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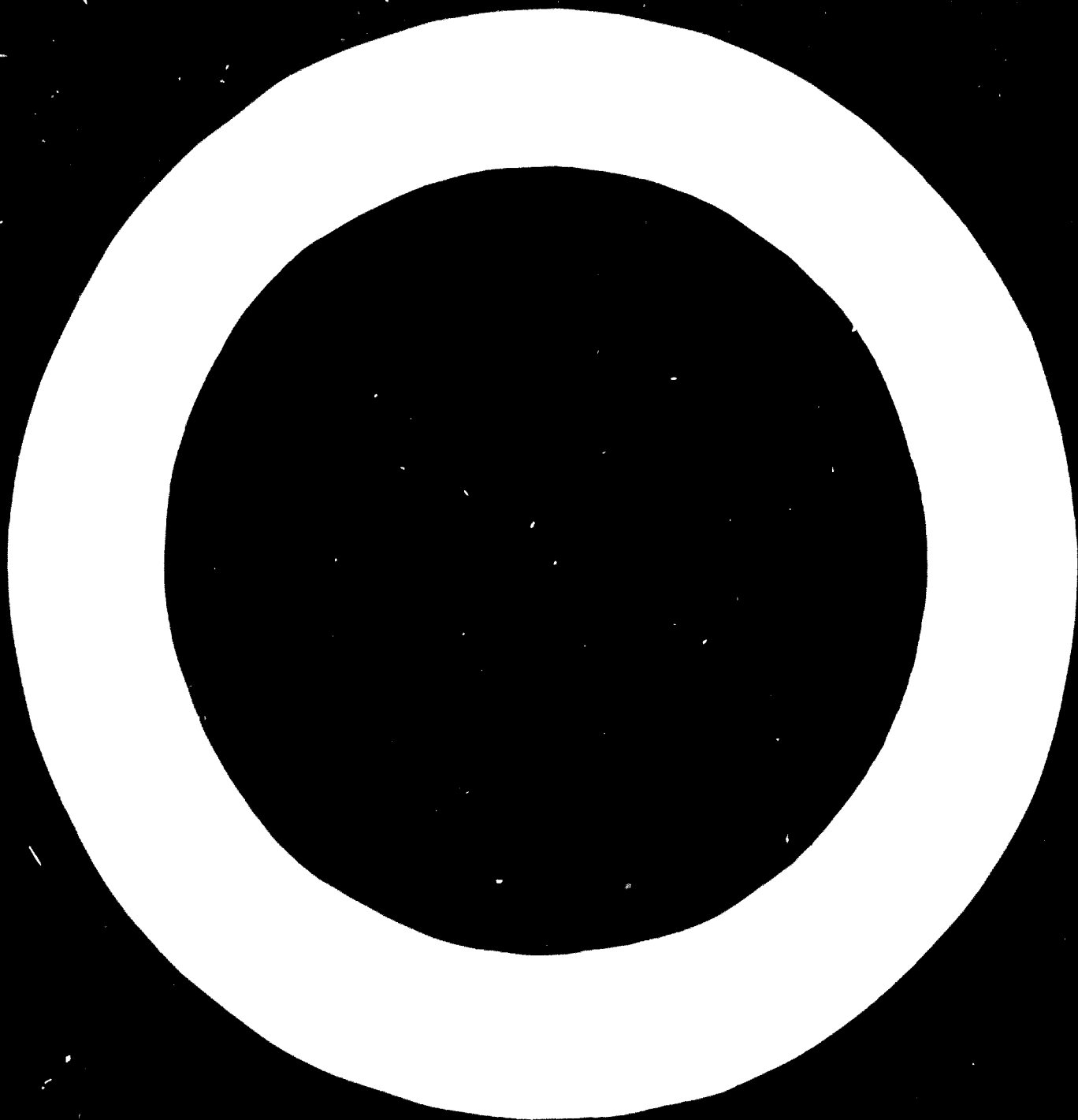
**ADMINISTRATION AND ORGANIZATION OF INDUSTRIAL  
PROPERTY OFFICES IN CENTRALLY PLANNED ECONOMIES<sup>2/</sup>**

