



Disclaimer: unless otherwise agreed by the Council of UPOV, only documents that have been adopted by the Council of UPOV and that have not been superseded can represent UPOV policies or guidance.

This document has been scanned from a paper copy and may have some discrepancies from the original document.

Avertissement: sauf si le Conseil de l'UPOV en décide autrement, seuls les documents adoptés par le Conseil de l'UPOV n'ayant pas été remplacés peuvent représenter les principes ou les orientations de l'UPOV.

Ce document a été numérisé à partir d'une copie papier et peut contenir des différences avec le document original.

Allgemeiner Haftungsausschluß: Sofern nicht anders vom Rat der UPOV vereinbart, geben nur Dokumente, die vom Rat der UPOV angenommen und nicht ersetzt wurden, Grundsätze oder eine Anleitung der UPOV wieder.

Dieses Dokument wurde von einer Papierkopie gescannt und könnte Abweichungen vom Originaldokument aufweisen.

Descargo de responsabilidad: salvo que el Consejo de la UPOV decida de otro modo, solo se considerarán documentos de políticas u orientaciones de la UPOV los que hayan sido aprobados por el Consejo de la UPOV y no hayan sido reemplazados.

Este documento ha sido escaneado a partir de una copia en papel y puede que existan divergencias en relación con el documento original.



CAJ/XXII/7

ORIGINAL: English

DATE: April 11, 1988

INTERNATIONAL UNION FOR THE PROTECTION OF NEW VARIETIES OF PLANTS

GENEVA

ADMINISTRATIVE AND LEGAL COMMITTEE**Twenty-second Session
Geneva, April 18 to 21, 1988****COOPERATION SYSTEMS FOR OBTAINING INTELLECTUAL
PROPERTY RIGHTS IN SEVERAL STATES**Document prepared by the Office of the Union

1. In October 1987, at the twenty-first session of the Administrative and Legal Committee and the thirty-sixth session of the Consultative Committee, the question was raised of having a close cooperation system within UPOV whereby, for example, a single application for plant breeders' rights could be effective in several States.
2. The Administrative and Legal Committee considered this question in 1979, and for its fourth session (November 14 to 16, 1979) a detailed proposal for such a system, in the form of a draft agreement, was prepared by the Office of the Union (document CAJ/IV/2).
3. However, at that time, it was decided to postpone the discussions on the setting up of such a system. Recently, at the thirty-sixth session of the Consultative Committee (October 14, 1987), the Secretary-General proposed--and the Consultative Committee agreed--that the future work of the Administrative and Legal Committee should mainly focus on the revision of the Convention but that the principle of a close cooperation system should be anchored in the revised Convention.

4. The Chairman of the Administrative and Legal Committee has requested the Office of the Union to prepare a study of the existing international systems for obtaining intellectual property rights (such as the Patent Cooperation Treaty) to assist delegates when considering how the principle of a close co-operation system could be anchored in the revised Convention. The annexes to the present document contain that requested study.

5. The study takes the form of an information paper:

(i) Annex I contains summary descriptions of seven international systems which enable or assist an applicant to obtain intellectual property rights in several States as a result of one application (Benelux Convention on Marks, Community Patent Convention, European Patent Convention, Madrid Agreement Concerning the International Registration of Marks, Patent Cooperation Treaty, Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection, and Trademark Registration Treaty). A summary description is also given of the Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure, since this treaty establishes an international system for the deposit of living matter which might provide guidance on the possible use of a comparable system in UPOV.

(ii) Annex II constitutes a comparative analysis of the said international systems.

(iii) Annex III recalls the project of the European Communities.

6. "Anchoring" a cooperation system in the revised UPOV Convention could be effected by providing in the Convention that one of the objectives of UPOV is to establish a cooperation system among its member States, or some of its member States, that would allow the filing of applications with the examination of such applications, and even the granting of the titles of protection, by one national or international authority with effect in all the member States concerned.

7. The Committee is invited to express its views on the subject under consideration.

[Annex I follows]

CAJ/XXII/7

ANNEX I

SUMMARY DESCRIPTIONS OF EXISTING INTERNATIONAL SYSTEMS
FOR FACILITATING, BY A SINGLE ACT, THE OBTAINING OF
INTELLECTUAL PROPERTY RIGHTS IN SEVERAL STATES

1. Benelux Convention on Marks

This Convention in effect creates a single territory for the purposes of trademark registration and law. Thus a single application filed at the Benelux Trademarks Office in The Hague leads to the granting of a trademark registration (without examination) which is effective throughout the contracting States, i.e., Belgium, Luxembourg and the Netherlands. The trademark right is governed by the Uniform Benelux Law on Marks of March 19, 1962 (as amended on November 10, 1983) which is in force in the three contracting States.

