Industrial Property

Monthly Review of the United International Bureaux for the Protection of Intellectual Property (BIRPI) Geneva

3rd Year No. 6 June 1964

Contents

XIX^a Mostra internazionale delle conserve alimentari e dei relativi imballaggi — Salone internazionale per le attrezzature delle industrie alimentari (Parme, September 20-30, 1964);

XLVI^o Salone internazionale dell'automobile (Turin, October 31-November 11, 1964)

shall enjoy the temporary protection provided by laws No. 1127 of June 29, 1939 [2]), No. 1411 of August 25, 1940 [3]), No. 929 of June 21, 1942 [4]), and No. 514 of July 1, 1959 [5]).

GENERAL STUDIES

Intellectual Property and Justice

By Professor Dr. A. TROLLER. Lucerne *)

(Translation)

Seventy-five years ago, the Federal Council decided to create an Office under the title of " Intellectual Property Office " to deal with, as the Minutes show, " all matters arising out of the application of the following laws:

(a) the Federal Patent Law;

(b) the Federal Law for the Protection of Trademarks " [1]).

The extract from the Minutes does not show how the choice of this name was decided. It is now only used in Liechtenstein. Other countries have chosen either the name " Industrial Property Office " or " Patent Office " or " Patents, Trademarks and Designs Office ".

By 1888, the opponents of patent protection abandoned, in Switzerland as elsewhere, the struggle which had seriously threatened the existence of patent legislation, particularly between 1850 and 1873. The protection of industrial property and copyright were recognised for decades as necessary elements in an equitable system of law. Whenever anyone paused to consider this specialised field of law, it was primarily for the purpose of extending the scope of protection still further.

Its opponents confined themselves to attacking certain rules and tried to exempt certain fields from the exclusive right or at least to limit its scope here and there. The prevailing calm in matters of legislative policy not only permitted the fundamental principles of the law of patents, trademarks, designs and copyright to go unchallenged; at this time the question whether any other intellectual or industrial activities ought to be similarly protected was scarcely even considered. " Scientific property " was the concern of only a few idealists. It is true that in the 1930's the rights of performing artists, of the gramophone industry and of broadcasting were incorporated into the Italian and Austrian copyright legislation, but the basic related problems of legal policy and those of a legislative and doctrinal nature had not yet been raised.

Fifteen or even ten years ago, no lawyer would have dared, on such a solemn occasion as the present, to draw the attention of such a distinguished audience to the twofold concept of " intellectual property " and " justice ". He would have feared the reproach of taking advantage of the silence, ordinarily and by common courtesy accorded to a speaker, in order to make his own views heard after all that has already been said and written for and against the doctrinal value of the concept " intellectual property ". Moreover, until recently it might have been thought that the title " Office for Intellectual Property " could usefully be replaced by " Patent Office " as being better and closer to reality, if a certain respect and tradition were not against such a change.

Against all expectation, it now appears that the name is no mere *flatus vocis* and is not just the name of a Federal service which can be altered at will. It has been restored to a place of honour and has taken on a new significance because, after a period of calm lasting seventy-five years, protection of industrial property and copyright have been dragged, in Switzerland as elsewhere, into troubled waters.

While distinguished experts continue to do their utmost to develop the national and international law, other equally earnest thinkers are of the opinion that the foundations of this great legal edifice are in several respects open to question. We cannot simply ignore such doubts and we must ask ourselves whether, in the spirit of our times and present circumstances, those fundamental principles have been shaken or are inadequate.

The ultimate aims of the law are of a metaphysical character. In this field, the last word depends on philosophical or religious beliefs. No higher tribunal than that of human reason can be called upon to adjudicate in the controversy between them. However, the road to these ultimate decisions on the law is long. Our success in matters of legal policy is greatest where the problems can be analysed rationally and where the solutions can be justified by logic. Therefore, we, in turn, must ask ourselves whether and to what extent we can discuss the fundamental principles of industrial property protection and copyright while remaining within the bounds of reasoned judgement. The stronghold of metaphysics should be resorted to only when all arguments in favour of a reasoned solution are exhausted, without providing the basis for a sound judgement.