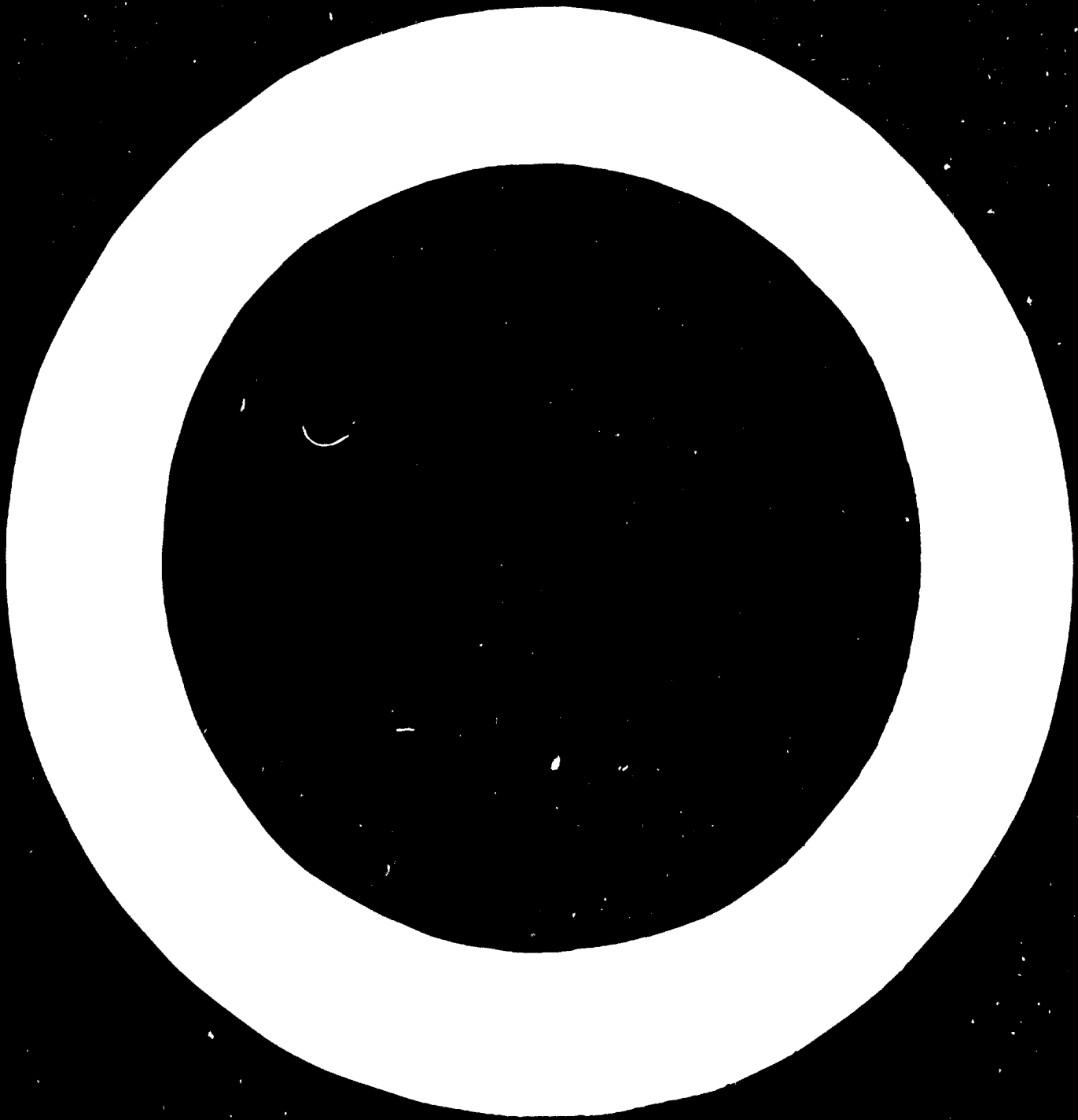
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<sup>1/</sup> Organized jointly by UNIDO and BIRPI (United International Bureau for the Protection of Intellectual Property, Geneva).

