular matter. In certain cases, however, there were genes which might be contained in a particular matter and which might effect the physiology of the final product, although not being expressed in that matter. The present wording of the Suggested Solution would not extend protection to such cases.

The following revised text of the Suggested Solution was proposed and considered by the meeting:

'Patent protection for a product that consists of, or contains, particular genetic information as an essential feature of the invention as defined in the claim or claims shall extend to any use of the patented product as contained in any matter provided that the said genetic information is essential for its use.'

Several delegations and representatives considered that the words 'is essential for its use' in line 5 of the draft set out in the preceding paragraph caused difficulties, since a patent might be infringed even if the genetic information was not essential to the use of the matter containing the genetic information, but only helpful or desirable. Thus, the inclusion of the words 'essential for its use' could lead to a diminution of protection against infringement.

Among the suggestions for improving the draft set out in paragraph 80, above, were the replacement of all words appearing after 'shall extend' with either 'to any use of the patented product in any matter in which the said genetic information is utilized,' or 'to any use of the patented product in or for the production of any matter containing the said genetic information.'

No agreement was reached on the various alternative drafts placed before the meeting and it was concluded that the drafting of the Suggested Solution should be referred to the International Bureau."

Suggested Solution No. 10: Exhaustion

Suggested Solution No. 10 as submitted by the International Bureau to the Committee of Experts read as follows:

"Putting on the market of a product constituting living matter that is covered by a patent, by the owner of the patent or with his consent, shall not exhaust the rights of the patent owner in relation to any acts committed with respect to material obtained through multiplication of the said product, unless, and only to the extent that, such multiplication can be considered as a use which is a normal consequence of the product having been put on the market."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 10 reads as follows:

"The majority of delegations and representatives approved Suggested Solution No. 10, subject to the modifications set out below.

Many delegations and representatives expressed concern over the meaning of the expression 'a normal consequence of the product having been put on the market' in the last two lines of the provision. It was pointed out that the solution was addressed to living matter, and that multiplication might be considered to be a normal consequence of all living matter. It was therefore considered necessary to find words to express the position that the principle of exhaustion should apply only if the product was used in the manner intended by the patent owner when he put the product on the market. Accordingly, there should be no exhaustion if material was obtained through multiplication of a product put on the

market where the multiplication did not fall within the use intended by the patent owner when he put the product on the market. A number of drafting alternatives were suggested in this respect, including that exhaustion should apply to material obtained through the multiplication of a product put on the market only to the extent that such multiplication could be considered to be 'a use which was understood or implied in putting the product on the market.' It was pointed out that this suggestion would accommodate any use implied by market practice, as well as allow the patentee the right to place restrictions on the use of a product when putting the product on the market.

One delegation suggested that the principle in Suggested Solution No. 10 touched on the interface between patents and plant variety rights, particularly in respect of the farmers' privilege to use seeds for sowing further crops.

It was requested that the solution be considered in the planned joint WIPO/UPOV study to the extent that it concerned plant variety rights."

Suggested Solution No. 11: Dependency License in Favor of Holders of Plant Variety Rights

Suggested Solution No. 11 as submitted by the International Bureau to the Committee of Experts read as follows:

"(1) Where the holder of a plant variety right for a variety that represents a significant technical advance over a patented invention in the relevant area wants to carry out an activity concerning the said new plant variety which is within the scope of protection of the said patent, he shall have a right to obtain a license under the said patent in order to carry out such activity, subject to the payment of a reasonable remuneration.

(2) Where such a license has been granted, the owner of the licensed patent shall have a right to obtain a license under the licensee's plant variety right subject to the payment of reasonable remuneration."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 11 reads as follows:

"Discussions concerning Suggested Solution No. 11 related to two matters—(1) the conceptual approach adopted in the Suggested Solution to the interface between patents and plant variety rights; and (2) the manner in which that conceptual approach was implemented in the drafting of the present Suggested Solution.

Concerning the conceptual approach adopted in the Suggested Solution, four delegations approved in principle the approach, subject to the comments on the drafting set out below.

A number of delegations and representatives opposed the adoption of the approach in the solution at the present time on the basis that it was too early to decide on a definite approach to the question of the interface of patents and plant variety rights, and that the matter required further in-depth study, as well as consideration in the planned joint study by WIPO and UPOV.

Many delegations and representatives opposed the adoption of the approach in this solution on the basis that compulsory dependency licenses were an inappropriate means of regulating the interface between patents and plant variety rights. In this respect, it was noted that practices differed widely in different countries on both compulsory licenses and dependency licenses within the patent system. A number of delegations and representatives considered that compulsory licenses should be reserved for cases of national emergency or adjudicated violations of rights. In this regard, it was stated that the patent owner's right was one of an exclusionary nature, rather than a right to receive reasonable remuneration, so that a compulsory license, even if granted in return for the payment of a reasonable remuneration, constituted an unwarranted interference with the patent owner's rights. It was also stated that technological development would best be stimulated through the provision of an environment which encouraged voluntary, rather than compulsory, licensing. In addition, some representatives considered that dependency licenses, where they existed in patent systems, were open to the possibility of abuse, since an invention covering a small technical activity could provide the basis for obtaining access to a large technical field.