Everywhere and at all times, the law must govern human relationships as conceived at any given moment. It is in this phenomenon and nowhere else, that we find those factors which help us to establish the law. With this in mind we shall consider whether the fundamental rights of the law of intangible property are still valid. The following are the axioms which have hitherto been considered valid by the great majority of those concerned:

---

2) See *Prop. ind.*, 1939, p. 124; 1940, p. 84.
3) *Ibid.*, 1940, p. 196.
4) *Ibid.*, 1942, p. 168.
5) *Ibid.*, 1960, p. 23.

*) An address by Professor A. Troller on the occasion of the 75th Anniversary of the founding of the Swiss Federal Office for Intellectual Property.

1) Extract from the Minutes of the Swiss Federal Council Meeting of Friday, October 5, 1888.

(1) those who create intangible property have exclusive rights in it;
(2) such exclusive rights exist not in all intangible property, but only:
   (a) when they are created by human endeavour; and
   (b) of these latter, only when recognised at law, that is to say, judicially, and consequently not outside the legal sphere (inventions, literary and artistic works, designs and trademarks; to some extent also technical know-how).

We might start the debate on the validity of these fundamental principles by examining some of the essential qualities of the persons who are affected by the law of intangible property and the relationships created between those persons. In this way we shall also discover the basic truths. Yet this goal can also be reached by another route. Starting from agreed concepts, we can find out whether they meet the relationships that are to be regulated. By this I do not mean that we should draw logical inferences from a word or an expression for no other purpose than that of exercising our minds, as, for example, is the case with such concepts as " property ", " inheritance " and " claim " when they are used in the strictly legal sense. Such an exercise would restrict us to the limits imposed by the mind for its own purposes on the meaning of the words. The concepts which we want to examine here, first of all, are those which represent ideas in their original and pure sense. I am well aware that this brings us to the brink of the metaphysical sphere but, in the circumstances, we shall not pass beyond them.

The concept of " intellectual property " (that is to say, " property of the mind "), to which we thus return, combines two elements which we know from our own experience really exist. The mind, as a phenomenon which the senses can perceive, shows itself in every manifestation of human thought or feeling. To try to argue that, especially in the creation of inventions or literary and artistic works, the mind is divorced from the originator of the idea and exists independently is absurd, precisely because of the mental effort used to that end. Similarly, property, that is to say, the exclusive right to something recognised at law, is familiar to us as a concept found in our society; it is an idea that actually exists, an ideal capable of applying even if the law forbade it to enter into human relationships. A State which denies to its citizens the right, in whole or in part, to own private property, must at all times — and more than ever — pit itself against the force of this social ideal.

Thus, if we combine the two concepts of " mind " and " property ", the reality of which, within the scope of our perception, has been proven, then the existence of the specific concept of " intellectual property " (that is to say, " property of the mind ") which is derived from it, cannot be denied. For this reason, I emphasised just now that the concept is not only a name but an idea which actually exists. It can serve as a basis for the law governing intangible property and can give meaning to its rules. If we admit the principle that, within the framework of the existing law, a person can own an exclusive right in intangible property, that is to say, in " intellectual property ", we shall have formulated the essence of the problem. Thereafter, only the extent and the conditions precedent to that right remain to be determined.

By conferring this name on the competent authority, Switzerland has shown itself to be a supporter of this idea for seventy-five years. This is a sufficient reason for attempting to answer the questions raised, taking this concept as a starting point. However, this fact is not so overwhelming as to render the idea of " intellectual property " acceptable as an axiom which cannot be questioned.

The time is, therefore, opportune, since the name of the institution whose anniversary we are celebrating has been acclaimed and recognised as a concept, to make these doubts known and to explain them. The opponents of " intellectual property " are to be found among the adherents of differing schools of thought, partly, even totally, opposed to each other. Then there are those who would not wish to see the protection of industrial property and copyright in their present form disappear, but who, on the contrary, wish to extend protection to further types of property (scientific property, protection of professional services which are not concrete products of the mind, etc.).