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I

Industrial property is the product of economy in modern times. When a country's economy is drawing away from national self-sufficiency, that is to say, from autarchy, when the exchange of goods with foreign countries becomes an important factor in national economy, industrial property is indispensable. Human activity concerning industrial property is however as old as society itself: inventors can be found in ancient times, china-wares, - porcelain as we call them nowadays, - prove the existence of inventive creation many a thousand years ago and ancient amphoras rescued from the depth of the seas give evidence that Greek, Egyptian and Phoenician traders used marks on their goods even at that time. But the economic development, which necessitated the creation of the new institution of industrial property, was started by the industrial revolution.

Industrial property is connected with several spheres of social life: intellectual creations with industrial character, like inventions, industrial designs, utility models, know-how etc., - are connected with commodity production. This sphere of industrial property is inseparable from industrial development and the existence of modern society is inconceivable without industrial development.

Signs, which are used to indicate goods, connect industrial property with trade and trade belongs to the category of distribution of goods: trademarks, appellations of origin have a more and more important role on the market and similar importance is attached to trade names, to indications of source and to signs used in trade. Nobody, who has wide experiences in business life, would suggest that trade today could exist without these signs.

As both categories, intellectual creations with industrial character and signs indicating goods are in close connection with social activities, it is well understandable that in every country we may find such human attitudes, which either intentionally, or not intentionally infringe upon somebody's right. These acts in contravention of somebody's right belong to the sphere of unfair competition. Unfair competition is also an integral part of industrial property.

It is not my task, to deal with industrial property, it is only per tangentem I have mentioned it, because without recalling it in our mind,

it wouldn't be possible to draw a just picture about the function and activity of industrial property offices.

There is another point, which we must take into consideration: As I have just mentioned, industrial property is connected mainly with two basic social activities, with commodity production and with distribution of goods. There can be no doubt about it that industrial property does not, - and cannot, - comprehend the totality but only a part of the territory of commodity production and distribution of goods. Nevertheless, the importance of industrial property is not characterized merely by this limiting fact. Industrial property is the engine oil of economy and like engine oil, its quantity and appearance is quite negligible, but without engine oil the biggest and most up-to-date engine squeaks and finally stops.

Speaking about industrial property offices, we must not forget that the accomplishments of these organs cannot be evaluated by numbers, their importance surpasses the quantity of patents granted and trademarks registered and even the sum of taxes and fees collected by the industrial property offices cannot show the real value of their work.

## II

The problem we are dealing with is the administration and organization of industrial property offices in centrally planned economies. As it is well known, the basic means of production in socialist countries are in social property. This economic-basis is characteristic of all socialist countries, but the methods of direction in the economy, - the new system of economic management, as we call it nowadays, - may differ considerably. Economic resources, industrial development, historical traditions of socialist countries may necessarily result differences in the system of economic management. These differences appear in the activities of industrial property offices too. In such circumstances we cannot say, that there is a socialist type of industrial property offices, because their duties and organizations correspond to the system of economic management in the given countries.

At the same time, in other respects, - as e.g.: the granting of special industrial property rights like patents, trademarks and industrial designs, - their duties correspond entirely to the duties of industrial property offices in non socialist countries.

We may point out, that in respect to special industrial property rights, there is no basic differences among socialist and non socialist industrial property offices, their duties are identical.

The main difference - in my view, - between socialist and non socialist industrial property offices consist of the fact, that industrial property offices in socialist countries participate to a greater extent in general direction of economic policy.

### III

Stressing the point that the activities and functions of industrial property offices are not necessarily identical in socialist countries, - in centrally planned economies, - I shall try to give a sketch of the National Office of Inventions in Hungary, underlining those functions, which - according to me - are more or less characteristic of other socialist offices.

The first question to deal with is: what is the role of industrial property office. The Hungarian Office has a double task. The National Office of Inventions is

- a./ the administrative organ with country-wide jurisdiction for matters of protection of industrial property and
- b./ the central State organ for policy directives in these matters.