The Convention was signed on March 19, 1962, and entered into force on July 1, 1969. During 1987, 23,920 applications were filed for products and services. The number of staff employed by the Benelux Trademarks Office is approximately 60.

2. Community Patent Convention

This Convention provides for a supranational patent (a Community patent) which has uniform effects throughout the contracting States. The Convention sets out precisely the rights which are conferred by a Community patent in the contracting States. Community patents may only be granted, transferred, revoked or allowed to lapse in respect of all the contracting States together.

The Convention is intended to complement the European Patent Convention (see 3 below), and a Community patent is obtained by applying to the European Patent Office for a European patent and giving the contracting States of the Community Patent Convention as the designated States.

The Community Patent Convention was signed on December 15, 1975, by nine States (Belgium, Denmark, France, Germany (Federal Republic of), Ireland, Italy, Luxembourg, Netherlands, United Kingdom) but it has not yet entered into force.

3. European Patent Convention

This Convention establishes the European Patent Office, which is in Munich and which grants European patents. A European patent confers on its proprietor, in each contracting State for which it is granted, the same rights as would be conferred by a national patent granted in that State. Thus, as a result of a single procedure at the European Patent Office, the applicant may obtain, in effect, a "bundle" of national patent rights.

The European Patent Convention was signed on October 5, 1973, and the system it established came into operation in June 1978. It has 13 member States (Austria, Belgium, France, Germany (Federal Republic of), Greece, Italy, Liechtenstein, Luxembourg, Netherlands, Spain, Sweden, Switzerland and United Kingdom). During 1986, 36,783 European patent applications were filed, and the average number of designated States per application was 6.7. During 1986, 18,471 European patents were granted and the average number of designated States per granted patent was 6.3. The total number of staff employed by the European Patent Office at the end of 1986 was 2,103.

4. Madrid Agreement

The Madrid Agreement enables an applicant to avoid filing many different national trademark applications. By complying with a single procedure, the applicant obtains an international registration for those contracting States for which protection is requested. The effect of the international registration is that the trademark enjoys, as from the date of registration in each of the States concerned, the same protection it would have enjoyed had an application been made for it directly in each of those States. Thus an international registration constitutes, in effect, a "bundle" of national applications, each subject to the legislation of the designated State concerned, particularly with respect to any examination procedure required.

Before an international application under the Madrid Agreement can be made, the trademark concerned must be registered at the national level. The international application must be submitted in French to the industrial property office of the country of origin of the trademark. After checking for formalities, that office transmits the application to the International Bureau of WIPO for further processing.

The Madrid Agreement was signed on April 14, 1891. It has 28 member States. During 1987, the number of international applications filed was 10,186 and the average number of contracting States designated per international application was 9.03. The number of staff dealing with the Madrid Agreement employed by the International Bureau of WIPO is around 24.

5. Patent Cooperation Treaty

This treaty establishes a system which facilitates the obtaining of patent protection in a number of countries. The treaty provides for the filing of an international patent application by nationals or residents of any contracting State. The international patent application is generally filed at the national patent office of the contracting State of which the applicant is a national or resident. The treaty regulates in detail the formal requirements that any international application must comply with.

Among all the contracting States, the applicant designates those in which he wishes that his international application have effect ("designated States"). The effect of any international patent application in each designated State is the same as if a national patent application had been filed with the national patent office of that State.

CAJ/XXII/7
Annex I, page 3

The international application is subjected to an "international search" which is carried out by one of the major national patent offices or by the European Patent Office. The international search report is communicated to the applicant who may decide to withdraw his application and normally will do so if the report makes the granting of patents unlikely. If the international application is not withdrawn, it is, together with the international search report, published by WIPO and communicated to each designated patent office by WIPO.

Twenty months after the filing of the international application or, where that application involves the priority of an earlier application, then 20 months after the filing of the earlier application--and not before--the applicant must furnish to each designated office a translation of the application into its official language and has to pay to it certain fees. This 20-month period is extended by a further 10 months where the applicant chooses to ask for an "international preliminary examination report," a report which is prepared by one of the major patent offices and which gives a preliminary and non-binding opinion on the patentability of the claimed invention. However, the advantages of international preliminary examination cannot be invoked in respect of six contracting States.