Concerning the present wording of Suggested Solution No. 11, a number of delegations and many representatives considered that the words 'significant technical advance' were inappropriate as a measure of the relationship which must exist between a plant variety right and a patented invention in order to justify the grant of a dependency license to the holder of a plant variety right in respect of that patented invention. Since plant variety rights were granted on the basis of criteria which did not include an inventive step or a technical advance, it was considered that other wording, such as, for example, 'a variety of demonstrated commercial importance,' would be more appropriate.

Several delegations and representatives also considered that the words 'in the relevant area' in lines 2 and 3 of paragraph (1) were not sufficiently clear to describe the required connection between a plant variety right and a patented invention in order to justify the grant of a dependency license. It was suggested that wording should be found to demonstrate a clear connection between the plant variety right and the patented invention.

One delegation considered that the solution should make it clear that the determination of reasonable remuneration in respect of a dependency license should be open to judicial review.

One delegation considered that paragraph (2) should be deleted on the basis that the cross-license system is to the disadvantage of developing countries in view of the different position which such countries occupy in the technology market in relation to patent owners.

The Chairman noted, in conclusion, that there were differences of view concerning the possibility of compulsory dependency licenses between those delegations whose national systems recognized the concept of dependency licenses in the patent field and who, in general, favored the idea of extending such licenses to plant variety rights, and those delegations whose national systems did not recognize dependency licences and restricted compulsory licenses to a narrow range of circumstances and who, in general, opposed the approach in the Suggested Solution. In addition, the Chairman noted that there had been an objection of principle on the part of some delegations and representatives to any linkage between the two forms of protection constituted by patents and plant variety rights. Concerning the modalities of implementing the principle in the Suggested Solution, the Chairman noted the reservations which had been made in respect of the use of the concept of a 'significant technical advance' in respect of plant variety rights, and that a form of judicial review in respect of the grant of the license and the determination of reasonable remuneration under a dependency license was also favored by some. In addition, the Chairman noted the reservation which had been made concerning the applicability of paragraph (2) to developing countries. The Chairman also stated that, being specific to plant variety rights, Suggested Solution No. 11 ought to be transferred as it stood to joint discussions between WIPO and UPOV."

Suggested Solution No. 12: Experimental Use

Suggested Solution No. 12 as submitted by the International Bureau to the Committee of Experts read as follows:

"Where a product comprising or consisting of genetic information and protected by a product patent or—through extension—by a process patent is used for the development of another such product, such use shall not be regarded as experimental use if the progeny of the developed product, in a form which is substantially the same or is differentiated on the basis of said genetic information, is used for other than private or experimental purposes concerning the product which has been developed."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 12 reads as follows:

"After a full discussion, it was proposed that the Suggested Solution should be deleted on the understanding that deletion did not indicate that a problem did not exist, but indicated rather that a satisfactory solution could not be found to the problem. However, a further discussion of the subject as such had to be transferred to the joint study by WIPO and UPOV.

A number of delegations supported the deletion of the Suggested Solution on the basis also that experimental use in the field of biotechnology should be treated according to ordinary patent law principles, and that any clarification could be provided by the courts.

Some delegations and representatives considered, however, that the principle in the Suggested Solution should be retained. While they agreed that biotechnology should be treated, like any other technology, on the basis of ordinary patent law principles, they considered that biotechnology raised special problems concerning the exemption from patent protection for experimental purposes that required clarification. These special problems arose from the fact that one experiment on living matter could suffice to produce a new product which, being susceptible of multiplication or replication, could be commercially exploited.

Several delegations and representatives referred to the distinction in some national laws between, on the one hand, experimentation on a patented invention, which was permitted, and, on the other hand, experimentation with a patented invention for another purpose, which was not permitted. It was suggested that this distinction should be reflected in the Suggested Solution.

Many representatives of non-governmental organizations considered that an alternative approach to the problem presented in the Suggested Solution would be the allowance of broad claims by patent offices, for example, a claim for microorganisms generally having a particular DNA structure, as opposed to a particular microorganism having that structure. It was stated, on the other hand, that broad claims could only be allowed for broad inventions, and that the question of the breadth of claims was not specific to biotechnololgy, but concerned also the chemical field."

Suggested Solutions Concerning Deposits of Microorganisms

Suggested Solution No. 13: Meaning of the Term "Microorganism"

Suggested Solution No. 13 as submitted by the International Bureau to the Committee of Experts read as follows:

"The term 'microorganism,' as used in national laws and international treaties in connection with deposit for the purposes of patent procedure, shall be understood in the widest sense, comprising especially any matter which can be deposited and

(i) which is self-replicable, or

(ii) which is contained in, or can be incorporated into, a host organism and which is replicable through replication of the host organism."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 13 reads as follows:

"The majority of delegations and representatives expressed support for a broad interpretation of the term 'microorganism,' which would allow the deposit with depositary institutions of organisms other than microorganisms *strictu sensu* as long as the procedure provided for under the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure (hereinafter referred to as the 'Budapest Treaty') could apply, by analogy, to such deposits.