#### ad a./

As organ with country-wide jurisdiction, its functions are:

- 1./ grant of rights
- 2./ professional control
- 3./ publication of an official periodical.

1./ The grant of rights includes only special industrial rights, like: patent, industrial designs, trademarks and appellations of origins. With the exception of Poland, socialist states don't grant protection for utility models. Some socialist countries grant inventors certificates for inventions. Inventor's certificate is a special form of protection for inventions in centrally planned economy, - Hungary doesn't apply this form of protection.

The grant of the above mentioned rights, - with the exception of industrial designs, - is generally preceded by an examination, which is the most important and most difficult part of the whole procedure from administrative point of view too. The examination of inventions as to their patentability impose a continually increasing and heavy duty on the offices with examination. The incredible growth of the number of filings and technical documentation has its effect on both, capitalist and socialist offices alike. Socialist offices, - and among them the Hungarian Office too, - are induced to seek a solution in international co-operation. It is well understandable therefore, that the Hungarian Office is interested in and according to its limited possibilities, stands for the effort to establish the Patent Co-operation Treaty and participates in the work of ICIRPAT. Both have the aim to rationalize, to expedite the procedures and to avoid double work.

As I have mentioned, the meritory examination is the most important part of the granting procedure. International co-operation is not only necessitated on account of rationalization. Modern industrial property protection is unimaginable without the Paris Convention for the protection of industrial property and its special agreements. The most important part of the procedure for the applicant claiming special rights is connected with union's priority and national treatment. Both, the union's priority and national treatment are basic principles of the Paris Convention. Besides these, the Paris Convention and its special agreements comprise several practical provisions, which help the offices in their work and assure advantages for the applicants. It results from this that the grant of special rights necessitates also international co-operation among industrial property offices. One form of manifestation of it is the adherence to the Paris Convention and to its special agreements, the other is the participation in the activity of the unions.

The Hungarian Office does not participate only in the life of the big family of industrial property, but in addition to it, it participates in the work of a more restricted industrial property family, that of the COMECON.

2./ The other role of the Office, deriving from its country-wide jurisdiction, is a professional control over the social organs in the field of industrial property protection and, in relation to patent agents, discharge functions determined by special laws and regulations.



3./ The easiest administrative task of the Office is the publishing of the Official Gazette. The Official Gazette does not publish only information concerning the grants of rights and facts relating to them, but we may find official informations, reports, studies on industrial property in it too. Though the Official Gazette in Hungary has become a professional forum for industrial property.

ad b./

In the introductory I referred to the well known fact that industrial property has an impact on several very important spheres in the life of a country. This can be felt even more, when we speak about the second main task of the Office, about its central policy making function.

Industrial property is a special field, - there are few, who are specialists in this line. We can find everywhere eminent lawyers and excellent engineers, but to be an eminent lawyer or an excellent engineer doesn't mean to be an excellent specialist in the field of industrial property. The observance of industrial property rules is a big task and a very complicated one. Industrial property legislation affects state organs and municipal authorities, enterprises, firms, co-operatives alike, but they have very few specialists, who are experts in industrial property. It is a very difficult task for lawyers and engineers, who are not versed at all in industrial property, to put into practice industrial property legislation. The task, to control these employees, how they observe industrial property rules is not an easy task either.

There are two ways to control the observance of industrial property rules: the first, the direct control means, that the Office controls and examines whether regulations are observed by interested organs, firms etc. Indirect control may take several forms. We have worked out in Hungary an interesting indirect form of control. The Office is bound to take up position in questions of principle and to give advice. Inventors, innovators, firms and other organs use this possibility and they turn to the Office with their matters in dispute for advice. These disputes give the Office a possibility to obtain knowledge about the observance and putting into operation and practice of industrial property legislation. We can say, this indirect control is of greater value, than any direct investigation.

Naturally, this kind of indirect control extends mainly on matters in dispute concerning remuneration of inventors and innovators and on

the contracts and disputes relating to them. This form of control does not function in other sectors of industrial property, because e.g. there are no disputes of this kind in the field of trademark.