To find our first opponent of " intellectual property " we should first explore the world of communist thinking. Contrary to what might be expected, the opposition is not easily found. After some initial hesitation, inventions and literary and artistic works were protected there in a way which, according to the letter of the law, was not so very different from our own[2]). The latest Yugoslav patent law has even abandoned the institution of the " author's certificate ", which in the Soviet Union and the other European People's Republics ensured for the author compensation from the State in place of an individual patent, and has retained only the latter[3]). The system of an " author's certificate " which assures the inventor of recognition in his capacity of inventor as well as reasonable compensation, gives him, according to the legal texts, as much as he would earn from third parties in the non-communist world[4]). On the surface, the Yugoslav system, which distinguishes between inventions belonging to the firm on the one hand and those belonging to the inventor but which a firm can acquire against payment on the other, corresponds with the Swiss law from the institutional viewpoint. Copyright law in the European communist countries, including Russia, recognises the sole right of the author to his work and his right to the protection of his intellectual interests. The fact that in Russia the right to protection lasts for only fifteen years after the author's death does not allow us to conclude that there is any fundamental difference between it and our own copyright.

---

[2]) Katzarov, K.: *Protection of industrial property and copyright in the USSR and the European People's Republics*, 1960; cp. also the comments of Pretnar, St.: *GRUR Ausl.*, 1961, pp. 145 *et seq.* Cp. also G. Grant, W. Wallace, H. R. Mathys: " Soviet law of Patents, Trademarks and Designs ", *La Propriété industrielle*, 1961, pp. 62 *et seq.*

[3]) Pretnar, St.: " Letter from Yugoslavia ", *La Propriété industrielle*, 1961, pp. 217 *et seq.*

[4]) Compare the very interesting comments in: *The law of employed inventors in Europe*, Study of the Subcommittee on patents, trademarks and copyrights of the Committee of the Judiciary United States Senate, eighty-seventh Congress, second session; pursuant to S. Res. 267, Study No. 30. Also Englert, Ch.: *The inventions of persons employed in private enterprise*, 1960.

Can we then say that in the legal thinking of European communism the alleged adversary of industrial property protection and copyright is not to be found? That would indeed be so if we considered only the rules and their immediate application, if we stopped short at the positive provisions regulating the question of compensation between interested parties, that is between the creator of works of the mind on the one hand and the community on the other. However, if we believe that the combined concept of "intellectual property" is the true existing basis, on which the law of patents, copyright, industrial design and perhaps even that of trademarks is founded, the answer is not the same. Dialectical materialism denies the existence of the mind as an autonomous phenomenon. It excludes private property from its legal system as far as possible and grudgingly allows it a last refuge in the narrowest personal sphere. We can, therefore, say that in principle the communist legal system certainly recognises the individual creation of the mind as well as the material and moral reward due to it in exchange, but this system is not based on the idea of "intellectual property" but on considerations of expediency. Whether this different fundamental principle, which for the present we are content merely to note, is of real importance, must be examined later, after the other adversaries of "intellectual property" have had their say.

Violent attacks which seek to suppress patent legislation in the name of a free economy, are directed only to the exclusive right in an invention. This being so, they do not go beyond a purely economic concept and avoid the more lofty sphere of human values. Its advocates are economists. Professor Machlup has, with complete objectivity, written an exhaustive report on this for the United States Senate [5]). He reaches the conclusion that it is impossible to show with any degree of certainty that industry develops better under the patent system, or that is would lag behind without it. He, therefore, recommends that patent legislation should be retained in those countries where it is already in force, but should not be introduced in others. Machlup's own very carefully developed ideas and those of the writers he quotes at some length, express important economic and industrial considerations.

It cannot be denied, for example, that patent law tries to break down a number of creative ideas into separate rights; it is equally true that the activity of inventors which consists more and more of trial and error, resembles a drama on a cluttered stage (M. Polanyi) [6]). No one can deny that one person may try all his life to develop one great idea, while another makes millions with a simple household gadget which he thought up in the course of an evening, so that there is no relation between the usefulness to mankind of an invention and the profits gained from it (E. T. Penrose) [7]). We also know that inventions which have been outstandingly successful drive competing firms to seek costly and roundabout methods, spending large sums for this purpose, instead of creating something new and valid on the technical level [8]). A. Plant writes as follows [9]): "Briefly, even to-day, political economy has not succeeded in developing an analytical instrument capable of judging the relative productivity of that particular industry which is not yet out of its infancy, that is to say, the production of inventions; neither does it provide the criteria which might enable one to endorse this particular method of stimulation". He continues: "Means such as 'licences of right' cannot make up for the absence of a theoretical principle on which to base the entire system of patents. They are at most capable of keeping in existence the harmful effects of monopoly within the limits laid down by legislators. As I have tried to show, the science of economics, at its present stage, provides no justification for the enormous experiment of trying to stimulate a particular activity by conceding the monopolistic domination of prices" (according to Plant). May I quote another instructive passage from Machlup's penetrating report. J. Jewkes accuses the patent system of lacking logic [10]): "It presupposes the existence of something called an 'invention'. The truth is that to this day we do not possess a satisfactory definition of the word 'invention' and the Courts in their search for valid criteria have succeeded in creating an incredible confusion between contradictory doctrines. This muddle is the cause of long and costly litigation. Its critics have described a patent as something which must be defended before the Court; they have called it — since the independent inventor is at a disadvantage vis-à-vis the large undertakings — a lottery in which it is scarcely worth buying a ticket".

