

BUREAUX INTERNATIONAUX
RÉUNIS POUR LA PROTECTION
DE LA PROPRIÉTÉ INTELLECTUELLE
GENÈVE, SUISSE

BIRPI

UNITED INTERNATIONAL
BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENEVA, SWITZERLAND

UNION DE PARIS: COMITÉ EXÉCUTIF, CINQUIÈME SESSION
PARIS UNION: EXECUTIVE COMMITTEE, FIFTH SESSION

(Genève, 22-26 septembre 1969)
(Geneva, September 22 to 26, 1969)

INTERNATIONAL CLASSIFICATION OF PATENTS FOR INVENTION

Report of the Director of BIRPI

Revision of the European Convention

1. By decision of the Executive Committee of the Paris Union at its fourth session from September 24 to 27, 1968 (see document CEP/IV/10, and CEP/IV/18, paragraphs 38 to 41), and of the Council of Ministers of the Council of Europe, the Secretariat General of the Council of Europe and BIRPI were asked to cooperate in preparing proposals for revision of the European Convention on the International Classification of Patents for Invention (hereinafter referred to as the European Convention). It is recalled that the main purpose of the said revision is to permit all countries of the Paris Union which so desire--and not only those which are members of the Council of Europe--to participate on an equal footing in the development of the International Classification of Patents for Invention (hereinafter referred to as the Classification). However, it was agreed that the proposals for revision should ensure that the Classification will continue to be properly applied, and that the Classification system as worked out over fifteen years will not be impaired, that is, the basic structure of the Classification should not be altered (although, of course, the system will have to be constantly perfected).

2. The Joint ad hoc Committee of the Council of Europe and BIRPI on the Classification, set up in conformity with the said decision of the Executive Committee of the Paris Union and with the approval of the competent organs of the Council of Europe, held its first session from April 14 to 16, 1969, at Berne. A copy of the report of the said session (document CE/BIRPI/14) and of Annex IV thereto is attached to this report, for information.

3. The Joint ad hoc Committee exchanged views on the subject of the revision of the European Convention, and, in the light of this exchange of views, the Secretariat General of the Council of Europe and BIRPI established the document entitled "Principles Governing the Revision of the European Convention on the International Classification of Patents for Invention, of December 19, 1954," which is attached to the report of the Joint ad hoc Committee as Annex IV.

Program for the Revision of the European Convention

4. As regards the procedure to be followed for the preparation of the revision of the European Convention, it is proposed that a Diplomatic Conference of revision be held at Strasbourg in 1970. The Conference will be convened jointly by the Council of Europe and BIRPI. The program as foreseen in the above-mentioned document (see paragraph 15) has since been modified and is the following:

- (i) The Joint ad hoc Committee will meet in February 1970 to make observations on the first draft Agreement prepared by the Secretariat General of the Council of Europe and BIRPI.
- (ii) Thereafter, the revised draft Agreement will be sent to all States members of the Paris Union and to all intergovernmental and international non-governmental Organizations concerned, together with an invitation to the Diplomatic Conference, requesting the submission of observations.
- (iii) Finally the Diplomatic Conference of revision will be convened at some time during the late autumn of 1970.

Mandate of the Joint ad hoc Committee

5. The terms of reference of the Joint ad hoc Committee were laid down by the Committee of Experts of the Council of Europe (see document EXP/Brev.(67)17), and later endorsed by the Executive Committee of the Paris Union at its above-mentioned fourth session. These terms of reference relate only to technical matters, however, and do not cover the question of the revision of the European Convention. It is suggested that the Joint ad hoc Committee is a suitable organ to have a discussion on a first draft of the proposed new Agreement. It has expressed its willingness to undertake the task. It is necessary to extend the terms of reference of the Joint ad hoc Committee to permit this extension of its activities.

The Finances of the Special Union

6. The document referred to in paragraph 3, above, foresees the replacement of the European Convention by a Special Agreement within the meaning of Article 19 of the Stockholm Acts of the Paris Convention. It is further provided (see paragraph 9) that the administrative provisions of the Agreement be based on the administrative provisions of the Stockholm Acts of the Paris Convention and its existing Special Agreements.

7. As regards the finances of the Special Union, the annual expenses of which will be in the region of 350 000 Swiss Francs, or about 14% of the 1970 budget of the Paris Union, there are two possibilities: either,

- (1) the expenses of the Special Union would be covered by the general Paris Union budget; or
- (2) the expenses of the Special Union would be covered by special contributions from the member States of the Special Union.