The Patent Cooperation Treaty was signed on June 19, 1970, and the system it established came into operation in June 1978. It has 40 member States. During 1987, the number of international applications filed under the Patent Cooperation Treaty was 9,610. The average number of contracting States designated per international application was 13.98. The number of staff dealing with the Patent Cooperation Treaty employed by the International Bureau of WIPO is approximately 30.

6. Trademark Registration Treaty

This treaty establishes a system very similar to that of the Madrid Agreement (see 4 above). By filing a single application, the applicant obtains an international registration for each contracting State designated. The effect of the international registration is that the trademark enjoys, as from the date of registration in each of the designated States, the same protection it would have enjoyed had an application been made for it directly in each of those States. Thus an international registration constitutes, in effect, a "bundle" of national applications, each subject to the legislation of the designated State concerned, particularly with respect to any examination procedure required.

However, unlike under the Madrid Agreement, it is not necessary to have a registration at the national level before an international application can be made. The application, which is in English or French, is filed directly at the International Bureau of WIPO, although a contracting State may provide that international applications of residents of that State may be filed through the national Office of that State.

The treaty was concluded in 1973 and amended in 1980. Five States are party to it and, because of this low number, the system established by the treaty is, in fact, not used.

7. Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Under this treaty, two States, Switzerland and Liechtenstein, have formed themselves into a unified territory for the purposes of patent law. For the unified territory, the Swiss Federal Office of Intellectual Property is competent to carry out all the administrative tasks deriving from the patent legislation. Thus applications are made to that office for the grant of patents which are effective throughout the unified territory. Patents may only be granted, transferred, annulled or lapse in respect of the whole of the unified territory. Only the unified territory, and not the individual territories of Switzerland and Liechtenstein, may be designated under the Patent Cooperation Treaty and the European Patent Convention (see 3 and 5 above).

The law applying to patents is the same throughout the unified territory (Swiss law applies). However, the courts of each contracting State have jurisdiction over patent disputes arising in that State, except that judgments by Liechtenstein courts in patent cases may be appealed to the Federal Court in Switzerland.

The treaty was signed on December 22, 1978, and entered into force on April 1, 1980.

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

The Budapest treaty avoids the need for an applicant for a patent concerning a microorganism to make deposits of that microorganism in a number of different countries, if he seeks patent protection in several countries.

In an increasing number of countries, when a patent application is filed for a microorganism, it is necessary not only to file a written description but also to deposit, with a specialized institution, a sample of the microorganism. When protection is sought in several countries for an invention involving a microorganism or the use of a microorganism, the complex and costly procedures of the deposit of the microorganism may have to be repeated in each of those countries.

In order to eliminate or reduce such multiplication of deposits, the treaty stipulates that any contracting State which allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any "international depositary authority," irrespective of whether such authority is on or outside the territory of that State. In other words, one deposit, with one international depositary authority, will suffice for the purposes of patent procedure before the national patent offices of all of the contracting States.

An international depositary authority acquires that status through the furnishing by one of the contracting States of assurances to the Director General of WIPO to the effect that the institution complies and will continue to comply with certain requirements of the treaty.

CAJ/XXII/7
Annex I, page 5

The Regulations made under the treaty contain detailed provisions on who is entitled--and when--to receive samples of a deposited microorganism, and provisions allowing for a "new" deposit where no samples of the originally deposited microorganism can be furnished.

The treaty was signed on April 28, 1977, and entered into force on August 19, 1980. On January 1, 1988, it had 22 contracting States and 18 institutions had the status of international depositary authority under the treaty.

[Annex II follows]

COMPARATIVE ANALYSIS OF EXISTING INTERNATIONAL SYSTEMS
FOR FACILITATING, BY A SINGLE ACT, THE OBTAINING OF
INTELLECTUAL PROPERTY RIGHTS IN SEVERAL STATES

1. PERSONS ENTITLED TO USE THE SYSTEM

Benelux Convention on Marks

The following may file applications: nationals of Belgium, Luxembourg and the Netherlands; nationals of countries party to the Paris Convention for the Protection of Industrial Property ("the Paris Convention"); nationals of countries outside the Paris Convention who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries party to the Paris Convention. Persons entitled to file an international application under the Madrid Agreement (see below) may designate the Benelux territory, thereby applying for a Benelux trademark registration.