The representatives of industry are opposed to the arguments of the economists, and they maintain — and their assertion seems credible — that the burden of enormous sums spent on research, in the pharmaceutical industry for example, could not be borne and would, consequently, be unwarranted from the economic point of view if the exclusive right to the exploitation of the successful invention did not bring its reward [11]).

I am not qualified to enter into a discussion on matters of political economy. I can, therefore, only compare Machlup's theses which from the scientific point of view are convincing, with industrial practice. In view of the fact that the representatives of enterprises both large and small, do not complain about the patent system, its maintenance must be thought to be useful from the economic viewpoint. Nevertheless, some doubts remain. I believe that the outcome of the battle on the economic level does not prejudge the fundament decision. Even in the industrial and economic field, the normal human being is neither exclusively nor in essence a *homo oeconomicus*. The social system, and the legal system which is an important part of the former, consider man as a whole and not as an industrialist, a technician or a shopkeeper. Such activities must be considered incidental to human life. They do not constitute the essence of our being. The fact that, nevertheless, they often intrude into other spheres of life

5) Machlup, F.: "The economic bases of patent law", *GRUR Ausl.*, 1961, pp. 373 *et seq.*, 473 *et seq.*, 524 *et seq.*
6) Machlup, p. 382.
7) Machlup, p. 382.
8) Machlup, p. 478.
9) Machlup, pp. 389 *et seq.*
10) Machlup, p. 390.
11) Connor, J. T.: "In Defence of the Patent System", *GRUR*, 1963, pp. 161 *et seq.*

should not deter us. No doubt man has technical or commercial abilities, among others, and these form part of his nature. Yet they must not be confused with the aspects of an economy which has become an end in itself. The latter has no inherent value. It is useful only insofar as it helps man to develop according to his vocation. That means that everything we plan and do in industry has a meaning only if it allows man with all his physical, mental and intellectual qualities to develop more fully, both as an individual and as a member of society. The politico-economic discussion about the usefulness of the patent system seeks its arguments in the assumed or disputed increase of production, and in the development of techniques. It takes as its starting point, therefore, the axiom that the true value of patent legislation lies in this limited field. In its eyes, the increase in national wealth and income becomes identified with the public good. According to this theory, this circuitous route would give individuals the best chance of satisfying their moral and material needs. Such reasoning might be acceptable in a politician for whom the individual is nothing but a pawn in a preconceived plan first to create and then to distribute vast national wealth. Such a politician sees the legal system in the same light as those men whose sole aim it is to obtain the largest possible income to pay for their pleasures. However, those who choose to arrange their professional activity in such a way as to experience joy and develop their personality, are much happier. The wise and humane politician will take that into account. Legislation is intended to regulate a fair exchange between the persons concerned, between those who give and those who take. In patent legislation, it is those who invent, then those who exploit the invention and finally, but clearly last, all those actually in need of the result of the invention (chemical products, medicines, machines, etc.) or in whom a need for it is created. The community cannot expect the politician to rise above inventors and industrialists and consider them simply as successive stages in the national and world-wide economic structure, instead of pausing to consider and reflecting carefully on what goes on inside them and what they provide in the sphere of human endeavour, and not only in the technical and economic sphere. The communist countries have discovered that the latter cannot be dissociated from the former, just as the tree cannot bear fine fruit if it does not prosper, and they have drawn the conclusions which have dictated their patent legislation. The inventor, like everyone else, needs moral recognition and material recompense for his labour. It is not sufficient for him to know that he has made a useful contribution to the community. In the communist countries of Europe, that recompense takes the form of an " author's certificate " or a right to a patent; in the Western countries, it takes the form of the right to a patent or a contract to work as an inventor. If the patent system were abolished, all incentive to intellectual effort by those to whom we owe the kind of technical progress which can be directly converted into practice, would be removed. They would never use and develop their talents with the same enthusiasm. That would be detrimental not only to science but also to themselves and to those around them. A person who lets his ability lie dormant becomes atrophied and cannot, as a consequence, act and play his part in his family circle, and among his friends and acquaintances, as a fully mature person. A lot could be said about this and the value to the community, of each person's intellectual development. Suffice it to say here that the contribution of the patent system to it is not inconsiderable.