8. In view of the fact that the Classification is of universal interest, and of possible utility to all member States of the Paris Union, it is suggested that the expenses of the Special Union ought to be covered by the general Paris Union budget. A distinction may be made, in this regard, from the other Special Unions under the Paris Convention which are financed by special contributions because the latter are concerned with matters which are of interest only to their member States,

whereas the Classification has an interest for all member States of the Paris Union. Furthermore, it is desirable for the future of the Classification that as many as possible be encouraged to apply the Classification, and some countries might hesitate to join the Special Union if they were required to pay special contributions.

Use of the Classification by member States of the Paris Union

9. A survey is currently being conducted among the member States of the Paris Union as to the present and anticipated future use of the Classification in each country. A report setting out the information resulting from the said survey will be issued at a later date prior to the forthcoming session of the Executive Committee.

10. The Executive Committee is invited to:

- (a) take cognizance of document CE/BIRPI/14 and of Annex IV thereto;
- (b) approve the program set out in paragraph 4 hereof;
- (c) enlarge the mandate of the Joint ad hoc Committee to allow it to prepare the revision of the European Convention;
- (d) express a provisional opinion as to whether the expenses of the Special Union should be borne by the general Paris Union budget or be covered by special contributions from the member States of the Special Union.

COUNCIL OF EUROPE

SECRETARIAT GENERAL

STRASBOURG - FRANCE

UNITED INTERNATIONAL
BUREAUX FOR THE PROTECTION
OF INTELLECTUAL PROPERTY
GENEVA - SWITZERLAND

INTERNATIONAL CLASSIFICATION OF PATENTS

JOINT AD HOC COMMITTEE

First Session

(Berne, April 14 to 16, 1969)

April 17, 1969

REPORT

INTRODUCTION

1. The first session of the Joint ad hoc Committee of the Council of Europe and BIRPI on the International Patent Classification (hereinafter designated Joint ad hoc Committee) was held at the headquarters of the Federal Bureau of Intellectual Property, Berne, from April 14 to 16, 1969.
2. The following States were represented: Czechoslovakia, Federal Republic of Germany, France, Japan, Netherlands, Spain, Switzerland, Union of Soviet Socialist Republics, United Kingdom, United States of America. The International Patent Institute of The Hague was represented by an observer.
3. The first session of the Joint ad hoc Committee was opened by Mr. Walter Stamm, Director of the Federal Bureau of Intellectual Property, Berne. Mr. Stamm welcomed the experts and stressed the importance of the task to be accomplished by the Joint ad hoc Committee.

4. Mr. Roland Muller, on behalf of the Council of Europe, after having thanked the Swiss Authorities for their hospitality, reminded the Committee of the work achieved under the auspices of the Council of Europe in the field of the International Patent Classification and explained the reasons for which the Council of Europe considered it opportune to give the said Classification a universal character.

5. Mr. Joseph Voyame, on behalf of BIRPI, expressed the gratitude of the non-member countries of the Council of Europe, and of BIRPI itself, for the work which had so far been achieved in the field of the International Patent Classification and explained the future task of the Joint ad hoc Committee.

6. The Joint ad hoc Committee elected as Chairman Mr. Werner Rubach (Federal Republic of Germany). Three Vice-Chairmen were elected, namely: Mr. Igor Cherviakov (Union of Soviet Socialist Republics), Mr. Harvey Winter (United States of America) and Mr. Gerhardus Koelewijn (Netherlands).

7. The list of participants is attached to this report as Annex I.

8. The Joint ad hoc Committee adopted the agenda which is attached to this report as Annex II.

EXAMINATION AND ADOPTION OF THE RULES OF PROCEDURE
OF THE JOINT AD HOC COMMITTEE
(ITEM 3 OF THE AGENDA)

9. The Joint ad hoc Committee adopted the Rules of Procedure reproduced in Annex III hereto.

10. With regard to the expression in camera, in Article 6, it was remarked that the meaning of the expression is that the sessions of the Joint ad hoc Committee shall not be held in public and that only States and Organizations invited jointly by the Council of Europe and BIRPI shall be entitled to attend.

11. In connection with Article 11, it was made clear that all working documents will be prepared in English and in French. Derogations from this rule may be made, where appropriate, as regards documents of the Working Groups provided for in Article 9. It was understood that delegations shall have the right to submit their documents in one of the said languages, the translation into the other language to be undertaken by the Secretariat of the Joint ad hoc Committee.