Community Patent Convention

As for the European Patent Convention (see below).

European Patent Convention

Applications may be filed by any natural or legal person or any body equivalent to a legal person, regardless of nationality or place of residence or business.

Madrid Agreement

Nationals of the countries party to the Agreement are entitled to apply; nationals of other countries who have their domicile (or headquarters) or a real and effective industrial or commercial establishment in a country party to the Madrid Agreement are also entitled to apply.

Patent Cooperation Treaty

Any resident or national of a contracting State may file an international application. Where there are several applicants, at least one of them must be a national or a resident of a contracting State. In the application, different applicants may be indicated for different designated States, but if this is done, for each designated State at least one of the applicants must be a national or a resident of a contracting State.

CAJ/XXII/7
Annex II, page 2

Trademark Registration Treaty

Any resident or national of a contracting State may file an international application, but if there are several applicants, they have the right to file an international application only if all of them are residents or nationals of contracting States. Nationals of other States who have a real and effective industrial or commercial establishment in a contracting State are also entitled to file an international application.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

The treaty does not specify the persons who may file an application under it.

2. WHETHER A NATIONAL RIGHT IS REQUIRED BEFORE AN INTERNATIONAL APPLICATION CAN BE MADE

Benelux Convention on Marks

No

Community Patent Convention

No

European Patent Convention

No

Madrid Agreement

Prior to international registration, the trademark concerned must be registered at national level with the industrial property office of the country of origin.

Patent Cooperation Treaty

No

Trademark Registration Treaty

No

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

No

3. WHERE THE INTERNATIONAL APPLICATION IS FILED

Benelux Convention on Marks

Applications for Benelux trademark registrations are filed either at the national offices of Belgium, Luxembourg or the Netherlands or at the Benelux Trademarks Office in The Hague. An international filing under the Madrid Agreement designating the Benelux territory must be filed in accordance with the Madrid Agreement (see below).

Community Patent Convention

The place of filing of the application is the same as for the European Patent Convention (see below).

European Patent Convention

Applications must be filed at the European Patent Office in Munich (or at its branch at The Hague), or, if the law of a contracting State so permits or prescribes, at the industrial property office of that State.

Madrid Agreement

An application for international registration must be filed at the industrial property office of the country of origin of the trademark.

Patent Cooperation Treaty

An international application under the PCT is filed by the applicant at the Receiving Office, which is usually its or his national industrial property office. However, if the applicant is a national or resident of a contracting State of the European Patent Convention, the international application may be filed at the European Patent Office; if the applicant is a national or resident of Barbados, Sri Lanka or a contracting State of the African Intellectual Property Organization (OAPI), the international application is to be filed at the International Bureau of WIPO.

Trademark Registration Treaty

International applications must be filed at the International Bureau of WIPO, although the law of a contracting State may provide that international applications can be filed through the national industrial property office of that State.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Applications are filed at the Federal Office of Intellectual Property in Berne.

4. LANGUAGE OF FILING

Benelux Convention on Marks

The application must be submitted in French or Dutch.

Community Patent Convention

As for the European Patent Convention (see below).

European Patent Convention

The application must be in one of the official languages of the EPO, namely, English, French or German, although nationals and residents of a contracting State having a language other than one of the official languages may use the language of that State, provided that a translation in one of the official languages is subsequently filed.

Madrid Agreement

The application is submitted in French.

Patent Cooperation Treaty

The language to be used depends upon the Receiving Office with some Receiving Offices allowing the applicant to choose between two or more languages.

Trademark Registration Treaty

The international application has to be made in English or French.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Swiss law governs the application procedure, and under Swiss law the application may be submitted in French, German or Italian.

5. THE STATES FOR WHICH PROTECTION IS GRANTED

Benelux Convention on Marks

Belgium, Luxembourg and the Netherlands.

Community Patent Convention

The contracting States of the Community Patent Convention. (It is required that any State which becomes a member of the European Economic Community must accede to the Convention. Therefore protection would be granted for all the member States of the European Economic Community.)

European Patent Convention

The applicant designates the contracting States for which protection is requested.

Madrid Agreement

The applicant designates the contracting States for which protection is requested.

Patent Cooperation Treaty

The applicant designates the contracting States of the PCT for which it is desired that the application should have effect.

Trademark Registration Treaty

The applicant designates the contracting States for which protection is requested.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Switzerland and Liechtenstein.