In this connection, it was indicated that a broad interpretation of the term 'microorganism' would confirm the existing practices of a number of international depositary authorities, which accept the deposit of organisms under the Budapest Treaty, such as, for example, seeds, which are not microorganisms.

One delegation proposed that the Suggested Solution should be deleted, since the absence so far of an agreed interpretation of the term 'microorganism' had not created any problem, especially in the framework of the deposit procedures provided for under the Budapest Treaty.

It was stated that a broad interpretation of the term 'microorganism' should in no way be construed as including higher-life forms, such as plants, and that material protected under the UPOV Convention should be excluded from such an interpretation.

It was pointed out that a broad interpretation of the term 'microorganism' should be adopted only for the purposes of the deposit of microorganisms with depositary institutions and would not affect any exclusion from patent protection provided for under national laws. In this connection, it was proposed that an explanatory note to this effect should be included under the Suggested Solution.

It was suggested that in subparagraph (i) the words 'e.g., bacteria, fungi, algae and protozoa' should be added after 'which is self-replicable,' and that in subparagraph (ii) the words 'e.g., plasmids and viruses' should be added. Moreover, it was suggested that in subparagraph (ii) the words 'is replicable through replication of the host organism' should be deleted and substituted by 'can direct its own replication therein.'

It was also suggested that the word 'especially' in the third line of the Suggested Solution be deleted.

It was pointed out that the term 'microorganism' should be qualified, where necessary, by adjectives, for example, 'active microorganism.'"

Suggested Solution No. 14: Requirements Concerning the Disclosure of Microbiological Inventions

Suggested Solution No. 14 as submitted by the International Bureau to the Committee of Experts read as follows:

"Where an invention concerns a microorganism, or involves the use of a microorganism, which is not available to the public and which cannot be described in a patent application in such a manner as to enable a person skilled in the art to carry out the invention, such an invention shall be regarded as having been sufficiently disclosed only if the microorganism has been deposited with a recognized depositary institution and samples thereof are available according to the applicable law, and if the patent application contains such relevant information as is available to the applicant on the characteristics of the microorganism."

Suggested Solution No. 15: Effect of Deposit of a Microorganism for Disclosure

Suggested Solution No. 15 as submitted by the International Bureau to the Committee of Experts read as follows:

"A deposit of a microorganism according to Suggested Solution No. 14 shall be able to replace the written description of a process enabling a person skilled in the art to obtain the said microorganism, whether the said microorganism is claimed per se *or whether it is a material that is necessary for carrying out the claimed invention, provided that the patent application contains such relevant information as is available to the applicant on the characteristics of the microorganism."*

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solutions Nos. 14 and 15 reads as follows:

"A large majority of delegations and representatives approved Suggested Solutions Nos. 14 and 15, subject to some clarifications.

It was pointed out that the expression 'applicable law' in Suggested Solution No. 14 meant the law of the country where the patent application had been filed or the relevant patent had been granted. In this connection, it was suggested that such clarification should be included in an explanatory note.

With respect to the term 'recognized depositary institution,' it was agreed that this did not imply that such an institution should be an international

depositary authority under the Budapest Treaty. The said term also covered institutions which were recognized under the national procedure of a country.

It was suggested to add at the end of Suggested Solutions Nos. 14 and 15 the words 'and on the process for obtaining it.' Such addition was objected to by several delegations.

With respect to Suggested Solution No. 14, it was stated that under the present practice of the Japanese Patent Office, the written description of a microbiological invention was required to contain, in addition to the identification of the deposit of the microorganism, all information available to the patent applicant concerning the characteristics of the microorganism involved in order to characterize and distinguish the deposited microorganism. The Delegation of Japan explained that this requirement could be fulfilled through a reference to existing publications with respect to a known microorganism. In this connection, it was pointed out by a representative of an observer organization that such a type of requirement constituted a heavy burden for the patent applicant because it implied very extensive research in the state of the art; it would be sufficient to limit the information on the microorganism to those aspects that permitted the full identification of the microorganism. It was, therefore, suggested that the word 'inventive' should be inserted before 'characteristics' in the last line of the Suggested Solution.

With respect to Suggested Solution No. 15, it was indicated that the function of the deposit of a microorganism was not to substitute the written description of a microbiological invention, but was to complete such description. It was suggested, therefore, that the word 'replace' in the second line of the Suggested Solution should be substituted by the word 'complete.'

It was pointed out that the 'applicable law' in Suggested Solution No. 15 meant the law of the country in which a decision had to be taken on whether a written description in combination with the deposit of a microorganism formed part of the state of the art.