EXCHANGE OF VIEWS CONCERNING THE REVISION OF THE
EUROPEAN CONVENTION ON THE INTERNATIONAL CLASSIFICATION
OF PATENTS FOR INVENTION
(ITEM 5 OF THE AGENDA)

12. The Joint ad hoc Committee exchanged views on the subject of the revision of the European Convention on the International Classification of Patents for Invention, on the basis of a document (CE/BIRPI/4) in which the Secretariat General of the Council of Europe and BIRPI indicated what could be the general principles of the future Agreement on the International Patent Classification. In the light of this exchange of views, the Secretariat General of the Council of Europe and BIRPI established the document entitled "Principles Governing the Revision of the European Convention on the International Classification of Patents for Invention, of December 19, 1954," which is attached to this report as Annex IV. That document will be submitted to the competent organs of the Council of Europe and of the Paris Union.

13. It was understood that the opinions expressed by the delegates were given in their personal capacities and did not bind their Governments.

14. As regards paragraph 5, it was agreed that the volumes of the International Patent Classification should be annexed to the Agreement in such a way that the States party to the Agreement would not be obliged to publish the text of the said Classification in their collections of laws and treaties.

15. Concerning paragraph 6(b)(iii) and (iv), it was generally accepted that examining Patent Offices should classify each application as soon as possible after the start of their procedure and, at the latest, before any publication or laying open for public inspection of the application. If an amendment to the International Patent Classification enters into force before any publication of the application or of a patent granted thereon, the classification already allotted should, where appropriate, be modified in consequence.

16. With regard to paragraph 7(d), certain delegations declared that the cases in which the International Patent Classification could only be amended with a majority of four-fifths of the votes cast were indicated in a rather vague manner, although it was recognized that it was difficult to define them precisely. The Joint ad hoc Committee, while agreeing with the idea expressed in paragraph 7(d), considered that an attempt should be made in the text of the Agreement to clarify the meaning of the expression "any rearrangement in the basic structure of the Classification." One delegation, however, expressed the view that a majority of four-fifths was too high and that a majority of two-thirds would suffice.

17. It was noted that, by reason of paragraph 10(b), a transitional period--of limited importance--could exist if the European Convention continued to subsist between certain States after the entry into force of the new Agreement. It was to facilitate this transition that paragraph 9 provided that States party to the European Convention, not yet having ratified the new Agreement, would have the right to participate as observers in the work of the Committee of Experts and of the Assembly established by the said Agreement.

18. It was pointed out, in connection with paragraph 11, that a similar provision exists in all of the Special Agreements administered by BIRPI.

FUTURE WORK OF THE COMMITTEE IN RELATION
TO THE INTERNATIONAL PATENT CLASSIFICATION
(ITEMS 6 TO 8 OF THE AGENDA)

19. The Joint ad hoc Committee held an exchange of views concerning the tasks with which it is entrusted by virtue of its mandate, as reproduced in document CE/BIRPI/1, Chapter III, paragraph 7. The Secretariat of the said Committee recalled in this connection that, when the "Principles Governing the Revision of the European Convention on the International Classification of Patents for Invention, of December 19, 1954" (Annex IV) have been approved by the competent organs of the Council of Europe and BIRPI, the Committee will in addition be charged with formulating observations on the first draft Agreement, which will be prepared by the Secretariat General of the Council of Europe and BIRPI.

20. As regards the work relating to the classification system and to its application, the Joint ad hoc Committee held a discussion based on document CE/BIRPI/2, and on documents CE/BIRPI/6 and 7 presented respectively by the delegations of France and the Netherlands.

21. Having regard to the complexity of the tasks to be undertaken by the Joint ad hoc Committee, the latter considered it opportune to set up two working groups entrusted with submitting concrete proposals to it for its next session.

22. Group I shall have the following functions:

- (a) to survey the tasks of the Joint ad hoc Committee with regard to the revision and application of the International Patent Classification;
- (b) to propose an order of priority for the carrying out of such work;
- (c) to propose the means necessary for the attainment of these objectives (organization of work, material needs, etc.).

23. In this connection, Group I should, in particular, study the following points:

- (a) procedure for revision of the International Patent Classification;
- (b) uniform application of the International Patent Classification;
- (c) cooperation in reclassification of search files;
- (d) utility of establishing a concordance between the International Patent Classification and the Universal Decimal Classification, and the procedure to be provided for this purpose.

24. Group II shall have the function of proposing measures for:

- (a) ensuring the concordance between the English and French texts of the International Patent Classification;
- (b) completing the Catchword Index in French.