6. CHECKING FOR FORMALITIES AND TRANSMITTAL OF THE APPLICATION

Benelux Convention on Marks

The authority receiving the application checks whether the filing requirements have been complied with, and if not, it notifies the applicant and prescribes a period for him to fulfill the requirements or to submit any observations or to limit the list of goods.

Community Patent Convention

As for the European Patent Convention (see below).

European Patent Convention

When a European patent application filed with a national authority has been forwarded by the latter to the European Patent Office (EPO), the EPO will inform the applicant, indicating the date of its receipt.

When the application is filed with the EPO (either directly or through a national authority), the Receiving Section examines whether it satisfies the requirements for the accordane of a filing date, whether the filing and search fees have been paid in time and whether the translation of the application in the language of the proceedings has been filed in time. The Receiving Section also checks for compliance with other mandatory application requirements. Where the Receiving Section notes that there are deficiencies which may be corrected, the applicant is given the opportunity to correct them; but if the applicant does not remedy the deficiencies, the legal consequences provided for in the Convention take effect.

Madrid Agreement

When the international application is filed at the national industrial property office of the country of origin of the trademark (as is required), that office checks and certifies that the mark reproduced in the international application is entered in the national trademark register with the same particulars. The office then sends the application to the International Bureau of WIPO.

Patent Cooperation Treaty

The Receiving Office checks the international application to see whether it is in order as to form and then transmits it to the International Bureau of WIPO in order to prepare for publication. The Receiving Office also transmits the application to one of the International Searching Authorities (e.g. the European Patent Office, the Japanese Patent Office).

CAJ/XXII/7
Annex II, page 8

Trademark Registration Treaty

The International Bureau of WIPO checks to see that the application does not contain any defects, and if it does not, it effects the international registration as applied for.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

All administrative procedure is carried out by the Federal Bureau of Intellectual Property in Berne.

7. SEARCHING AND EXAMINATION

Benelux Convention on Marks

A search of prior registrations is carried out by the Benelux Trademarks Office and the results are sent to the applicant. The applicant has four months from the date of sending the results in which to confirm that he wishes to continue with the application or to limit it. The Benelux Trademarks Office registers the trademark for the goods or services indicated by the applicant without examination.

Community Patent Convention

As for the European Patent Convention (see below).

European Patent Convention

A European search report is drawn up by one of the Search Divisions at the same time as the formalities examination. It is transmitted to the applicant together with a copy of any cited documents. The applicant can then amend the application to take account of the results of the search or he can withdraw it.

The applicant must request examination and pay the examination fee within 6 months of the date on which the European Patent Bulletin mentions the publication of the European search report. The substantive examination and grant of the patent is handled by the Examining Divisions in Munich. The examiner issues the necessary communications and keeps in touch with the applicant, normally in writing, but also orally by telephone and in informal discussions. The final decision on the grant of the patent will be taken by the Examining Division.

Madrid Agreement

Examination of the international registration takes place in any contracting State for which protection is requested if the legislation of that State so requires.

Patent Cooperation Treaty

The International Searching Authority establishes an international search report which is communicated to the applicant. After the applicant has had an opportunity to amend the claims, the international application is published by the International Bureau of WIPO about 18 months after the priority date, together with the international search report.

Where the second phase of the PCT is available (if it has not been excluded by a reservation made by a contracting State when ratifying the PCT), the applicant has the possibility to request an international preliminary examination of the invention. The applicant must elect among the States for which the second phase of the PCT is available, those for which it is desired that the examination should be undertaken. The examination is performed by

CAJ/XXII/7
Annex II, page 10

one of the International Preliminary Examining Authorities (e.g. the European Patent Office or the Japanese Patent Office). The international preliminary examination report is communicated to the applicant and the national Offices of the elected States in which the applicant wishes to use the examination results. If the applicant uses the second phase, examination and processing before the national offices starts only at the end of the 30th month from the priority date.

Trademark Registration Treaty

Examination of the international registration takes place in any contracting State for which protection is requested if the legislation of that State so requires.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Searching and examination is carried out by the Federal Office of Intellectual Property in Berne.

8. GRANTING OF THE RIGHT; PUBLICATION OF THE GRANT

Benelux Convention on Marks

The Benelux Trademarks Office registers the trademark for the goods or services indicated by the applicant and it issues a certificate of registration to the proprietor. Registrations are published in a monthly publication of the Office.