It was suggested that the question should be studied of whether a deposit of a microorganism with a recognized depositary institution was required at the time of first filing for the purposes of claiming the right of priority under the Paris Convention for the Protection of Industrial Property."

Suggested Solution No. 16: Furnishing of Samples to Legally Entitled Third Parties

Suggested Solution No. 16 as submitted by the International Bureau to the Committee of Experts read as follows:

"(1) Samples of the deposited microorganism shall be furnished by the depositary institution to any legally entitled third party (hereinafter referred to as the 'third party') at its request, to its place of residence as referred to in paragraph (3), subject to the conditions referred to in paragraphs (2) and (4).

(2) The request shall be based on a pending patent application, or a patent, which refers to the deposit of the microorganism of which a sample is requested.

(3) The third party shall have residence in a country for which a patent application was filed or a patent was granted on which a request can be based according to paragraph (2).

(4) Samples shall be furnished only after the publication of the patent or patent application on which the request is based, or after the third party has a right to inspect the files under the applicable law, and only if the third party has subscribed to the following undertakings vis-à-vis the owner of the patent or patent application on which the request is based:

(i) not to make the deposited microorganism or any microorganism derived therefrom available to any other third party;

(ii) to use the deposited microorganism or any microorganism derived therefrom only for experimental purposes, with a restriction until the grant of an enforceable right to experiments concerning the invention itself, excluding experiments serving the purpose of further development;

(iii) not to export the deposited microorganism or any microorganism derived therefrom to any other country.

The said undertakings shall be made for a period which shall continue at least until the expiration of the patent on which the request is based or resulting from the patent application on which the request is based.

(5) For the purposes of paragraph (4), any microorganism shall be deemed to be derived from the deposited microorganism if it is derived therefrom by culturing or in any other way of replication, provided that the derived matter still has those characteristics of the deposited microorganism which are essential for the carrying out of the invention."

The portion of the report of the Committee of Experts concerning the discussion of Suggested Solution No. 16 reads as follows:

"*General*

"As regards the general question of whether—in contrast to the general principles governing patent disclosures—special rules should apply to disclosures of inventions through deposits of microorganisms, a number of delegations stated that the

principle of the complete availability to the public of a description contained in a published patent application should apply without exceptions in the case of microbiological inventions. It was argued in this connection that the deposited microorganism was an integral part of the description so that samples thereof should be freely available after publication to any requesting party without being subject to special conditions.

Some delegations, supported by the large majority of representatives, approved the approach of the Suggested Solution, according to which microbiological inventions constituted a special category of inventions, in particular since the deposit contained material for using the invention and not just information on how to use the invention. Therefore, it would be justified if the furnishing of samples of deposited microorganisms were made subject to a number of conditions. It was necessary, however, to find a solution balancing, on the one hand, the right of the general public to an enabling disclosure of the invention and, on the other hand, the legitimate interest of the patent applicant to be protected against unauthorized use of his invention. In this connection, the provisions of Rule 28 of the Regulations under the European Patent Convention and of a number of national patent laws were referred to as examples of a well-balanced solution to this problem.

Paragraph (1)

The majority of delegations and representatives approved paragraph (1), subject to consequential amendments resulting from any modification introduced in paragraphs (2), (3), (4) and (5).

Paragraph (2)

The majority of delegations and some representatives expressed the view that access to the deposited microorganism should not end if the corresponding patent application was no longer pending or the corresponding patent was no longer in force. Thus, paragraph (2) should be amended accordingly.

Paragraph (3)

The majority of delegations was opposed to the principle embodied in paragraph (3) because it constituted an excessive limitation on the rights of third parties to have access to samples of deposited microorganisms, and would result in a state of the art which differed from country to country.

Paragraph (4)

General. It was agreed that any undertakings should apply only for the time during which the corresponding application was pending or the corresponding patent was in force and that the last three lines of paragraph (4) should be amended accordingly.

Subparagraph (i). The majority of delegations and representatives approved the principle embodied in this subparagraph.

Subparagraph (ii). The majority of delegations approved the principle embodied in this subparagraph. Some delegations favored the deletion of the words 'excluding experiments serving the purpose of further development.' Other delegations suggested a re-draft along the following lines:

> '(ii) not to use the deposited microorganism or any microorganism derived therefrom for action infringing the patent in case the request is based on a patent in force and to give reasonable compensation in case the request is based on a patent application for which a patent is granted.'

In conclusion, it was agreed that subparagraph (ii) had to be re-examined in the light of the modifications to be made to paragraphs (2) and (3).

Subparagraph (iii). The majority of delegations expressed hesitation on the principle embodied in subparagraph (iii). It was agreed that the said subparagraph be reconsidered in the light of amendments made in respect of the other provisions of this solution.

Paragraph 5

This paragraph was generally approved."

Future Work

The portion of the report of the Committee of Experts reflecting the discussions of the Committee of Experts on future work reads as follows:

"The International Bureau reconfirmed the point of view of the Director General, expressed at the third session of the Committee of Experts, that the Suggested Solutions were not meant to be recommendations to the member countries of WIPO to change their national laws. The principal aim was to make member countries aware of the questions arising from developments in the field of biotechnology.