25. The Groups shall be composed of delegates from the following countries:

Group I - Czechoslovakia, Federal Republic of
Germany, France, Netherlands, United
States of America.

Group II - France, Spain, Switzerland.

In addition, the International Patent Institute shall participate in the work of Group II.

26. The Groups shall be convened by the Secretariat and the following dates and places have been agreed on:

Group I - June 9-13, 1969 - The Hague

Group II - April 16, 1969 - Berne

27. Delegations to the Joint ad hoc Committee having observations for submission to Group I shall address them by May 5, 1969, at the latest, to the Secretariat at Strasbourg or Geneva, which will provide for their translation and distribution.

OTHER BUSINESS

(ITEM 9 OF THE AGENDA)

28. The delegation of the Soviet Union stated that the International Patent Classification will be used as the exclusive classification in its country, as from January 1, 1970.

29. In order to permit the Joint ad hoc Committee to prepare the revision of the International Patent Classification, all interested national Administrations will be invited to send suggestions as to future amendments to or improvements of the International Patent Classification to the Secretariat of the Joint ad hoc Committee, at Strasbourg or Geneva.

30. The Secretariat has communicated to the Joint ad hoc Committee four lists of errors contained in volumes 1 and 2 of the English and French versions of the International Patent Classification (documents CE/BIRPI/3 and addendum, 11, 12 and 13). Delegations wishing to present observations should submit them to the Secretariat by July 1, 1969, at the latest.

31. The Joint ad hoc Committee has agreed on the following date and place for its second session: October 21 to 24, 1969, at Munich.

32. On behalf of the Joint ad hoc Committee, the Chairman thanked the Swiss Authorities for their hospitality.

33. This report was adopted unanimously by the Joint ad hoc Committee.

PRINCIPLES GOVERNING THE REVISION OF THE EUROPEAN
CONVENTION ON THE INTERNATIONAL CLASSIFICATION OF
PATENTS FOR INVENTION, OF DECEMBER 19, 1954

I. MAIN FEATURES OF THE PROPOSED NEW AGREEMENT

1. The main features of the proposed new instrument, which would establish a Special Agreement within the meaning of Article 19 of the Stockholm Act of the Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention"), are described in this document. The Agreement would be based on the provisions of:

- (a) the European Convention on the International Classification of Patents for Invention (hereinafter referred to as "the European Convention");
- (b) the Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks (hereinafter referred to as "the Nice Agreement");
- (c) the Locarno Agreement Establishing an International Classification for Industrial Designs (hereinafter referred to as "the Locarno Agreement").

2. The Agreement would be entitled "Agreement Concerning the International Patent Classification."

3. There would be a preamble that:

- (i) pays tribute to the work carried out under the auspices of the Council of Europe pursuant to the provisions of the European Convention in establishing the international classification of patents for invention;
- (ii) acknowledges the universal value of the international classification, and its vital importance in the patent field to all States party to the Paris Convention;
- (iii) refers to Article 19 of the Stockholm Act of the Paris Convention.

4. The Agreement would:

- (i) establish a Special Union;
- (ii) establish a single classification of patents for invention;
- (iii) define the classification;
- (iv) provide for the amendment of the classification by a Committee of Experts.

5. The classification would be defined as being the complete elaboration of the international classification established pursuant to the provisions of the European Convention, which classification came into force and was published on September 1, 1968, subject to such amendments and additions as might be made to it before the entry into force of the Agreement or as might be provided for in the Agreement. The three published volumes of the classification would be annexed to the Agreement, in a manner to be determined.

6. (a) The Agreement would define the legal scope and use of the classification. This definition would be based on the provisions of Article 3 of the European Convention, Article 2 of the Nice Agreement, and Article 2 of the Locarno Agreement.

(b) The main features of the Article covering this point would be the following:

- (i) the classification would be solely of an administrative character, but each State would have the right to attribute to it the legal scope that it considered appropriate;
- (ii) each State would reserve the right to use the classification either as a principal or as a subsidiary system;
- (iii) the symbols of the classification would be included in the official documents and publications defined by the Agreement and concerning applications for, and the grant of, patents;
- (iv) States having neither an immediate nor a deferred examination system would have the right to make a reservation as regards applying the symbols of the complete elaboration of the classification.