Community Patent Convention

A Community patent is granted by the European Patent Office. The European Patent Office is to publish periodically a Community Patent Bulletin containing entries made in the Register of Community Patents, as well as other particulars, the publication of which is prescribed by the Convention.

European Patent Convention

A European patent is granted by the European Patent Office for the contracting States designated in the application. At the same time as it publishes the mention of the grant of the European patent, the European Patent Office publishes a specification of the European patent containing the description, the claims and any drawings.

Madrid Agreement

Provided that an application under the Madrid Agreement is correct and complete, the International Bureau of WIPO registers the trademark applied for, notifies the States concerned and publishes it in the periodical "Les Marques internationales."

Patent Cooperation Treaty

The Patent Cooperation Treaty deals with patent applications; patents are not granted under the treaty. The applications are published by WIPO both in a gazette and in the form of individual pamphlets.

Trademark Registration Treaty

Provided the international application does not contain any defects, the International Bureau of WIPO effects the international registration as applied for and issues a certificate to the owner of the registration. The International Bureau of WIPO publishes the international registration and notifies the industrial property offices of each designated State.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein on Patent Protection

Patents for the unified territory of Switzerland and Liechtenstein are granted by the Federal Office of Intellectual Property in Berne and the particulars of the patent are published in the Swiss Journal of Patents, Designs and Marks.

9. EFFECT OF THE RIGHT

Benelux Convention on Marks

The proprietor of the registration has an exclusive right to the use of the trademark on the Benelux territory, i.e. Belgium, Luxembourg and the Netherlands. This right is governed by the Uniform Benelux Law on Marks of March 19, 1962 (as amended on November 10, 1983) which is in force in those countries.

Community Patent Convention

A Community patent has uniform effects throughout the contracting States and those effects (i.e. the rights conferred by the Community patent) are set out in detail in the Convention.

European Patent Convention

A European patent confers on its proprietor, in each contracting State for which it is granted, the same rights as would be conferred by a national patent granted in that State. Thus, in effect, a European patent constitutes a "bundle" of national patent rights.

Madrid Agreement

A mark that has been covered by an international registration enjoys, from the date of registration in each of the countries for which protection is requested, the same protection it would have enjoyed if it had been filed directly in those countries, unless, within 12 months, protection is refused.

Patent Cooperation Treaty

The filing of a PCT application has the immediate effect of regular national filings in all contracting States designated in the application. On completion of the international phase of the PCT application, further action is required before and in the designated offices. In particular, the applicant has to pay to those offices the required national (or regional) fees, furnish them with any translations that are required and appoint a representative where required. The designated offices then examine the application and grant or refuse the national patent on the basis of their national laws.

Trademark Registration Treaty

International registration of a mark under the Trademark Registration Treaty has the same effects, in each of the designated States, as a national application. If no refusal is pronounced within the period of time laid down in Article 12(2)(a)(i), the effects of the international registration are the same as those of a national registration.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein
on Patent Protection

Patents granted under the treaty have uniform effects throughout the two contracting States, and those effects are as set out in the current Swiss legislation on patents.

10. COLLECTION AND DISTRIBUTION OF FEES

Benelux Convention on Marks

Upon filing of a Benelux trademark application, fees are payable to the Benelux Trademarks Office in accordance with a scale set out in the Rules. The Benelux Office pays to the national offices 20% of the amount of fees charged for transactions effected through them.

Community Patent Convention

This Convention provides for the distribution of revenues among the contracting States in proportions which are based on the numbers of patent applications filed in those States. The amounts distributed are:

- (i) the revenue derived from fees paid in accordance with the rules relating to fees, less the payments to the European Patent Organization pursuant to Articles 39 and 147 of the European Patent Convention (i.e. less a proportion of renewal fees)
- (ii) all other receipts of the European Patent Organization obtained in implementation of the Community Patent Convention.

European Patent Convention

The following fees are payable upon filing of a European patent application: filing fee; search fee; where appropriate, claims fees; designation fees (one fee per designated State, with the exception of joint designation of Switzerland and Liechtenstein). The fees to be paid during the European grant procedure have been calculated in such a way that the cost of obtaining a European patent, taking into account the cost of representation (before the EPO and national patent offices respectively) and the fact that the proceedings are conducted in one language, will normally be less than the cost of obtaining three corresponding national patents. The fees are paid to, and are for the benefit of, the European Patent Organization; they are not distributed to the member States.