In their attack on patent legislation, economists have not ventured into this field where purely economic reasoning so easily goes astray.

Copyright, that is the exclusive right of an author to his work, has not so far been generally attacked. There have been skirmishes on the periphery where the opponents have sought to win compulsory licences. The speaker, on the other hand, knows that lawyers who are favourably disposed towards authors would favour a compulsory licensing system, in the interest of authors themselves, since it would free them once and for all from the contractual shackles imposed by certain parties (for instance, editors). They stress, for example, that in any case the levy system operated by authors' societies permits anyone to make liberal use of copyright material against payment. They regard the " intellectual property " of an author in his work as a fiction, because, since the users of a work may be dispersed over the whole world, it is in practice no longer possible for the author to exercise his rights as he chooses. Moreover, since some rights are often re-assigned, he would be prevented by the other parties to the contract, with a commercial interest in the work, from making it available to all who may wish to possess it.

While the Swiss law on the protection of trademarks is being revised, and work on this is already in progress, the focal point of our discussion will be the concept of " intellectual property " as an absolute right in the trademark, which must not be restricted except to avoid abuse. The Federal Court is opposed to this because of existing legislation; interested parties, on the other hand, welcome it.

My watch tells me that the moment has come when it may be appropriate to mention why the idea of " intellectual property " allows copyright and the protection of industrial property to be put into effect more equitably than any other system, or even our own, if it were deprived of this basis.

Equitable apportionment means giving everyone his due. In this case, one is tempted to reply, as did Ségier, Le Chapelier and Lakanal in the course of the debate on the first French copyright law, that nothing has a stronger claim to be considered the property of a person than the creation of his own mind [12]). This principle is indisputably valid in the case of copyright. To the extent to which protection is granted to an author, others have no claim. The style, the general idea, etc., which influence the origins of a work and are recognisable in it, can be freely used by anyone. If the author were to be deprived of his exclusive right, and his work made freely available to all the world against payment of compensation, the principle that what is his, in this case the work, must belong to him, would not be respected. Instead of permitting the author to decide freely the extent and the manner

[12]) See Matthyssen in " Proposals for a law on copyright in France in the last century ", *Revue internationale du droit d'auteur*, IV, 1954. p. 25.

in which his work may be used, the legislator would either himself have to maintain a balance between the supposedly interested parties, or he would have to make a judge responsible for that task.

As regards industrial design legislation, the situation is similar to that of copyright legislation. A lesser originality finds a correspondingly less extensive protection of designs and of more limited duration.

On the other hand, as regards the inventor, the maxim "To each his own" does not lead so directly to the "intellectual property" in the invention. In the case of an invention by an employee, which is in practice so important, under the Swiss system the exclusive right belongs to the employer and not to the inventor. Why should it be just that the intangible property created by an employee should belong to his employer? Since nowadays it is not in doubt that the majority of patented inventions belong to firms, having either been originally purchased by or assigned to them, it is necessary to justify the concept of "intellectual property" in the light of this fact.

It is often the collaboration of inventors and other technicians in a firm which leads to an invention and enables it to be developed to the stage where it can be applied in industry. The firm contributes its organisation and makes funds available. Successful inventions thus are the result of a combination of intellectual and material factors. The firm, moreover, bears the risk of a possible failure at the technical and commercial level. By granting him a contract of work, the firm assures the inventor not only of his material reward; it also allows him, and I think this is equally important, to develop his intellectual faculties harmoniously without jeopardising his livelihood by his work as an inventor. This contribution by the firm constitutes, in my view, a sufficient reason in law for regarding the invention as the property of the firm. This applies even more in the case of an individual inventor.