A number of delegations from developing countries stressed the importance which they attached to the regional fora which would be organized by WIPO in 1989 and which would deal with the impact of emerging technologies on the law of intellectual property. In addition, these delegations requested that a consultative meeting of experts from developing countries be convened by WIPO to discuss the industrial property protection of biotechnological inventions, and expressed the view that such a consultative meeting should take place before any joint WIPO/UPOV meeting is convened. These

delegations also expressed the hope that financial assistance could be extended to facilitate the participation of experts from developing countries in the suggested consultative meeting.

It was recommended that a joint WIPO/UPOV meeting be convened to discuss the interface between patent protection and plant variety rights, and that such a joint meeting be preceded by a joint study by the International Bureau of WIPO and the Secretariat of UPOV, which should, in the measure possible, ascertain the legal situation relating to the interface between the two forms of protection, identify key areas for discussion, describe the arguments raised in discussions to date, in both WIPO and UPOV, for and against suggested approaches to the interface between the two forms of protection and summarize the list of solutions which could be proposed in respect of the interface between the two forms of protection. It was also suggested that, if possible, the distribution of such a joint study should take place sufficiently in advance of any joint meeting to enable written comments on the joint study to be submitted by States prior to the joint meeting.

It was recommended that the question of convening a fifth session of the Committee of Experts be considered by the meetings of the Governing Bodies of WIPO in September 1989. It was also stated that it would not be useful to convene such a fifth session before a joint meeting of WIPO and UPOV."

LIST OF PARTICIPANTS**

I. States

Argentina: A. Trombetta. **Anstria:** K. Wolf. **Brazil:** P. R. de Almeida; A.R.H. Cavalcanti. **Bulgaria:** K.J. Koleva. **Cameroon:** W. Eyambe. **Canada:** J.W. Buchanan; P.J. Davies; E.A. Mayer. **Cnba:** M.E. Menéndez Rodríguez; M. Jiménez Aday. **Denmark:** L. Østerborg; H. Rasmussen; F. Espenhain; P. Thorsboe. **Egypt:** M.Y. Saada; N. Gabr. **El Salvador:** M.A. Gallegos. **Finland:** H.I. Lommi. **France:** D. Darmon; R. Misrahi. **German Democratic Republic:** S. Schröter. **Germany (Federal Repnblic of):** D. Brouër; F.P. Goebel; H. Kunhardt; E. Heinen; S. Huber. **Ghana:** M. Abdullah. **Hungary:** E. Szarka. **India:** A. Malhotra. **Ireland:** E.P. Foley. **Italy:** G. Morelli Gradi. **Japan:** T. Moriya; S. Miyata; S. Takakura. **Libya:** A. Ashour; M. Ramadan; M.A. Azzouz. **Madagascar:** M.-F. Narove. **Mexico:** A. Fuchs. **Netherlands:** J.C.H. Perizonius; C.A.M. van der Schaal; D. Verschure; E.S. van de Graaf; Y.E.T.M. Gerner. **New Zealand:** H. Burton. **Nigeria:** D.A. Enwereuzoh. **Norway:** P.T. Lossius. **Peru:** R. Saif-Preperier. **Repnblic of Korea:** T.-C. Choi; S. Kim. **Soviet Union:** N. Shepelev; V. Chitikov. **Spain:** E.J. Rúa Benito; I. Seriña; C. Toledo de la Torre. **Sweden:** K.O. Oster; C.E.M. Holtz; R. Walles. **Switzerland:** J.-L. Comte; P. Messerli; S. Pürro; H. Meyer. **Turkey:** A. Algan. **United Kingdom:** R.J. Walker; D.L. Wood; J.Ardley. **United States of America:** D. Hoinkes; W.H. Duffey; D. Beier.

II. Intergovernmental Organizations

Commission of the European Communities (CEC): B. Schwab; S. Keegan. **European Free Trade Association (EFTA):** G. Aschenbrenner. **European Patent Office (EPO):** L. Gruszow; C. Gugerell; R. Teschemacher. **International Union for the Protection of New Varieties of Plants (UPOV):** B. Greengrass; A. Heitz. **Organization for Economic Co-operation and Development (OECD):** S. Wald.