Madrid Agreement

The industrial property office of the country of origin of the trademark may fix, at its own discretion, and collect, for its own benefit, a national fee for applications under the Madrid Agreement.

For all applications under the Madrid Agreement an international fee is payable, which is made up of the following components: a basic fee; a supplementary fee for each class after the third in cases where the list of goods and services comprises more than three classes of the International Classification set up under the Nice Agreement; a complementary fee for each country for which protection is requested.

The annual returns from the basic fees, after deduction of expenses, are divided equally among the member States of the Madrid Agreement. The amounts derived from the supplementary fees are divided annually among the member States in proportion to the number of marks for which protection has been applied for in each of them during the year, this number being multiplied, in the case of countries which make a preliminary examination, by a coefficient which is determined by the Regulations. The amounts derived from the complementary fees are divided between the member States for which complementary fees are payable, the division being made in the same way as that for the supplementary fees.

Patent Cooperation Treaty

The fees for the first phase of the PCT are the transmittal fee, the international fee and the search fee. They must all be paid to the Receiving Office. The transmittal fee is for the benefit of the Receiving Office. The international fee is for the benefit of the International Bureau of WIPO. It consists of one basic fee and as many designation fees as there are patents sought by the applicant in his application. The search fee is for the benefit of the International Searching Authority. For the second phase of the PCT, the international preliminary examination, two kinds of fees are due, the handling fee for the benefit of the International Bureau of WIPO and the preliminary examination fee for the benefit of the International Preliminary Examining Authority. Both fees are payable to the International Preliminary Examining Authority. "National fees" are payable to each national office in which the application is pursued.

Trademark Registration Treaty

Fees are payable to, and belong to, the International Bureau of WIPO for operations carried out by it under the treaty. In addition, each contracting State is entitled to "State fees" in connection with each designation and each renewal concerning it. For the State fees, each State may choose between two possibilities:

- either a system under which protection may be requested on its territory on payment of a standard State fee (that is, an amount which is the same for all States choosing this system), whereby the amount of the standard fee is to be multiplied by the number of classes of goods and services for which the mark is registered,
- or a system of individual State fees under which each State may determine the amount of the State fee applicable to it if designated in the application. The amount of the individual State fee may not, however, exceed the total amount of the fees required for registering a mark in the national register.

The total amount of the standard State fees collected by the International Bureau of WIPO in any given year is divided among the contracting States opting for standard State fees in proportion to the number of designations and

CAJ/XXII/7
Annex II, page 16

renewals concerning each of them, provided that the number resulting for each State is first multiplied by a coefficient which is based on the extent of the examination which the national law provides. Individual State fees collected by the International Bureau of WIPO are transferred to the States in respect of which they were paid.

Treaty Between the Swiss Confederation and the Principality of Liechtenstein
on Patent Protection

No information is available in the treaty on the collection and distribution of fees.

[Annex III follows]

CAJ/XXII/7

ANNEX III

EUROPEAN COMMUNITIES

Excerpt from UPOV document C/XXI/13 Prov. of February 29, 1988, paragraph 99:

"[The] purpose [of the study in the Commission of the European Communities] is to ensure that breeders can obtain protection with immediate, direct and uniform effect throughout the territory of the Community on the basis of a single application and a single decision. The characteristics of the project are the following:

(i) The proposed system is aligned on the provisions of the UPOV Convention. In particular it relies on Article 5(3) of the Convention, and leaves farmers free to produce their own seed. However, the latter provision will be made more specific in order to prevent over-use or misuse of the faculty.

(ii) Protection will be greatly enhanced. In particular: it is envisaged that the system will be applied to all botanical genera and species; protection will not necessarily be confined to reproductive or vegetative propagating material, as extension to other types of material is now planned in order to cover the movement of plant material of a variety protected within the Community from a country without protection; the duration of protection will be increased; protection will be offered for new methods of plant breeding.

(iii) The creation of a Community Office for the Protection of New Plant Varieties is planned. It will make use of the present structures of the various member States of the Community for the conduct of variety examinations.

(iv) The system provides for Community protection that relies on the Court of Justice of the European Communities.

(v) The system will be optional for breeders, who may continue to make use of national plant breeders' rights legislation.

(vi) It is planned that the system will be introduced by means of a legal enactment of the Community and not an international convention.

(vii) The system provides the possibility for non-Community States to participate under certain conditions. Its similarity in this respect to the single market concept as applied to the Community will play an important part."

[End of Annex III and of document]