The criticism that inventions are in the air and will see daylight as a result of technical development, cannot determine the fate of "intellectual property", for this is rightly taken into account in the strict conditions governing protection (the level, or respectively the merit, of an invention and its technical development) and in the time limit prescribed for protection. Competitors, and still less the community, are unable to prove that the invention should really be put at their disposal, either free or in return for payment. They are not the originators of the invention and have not taken the risk which it entails. The invention in no way belongs to them, not even in part. It follows that when the principle of "to each his own", which is the only basis for a just, and at the same time satisfactory, legal system, is put into practice, we arrive at the notion of "intellectual property" also in patent legislation.

You will perhaps ask yourselves why this notion is of such importance, and whether it might not be sufficient to speak less provocatively of an absolute right. The absolute right is a legal-technical concept. The term property, on the other hand, is a recognisable phenomenon in human life. The idea of "property" has not merely a rational significance. It contains an equally important emotional element. The latter appears at least as frequently in daily life as the deliberate and purely economic interest in property, and it appears in a more tangible form. It is true that lawyers and, with more reason, economists think first of the latter.

The concept of property is an emotional link between man and an external particle of the creation. Man finds in it a refuge from the perpetual restlessness of his existence, as Hölderlin said in his Ode "My Property" when he described the link between himself and his verses. The opponents of patent legislation hope, by repealing it, to increase the rhythm of economic activity and to launch industry into unbridled competition and a ruthless race. But what right have we to deny inventors and industry their moment of well-earned rest, which allows them to take breath without being upset by their competitors, to take a look at their achievement and think about the future? In their relationship with the invention as an immaterial thing, their tranquillity is in any event short-lived and often disturbed. It is, however, well deserved and must be granted to them.

Our last important argument in favour of retaining the idea of "intellectual property" as the guiding principle in the protection of industrial property and copyright law, is found in Hegel. He writes: "Since this need occupies the foremost place, to own property seems to be a means; but in reality, from the point of view of freedom, property has its own *raison d'être*, being the first concrete manifestation (presence) of freedom"[13]). We have often encountered this fundamental truth in the expression "to be one's own master, and lord of one's own domain". Property is not, primarily, a means of obtaining money to satisfy one's needs. It provides surroundings within which we can move and develop freely as individuals. The person who moves in a lively, free and congenial atmosphere can better develop the social side of his nature, because he is healthy and fortified as an individual, and hence in this aspect of human life. It is not for nothing that we fear the transformation of society into an amorphous mass and that we seek the means to cure this disease. A good prescription is the recognition and encouragement of the ownership of property. If we then admit that the ethical task of property is more important than its purely economic function, we have good reason to confirm the close and legitimate link between intangible property and those whose brainchild it is, by expressing our support for the notion of "intellectual property".

That is why, not only now but in the future, the name of the institution whose anniversary we celebrate to-day, is not simply a decorative and rhetorical description, but the guiding principle to which we are pledged.

The question whether the bases of the right to intangible property should be enlarged to cover other intellectual activities, cannot be considered here to-day. Those concerned with this question await a reply as soon as possible. The Office for the protection of "intellectual property" is particularly suited to help solve these difficult problems.

What is obvious to-day, is that the works of scientists and of creative artists cannot be protected by their individual

[13]) Hegel, G. W. F.: *Grundlinien der Philosophie des Rechts* (Principles of the Philosophy of Justice), p. 45.

efforts [14]). The law of barter and exchange cannot furnish us with a fair measure for appreciating their importance; only the principle of equitable apportionment can do that. We must ask ourselves again and again what should be done for those who cannot acquire "intellectual property" in their outstanding intellectual work and have to make it freely available to the community, because that work is neither in a technical form nor is it a concrete aesthetic work, which alone can be brought within the compass of the law. The nature of their work does not allow them to enjoy "intellectual property" in it and to benefit from the economic rewards it brings. It is, therefore, our duty always to try and see that, side by side with "intellectual property" at civil law, official legal measures for granting moral and material reward to scientific work and to innovators in the artistic field, are developed more fully and granted more generous financial resources.

On this day of celebration we want to remember above all those philosophers who recognised and solved the problems relating to copyright and the protection of industrial property. We extend our gratitude particularly to these eminent thinkers who have served and continue to serve the cause of justice in the Office for the protection of "intellectual property".