III. Non-Governmental Organizations

Association of Plant Breeders of the European Economic Commnnity (COMASSO): V. Desprez; R. Petit-Pigeard; J. Winter; D.G. McNeil; G. Urselmann. **International Association for the Protection of Industrial Property (AIPPI):** A.H. Laird. **Committee of National Institutes of Patent Agents (CNIPA):** B.H. Huber; D.G. Bannerman. **European Council of Chemical Manufacturers' Federation (CEFIC):** G. Orlando. **European Federation of Agents of Industry in Indnstrial Property (FEMIPI):** M. Bellenghi; G. Brock-Nannestad. **European Federation of Pharmaceutical Industries' Associations (EFPIA):** I. Hjertman; P. Leardini; C. Morris. **International Association for Horticultural Prodncers (AIPH):** M.O. Slocock. **International Association of Plant Breeders for the Protection of Plant Varieties (ASSINSEL):** T.M. Clucas; B. Le Buanec; D. Gunary; P. Lange; J. van der Linde; C. Pedersen; J. Donnenwirth; M. Roth; J. Jorgensen. **International Chamber of Commerce (ICC):** C. Morris; J. Buraas. **International Commnnity of Breeders of Asexually Reproduced Ornamental and Fruit Tree Varieties (CIOPORA):** P. Ilsink; R. Royon; S.D. Schlosser; W. Fiedler; R. Kordes. **International Federation of Industrial Property Attorneys (FICPI):** D.G. Bannerman. **International Federation of Pharmaceutical Manufacturers Associations (IFPMA):** K.F. Gross; W.K.M. Arnold. **International Federation of the Seed Trade (FIS):** M. Besson; A. Menamkat; J. Geertman. **International Group of National Associations of Manufacturers of Agrochemical Products (GIFAP):** T.W. Roberts; B.M. Roth. **Japan Patent Association (JPA):** N. Morimoto; K. Yamashita. **Licensing Executives Society (International) (LES):** C.G. Wickham. **Max Planck Institute for Foreign and International Patent, Copyright and Competition Law (MPI):** R. Moufang. **Seed Committee of the Common Market (COSEMCO):** B. Leplâtre; M. Marchand. **Union of European Practitioners in Industrial Property (UEPIP):** R.K. Percy. **Union of Industrial and Employers' Confederation of Europe (UNICE):** P. Mars; G. Orlando; R.S. Crespi; C. Morris.

IV. Officers

Chairman: J.-L. Comte (Switzerland). *Vice-Chairmen:* M.Y. Saada (Egypt); N. Shepelev (Soviet Union). *Secretary:* L. Baeumer (WIPO).

V. International Bureau of WIPO

A. Schäfers *(Deputy Director General)*; L. Baeumer *(Director, Industrial Property Division)*; F. Gurry *(Head, Industrial Property Law Section, Industrial Property Division)*; A. Ilardi *(Senior Legal Officer, Industrial Property Law Section)*; C. Walthour *(Senior Legal Officer, Industrial Property Division)*; B. Ibos *(Legal Officer, Industrial Property (Special Projects) Section)*; T. Niinomi *(Associate Officer, Industrial Property Law Section)*; A. Hüni *(Consultant)*.

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

Madrid Union

Preparatory Committee for the Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks

(Geneva, December 5 to 7, 1988)

NOTE*

The Preparatory Committee for the Diplomatic Conference for the Conclusion of Two Protocols Relating to the Madrid Agreement Concerning the International Registration of Marks (hereinafter referred to as "the Preparatory Committee") met in Geneva from December 5 to 7, 1988.

The following States were represented at the session: Algeria, Austria, Belgium, Bulgaria, Czechoslovakia, Democratic People's Republic of Korea, Denmark, Egypt, France, German Democratic Republic, Germany (Federal Republic of), Greece, Hungary, Ireland, Italy, Morocco, Netherlands, Portugal, Romania, Soviet Union, Spain, Sudan, Switzerland, United Kingdom, Viet Nam, Yugoslavia (26).

Representatives of the Commission of the European Communities also participated in the meeting as observers.

In his introductory statement, the Director General asked the Preparatory Committee to take into account his intention—subject to the agreement of the Preparatory Committee—to prepare a "basic proposal" (that is to say, the draft text on which the work of the Diplomatic Conference will be based) which would differ from the drafts so far considered in the following two main respects: (i) there would be one Protocol instead of two; (ii) the Protocol would be open not only to States, but also to intergovernmental organizations maintaining a regional trademark registry. Following that statement, and after having given itself a day of reflection, the Preparatory Committee agreed that the document to contain the basic proposal prepared by the Director General for the Diplomatic Conference should consist of the draft of a single Protocol.

Discussions were based on document MM/PC/2 (Preparations for the Diplomatic Conference).

It was agreed that the preparatory documents for the Diplomatic Conference would be published in English, French and Spanish. Interpretation at the plenary sessions of the Conference and in the Main Committee will be provided in Arabic, English, French, Russian and Spanish. In the Credentials Committee and in the other committees and working groups, interpretation will be provided in English, French and Spanish.

The Preparatory Committee approved the list of States and intergovernmental and non-governmental organizations to be invited to the Conference. The following States will be invited with the right to vote: the member States of the Madrid Union and the four Member States (Denmark, Greece, Ireland, United Kingdom) of the European Communities not members of the Madrid Union; the other States members of the International Union for the Protection of Industrial Property (Paris Union) will be invited in an observer capacity.

As far as the Commission of the European Communities is concerned, various views were expressed as to whether it should be invited as a member delegation or in an observer capacity. It was agreed that the final decision on that question, as on the draft Rules of Procedure as a whole, could only be taken by the Diplomatic Conference itself.