7. (a) The Agreement would establish a Committee of Experts entrusted with the revision and supervision of the application of the classification. Each member State of the Special Union would be represented on the Committee of Experts. States party to the European Convention, not party to the Agreement, would have the

right to be represented by observers without the right to vote. The Council of Europe and the International Patent Institute would also be represented by observers without the right to vote.

(b) The Committee would be entitled to create such sub-committees or working groups as it deems necessary for the performance of its tasks.

(c) Proposals for the amendment of the classification would be made by the competent authorities of the member States of the Special Union, by the International Bureau (see paragraph 9 below), by the Council of Europe, and by the International Patent Institute.

(d) Decisions of the Committee of Experts concerning the adoption of amendments and additions to the classification would be by a majority to be determined /simple or qualified/ of the member States of the Special Union. However, if any such decision should entail any rearrangement in the basic structure of the classification, a majority of four-fifths of the votes cast would be required.

(e) As regards the supervision of the application of the classification, the Committee would take decisions or make recommendations by a majority to be determined /simple or qualified/.

8. The Agreement would provide for the notification, entry into force, and publication of amendments and additions to the classification. It would provide also that decisions of the Committee of Experts would come into force within a period of six months from the date of dispatch of the notification by the International Bureau.

9. The administrative provisions of the Agreement would be based on the administrative provisions of the Stockholm Acts of the Paris Convention and its existing Special Agreements. These provisions would provide for an Assembly of the Special Union, for an International Bureau, and for the amendment of the administrative provisions. In the Assembly, States party to the European Convention, not yet party to the Agreement, the Council of Europe, and the International Patent Institute, would be represented by observers without the right to vote. As to the finances of the Special Union, the question whether the Paris Union budget would cover its expenses, or whether special contributions would be necessary, would have to be discussed with the competent organs of the Paris Union.

10. (a) Provision would be made for the ratification of and accession to the Agreement, and for its entry into force. Any State party to the Paris Convention would have the right to ratify the Agreement or to accede to it.

(b) The Agreement would enter into force three months after instruments of ratification or accession had been deposited by:

- (i) two-thirds of the States party, at the date of signature of the Agreement, to the European Convention, and
- (ii) at least three States party to the Paris Convention, not previously party to the European Convention, and of which at least one was a country where, according to the latest available statistics, more than 40,000 applications for patents or inventors' certificates were filed per year.

(c) The Agreement would also provide that Contracting Parties to the European Convention which ratified or acceded to the Agreement prior to its initial entry into force would be obliged to denounce that Convention at the latest on the day on which the Agreement entered into force. Ratifications and accessions by Contracting Parties to the European Convention deposited after the initial entry into force of the Agreement would not take effect until the said States had deposited their instruments of denunciation of the European Convention.

11. The Agreement would have the same force and duration as the Paris Convention.

12. Provision would also be made for the future revision of the Agreement.

13. There would be provision for the signature of the Agreement, the establishment of official texts, notifications, etc. The Agreement would be deposited with the Secretary-General of the Council of Europe. The Director General of the International Bureau would be responsible for notifications under the Agreement.

14. There would be transitional provisions. In particular, these would include a provision prohibiting, in principle, any revision of the classification before September 1, 1973 (that is, five years after the entry into force of the complete elaboration of the international classification of patents for invention); this provision could be rendered less severe so as to permit a revision of the Foreword and Guide within the period of five years.

II. PROCEDURE

15. As regards the procedure to be followed for the preparation of the revision of the European Convention, it is proposed that a Diplomatic Conference of revision be held at Strasbourg in October or November 1970. The Conference would be convened jointly by the Council of Europe and BIRPI. The program for the preparation of the said revision would be the following:

- (i) The present paper, which has been revised in the light of the discussions of the Joint ad hoc Committee, together with the report thereon of the said Committee, will be submitted for approval both to the Executive Committee of the Paris Union and to the competent organs of the Council of Europe, namely, the Committee of Experts on Patents and the Committee of Ministers. All these bodies would express their views on the paper as soon as possible and, at the latest, by the end of November 1969.
- (ii) The Joint ad hoc Committee would meet in December 1969 or January 1970 to make observations on the first draft Agreement prepared by the Secretariat General of the Council of Europe and BIRPI.
- (iii) In January or February 1970, the revised draft Agreement would be sent to all States members of the Paris Union (which includes all the States members of the Council of Europe) and to all inter-governmental and international non-governmental Organizations concerned, together with an invitation to the Diplomatic Conference, requesting observations by the beginning of June or July.

- (iv) In June or July 1970, papers containing the observations received, and other working papers relating to the Diplomatic Conference, would be distributed.