CORRESPONDENCE

Letter from Hungary

Dr. Alexander VIDA, Lawyer, Budapest

(Translation)

International Conventions - Legislation

1. — During the three years which have elapsed since the publication of our last "Letter from Hungary" [1]), the efforts undertaken with a view to accelerating the rhythm of industrial evolution in this country have led to a certain number of changes, and these have made themselves felt equally in the field of the protection of industrial property. The interest brought to bear on all questions within this field manifests itself, among other happenings, by the signature of several international conventions relating to problems which have long been in abeyance.

Thus, on the January 12, 1960, Hungary and the German Democratic Republic signed a bi-lateral treaty on the subject of German industrial property [2]); in the relationship between Hungary and the German Federal Republic, the agreement signed on the June 8, 1962, by the Hungarian enterprise "Sigma" and the *Bundesverband der Deutschen Industrie* [3]) regulated the question of "old" German trademarks.

The ratification by Hungary on the June 14, 1962, of the Paris Convention, the Madrid Agreement concerning the Repression of False Indications of Origin on Goods, and the Madrid Agreement for the International Registration of Trademarks (London texts) calls for even greater attention [4]).

An article by Madeleine Bernauer [5]) deals in detail with the reasons for which Hungary ratified the London texts: the author enlarges upon the changes that have occurred in legislation and jurisprudence following the adhesion of the country to the said Agreement. We restrict ourselves here to placing on record that, despite the short period that has elapsed since the ratification of the London texts, the consequences of this action are already making themselves clearly felt in jurisprudence, particularly in connection with trademarks. We shall return later to this subject.

We mention again the formation, in 1960, of the Hungarian Association for the Protection of Industrial Property, and the decision taken by the International Association for the Protection of Industrial Property, on the occasion of its 1963 Congress in West Berlin, to take note of the adhesion of the Hungarian Group to that Association.

2. — In our last "Letter" [6]), we envisaged the possibility of a new codification of the rules governing the protection of industrial property. Such a codification has not, so far, taken place; perhaps the legislature is exercising prudence, or even a certain amount of reserve, as regards the eventual revision of the legislation in force.

Nevertheless, we would indicate the interest, from the point of view of industrial property, of certain legislative texts that have since been published.

First, we would mention Governmental Decree No. 35 of July 24, 1960, on the deposit to be effected in respect of any application for a patent relating to micro-organisms [7]). In effect, the author of an application, who invokes in his favour the utilisation of a colony of unknown micro-organisms, must effect a deposit of the latter with the National Institute of Public Hygiene, or with a foreign organization, if reciprocity has been established by a declaration of the President of the National Office of Inventions.

3. — The new Hungarian Penal Code (Law V of 1961) contains a definition of certain infringements of industrial property.

Thus, Article 234 of the Code provides penal sanctions against any person who has put into circulation an industrial or agricultural product bearing a designation of quality, an

---

14) See Troller, A.: "Ist der immaterialgüterrechtliche *numerus clausus* der Rechtsobjekte gerecht?" (Is the limitation of the subjects protected by the law of intangible property just?), an article in *Jus et Lex*, paying tribute to Max Gutzwiller on the occasion of his seventieth birthday, pp. 769 *et seq.*

1) See *La Propriété industrielle*, 1960, p. 220.

2) See the German text of the accord relating to the extension of the term of priority of patents and trademarks, as well as to certain other questions bearing upon industrial property: *GBl. der Deutschen Demokratischen Republik*, I, p. 383.

3) *GRUR Ausl.*, 1962, No. 7/8, p. 398.

4) See *Industrial Property*, 1962, p. 142. The London text was promulgated by decree-law 17 of 1962, published in *Magyar Kozlony* (Hungarian Official Journal), 1962, No. 56, pp. 447-499. Decree 2 of July 20, 1962, of the President of the National Office of Planning, contains the regulations of public administration of the aforesaid law.

5) Madeleine Bernauer: "*Die Anpassung des ungarischen Patent-, Muster- und Markenrechts an die Londoner Texte der internationalen Abkommen*", *GRUR Ausl.*, 1963, No. 5, pp. 250-252.

6) See *La Propriété industrielle*, 1960, p. 221.

7) See *La Propriété industrielle*, 1960, p. 216.