The Preparatory Committee further approved the wording of the invitations to the Diplomatic Conference, the draft agenda and the draft Rules of Procedure of the Conference. It was decided that the invitation of the Government of Spain, to which the Preparatory Committee unanimously expressed its warm gratitude, would be accepted and that the Diplomatic Conference would therefore be held in Madrid from June 12 to 28, 1989.

LIST OF PARTICIPANTS**

I. Member States

Algeria: F. Bouzid. **Austria:** G. Mayer-Dolliner; M. Stangl. **Belgium:** W. Peeters. **Bulgaria:** P. Karayanev; C. Valtchanova-Krasteva. **Czechoslovakia:** L. Dokoupil; M. Sládková. **Democratic People's Republic of Korea:** Ri Djin Kyou; Kim You Tcheul; Pak Duk Hun; Kim Tcheul Sou. **Egypt:** N. Gabr. **France:** M. Guerrini; B. Vidaud; H. Ladsous. **German Democratic Republic:** S. Schröter. **Germany (Federal Republic of):** A. von Mühlendahl; M. Bühring. **Hungary:** Gy. Pusztai. **Italy:** M.G. Fortini; P. Iannantuono; P. Di Cintio. **Morocco:** M.S. Abderrazik. **Netherlands:** H.R. Furstner; M.C. Geuze; D. Verschure. **Portugal:** J. Mota Maia; R. Serrão; M.J. Pinto Coelho; A.L. de Sampaio. **Romania:** I. Marinescu. **Soviet Union:** V. Oushakov; A. Grigoriev. **Spain:** J. Delicado Montero-Ríos; A. Casado Cerviño; M. Perez del Arco. **Sudan:** I. Alamin. **Swit-**

* Prepared by the International Bureau.

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

zerland: J.D. Pasche. **Viet Nam:** Nguyen Duc Than; Ngo Dinh Kha. **Yugoslavia:** T. Lisavać.

II. Observer States

Denmark: L. Østerborg; J.E. Carstad; A. Fenger. **Greece:** J. Voulgaris; A. Abariotou; A. Cambitsis. **Ireland:** H.A. Hayden; M.P. Feely. **United Kingdom:** A. Sugden; M. Todd.

III. Intergovernmental Organizations

Commission of the European Communities (CEC): B. Schwab; A. Brun; V. Scordamaglia; H. W. Kunhardt; J. Huber.

IV. Bureau

Chairman: J. Mota Maia (Portugal). *Vice-Chairmen:* Gy. Pusztai (Hungary); M.S. Abderrazik (Morocco). *Secretary:* L. Baeumer (WIPO).

V. International Bureau of WIPO

A. Bogsch *(Director General)*; A. Schäfers *(Deputy Director General)*; G. Ledakis *(Legal Counsel)*; L. Baeumer *(Director, Industrial Property Division)*; P. Maugué *(Senior Legal Officer, Industrial Property (Special Projects) Division)*; B. Ibos *(Legal Officer, Industrial Property (Special Projects) Division)*.

Studies

The Importance of Industrial Property Law and Other Legal Measures in the Promotion of Technological Innovation

H. ULLRICH*

News Items

INDONESIA

Director General of Copyrights, Patents and Trademarks

We have been informed that Mr. Nico Kansil has been appointed Director General of Copyrights, Patents and Trademarks.

LIBYA

Secretary of the Admininistrative Committee, Industrial Research Centre

We have been informed that Dr. Abdulla Fadel has been appointed Secretary of the Administrative Committee, Industrial Research Centre.

Calendar of Meetings

WIPO Meetings

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

1989

April 3 to 7 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Copyright and Neighboring Rights (Eighth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Copyright and Neighboring Rights since the Committee's last session (March 1987) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

April 10 to 21 (Geneva)

Diplomatic Conference for the Conclnsion of a Treaty on the International Registration of Audiovisual Works

The Diplomatic Conference will negotiate and should adopt a Treaty on the intemational registration of audiovisual works and Regulations under that Treaty.
Invitations: States members of WIPO and, as observers, States members of the United Nations not members of WIPO and certain organizations.

April 24 to 28 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Sixth Session)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

May 8 to 26 (Washington)

Diplomatic Conference for the Conclnsion of a Treaty on the Protection of Intellectual Property in Respect of Integrated Circuits

The Diplomatic Conference will negotiate and should adopt a Treaty on the protection of layout-designs of integrated circuits.
Invitations: States members of WIPO or the Paris or Berne Unions and, as observers, States members of the United Nations not members of WIPO or the Paris or Berne Unions and certain organizations.

May 29 to June 2 (Geneva)

WIPO Permanent Committee for Development Cooperation Related to Industrial Property (Thirteenth Session)

The Committee will review and evaluate the activities undertaken under the WIPO Permanent Program for Development Cooperation Related to Industrial Property since the Committee's last session (May 1988) and make recommendations on the future orientation of the said Program.
Invitations: States members of the Committee and, as observers, States members of the United Nations not members of the Committee and certain organizations.

June 12 to 28 (Madrid)

Diplomatic Conference for the Conclusion of a Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks

The Diplomatic Conference will negotiate and should adopt a Protocol Relating to the Madrid Agreement Conceming the International Registration of Marks.
Invitations: States members of the Madrid Union, Denmark, Greece, Ireland, the United Kingdom and, as observers, the other States members of the Paris Union as well as certain organizations.

June 26 to July 3 (Paris)

Berne Union for the Protection of Literary and Artistic Works: Executive Committee (Extraordinary Session) (sitting together, for the discussion of certain items, with the Intergovemmental Committee of the Universal Copyright Convention)

The Committee will mainly review the activities undertaken and the meetings held since the Committee's last session (June 1987) as far as substantive issues of copyright protection are concerned.
Invitations: States members of the Executive Committee of the Berne Union and, as observers, other States party to the Berne Convention and certain organizations.

July 5 to 7 (Geneva)

Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations: Intergovernmental Committee (Ordinary Session) (convened jointly with ILO and Unesco)

The Committee will review the status of the international protection of neighboring rights under the Rome Convention.
Invitations: States members of the Intergovernmental Committee and, as observers, other States members of the United Nations and certain organizations.

September 25 to October 4 (Geneva)

Governing Bodies of WIPO and the Unions Administered by WIPO (Twentieth Series of Meetings)

All the Governing Bodies of WIPO and the Unions administered by WIPO meet in ordinary sessions every two years in odd-numbered years.
In the sessions in 1989, the Governing Bodies will, *inter alia*, review and evaluate activities undertaken since July 1988, and consider and adopt the draft program and budget for the 1990-91 biennium.
Invitations: States members of WIPO and the Unions and, as observers, other States members of the United Nations and certain organizations.

September 26 (Geneva)

Permanent Committee on Industrial Property Information (PCIPI) (Second Session)

The Committee will discuss its main activities and plans for the future.
Invitations: States and organizations members of the Committee and, as observers, certain other States and organizations.

October 9 to 13 (Moscow)

International Forum on the Role of Industrial Property in Economic Cooperation Arrangements (organized jointly with the State Committee for Inventions and Discoveries of the Soviet Union)

The Forum will deal with questions of industrial property in joint ventures among enterprises in industrialized and developing countries having different economic and social systems, and other cooperative economic arrangements, particularly in the field of the transfer of high technology, trade in goods bearing trademarks and franchizing of services.
Invitations: The Forum will be open to the public. Participants, other than representatives of governments, will be requested to pay a registration fee.

November 1 and 2 (Beijing)

Worldwide Symposium on the International Patent System in the 21st Century (organized jointly with the Chinese Patent Office)

The Symposium will be conducted in three half-day sessions, each dealing with one of the following three topics: internationalization of the patent system; computerization of the patent system; patent documentation, search and examination.
Invitations: States members of WIPO, certain intergovernmental organizations and non-governmental organizations having observer status in WIPO.

November 6 to 10 (Geneva)

Committee of Experts on Model Provisions for Legislation in the Field of Copyright (Second Session)

The Committee will continue to consider proposed standards in the field of literary and artistic works for the purposes of national legislation on the basis of the Berne Convention for the Protection of Literary and Artistic Works.
Invitations: States members of the Berne Union or WIPO and, as observers, certain organizations.

November 13 to 24 (Geneva)

Committee of Experts on the Harmonization of Certain Provisions in Laws for the Protection of Inventions (Seventh Session)

The Committee will continue to examine a draft treaty on the harmonization of certain provisions in laws for the protection of inventions.
Invitations: States members of the Paris Union and, as observers, States members of WIPO not members of the Paris Union and certain organizations.

UPOV Meetings

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

1989

April 14 (Geneva)

Consultative Committee (Thirty-ninth Session)

The Committee will mainly discuss the outcome of the twenty-fourth session (April 10 to 13) of the Administrative and Legal Committee and prepare the meeting with international organizations.
Invitations: Member States of UPOV.

October 16 (Geneva)

Consultative Committee (Fortieth Session)

The Committee will prepare the twenty-third ordinary session of the Council.
Invitations: Member States of UPOV.

October 17 and 18 (Geneva)

Council (Twenty-third Ordinary Session)

The Council will examine the program and budget for the 1990-91 biennium, the reports on the activities of UPOV in 1988 and the first part of 1989.
Invitations: Member States of UPOV and, as observers, certain non-member States and intergovernmental organizations.

Other Meetings Concerned with Industrial Property

1989

June 4 to 10 (Amsterdam) — International Association for the Protection of Industrial Property (AIPPI): Congress

July 10 to 12 (Geneva) — International Association for the Advancement of Teaching and Research in Intellectual Property (ATRIP): Annual Meeting

December 5 to 9 (Munich) — European Patent Organisation (EPO): Administrative Council