The inventor is the schoolmaster of the nation, - this is true, at least in connection with industry. It is therefore of great importance, whether inventors find it worthy to devote their energies and time to work out new technical creations. Hungary and the other socialist countries pay great attention to protect the moral and material rights of creators, to encourage creative activity. Such an incentive is for instance the Government Decree on the remuneration of inventors and innovators. It makes no difference, whether the inventor - as an employee - has made his invention in or outside of his sphere of activity, the remuneration is his legal due and if necessary, he may bring legal action to obtain remuneration on the basis of governmental decree. One of the most important tasks of the central industrial property office is to follow with attention, whether the decrees to incite creative activities, assure proper results. With the introduction of the new system of economic management, the Hungarian Government modified the Decree concerning the remuneration of inventors and innovators. The main difference between the old and the new decree consists of the fact that according to the new decree the enterprise and the inventor, - as contracting partners, - may agree entirely free, that is, without any limitation as to the amount of the remuneration. Formerly the amount of the remuneration was limited, it could not surpass 10% of the economic result achieved by the technical creation. The Hungarian Parliament passed recently a new law on patentable inventions and it is possible that on the basis of recommendations by the National Office of Inventions the decree on the remuneration of inventors will be further modified.

Another very important task of the industrial property office is the initiation of legislation in the field of industrial property. This activity has a double character. The Office prepares the drafts and submits them to the competent constitutional organs. But this preparatory work is not limited only to internal legislation. International agreements come to force in Hungary only when the Presidential Council promulgate them and thus they become Hungarian internal laws. The second task of the Office concerning legislation is to prepare the promulgation of international agreements. Hungary signed e.g. the Stockholm Acts of intellectual property, now it is the duty of the Office to prepare the

promulgation of those conventions and arrangements which relate to industrial property.

Legislation is a very complex work. In the field of industrial property, foreign legislation and international agreements must be taken into consideration much more, than elsewhere. Legislation directs again the attention of the competent organ toward foreign countries and one has to take into account, evaluate and study the results achieved abroad.

I have already mentioned that in the exercise of its functions, the Office necessarily establishes contacts with international organs of industrial property and with foreign countries. This obligation is imposed on the Office by Government Decree too. As the relations with industrial property unions have already been mentioned, I won't deal with them any more.

It is quite impossible to overestimate the role of inventors in industrial development. In socialist countries the questions concerning inventors and innovators fall not only within the competence of the industrial property office, but as a movement, - innovation movement, - within the competence of the trade unions. On account of this common task, - the protection of the rights of inventors and innovators, to incite creative activity, - it is necessary that the Office and the trade unions co-ordinate their work in this field. The trade unions are great help for the office in propagating the innovation movement and inciting creative activity.

It is indispensable to provide technical documentation in every office using examination. The documentation is not used only by the Office, it is available for everyone interested in it. Naturally, the information service of the Office can be used only for payment. Publication of filings, patents granted in the indicated class or classes may be very useful for the industry and those interested make the best of this opportunity.

The other side of documentary and informatory activity is industrial property propaganda. Appropriate information of enterprises and interested organs is the best way to draw their attention to what to do and how can it be done. Such an activity was recently information and propaganda concerning the importance of appellations of origin. It is a pity, but the Office cannot be proud of the results achieved, though it did its utmost to convince interested circles of the necessity of registration of appellations of origin.

Every Office is interested in the professional formation of its employees. Generally industrial property offices are training their staff themselves. This is the case in the Hungarian Office too, but in the professional formation the Hungarian Office goes beyond that. On the basis of legislation it is the duty of the Office to assure the general industrial property formation. This formation has two phases: the clerks of the enterprises responsible for industrial property have to enrol for a course of industrial property, at the end of which they pass an oral examination. The subjects of the examination are: patent, industrial design, trademark, appellations of origin, innovation, international agreements on industrial property, documentation and information, basic legal knowledge.

The second phase of professional formation consists in the formation of patent attorneys. The candidates are not obliged to enrol for a course, but they have to pass an oral and written examination. The examination comprise the whole territory of industrial property and copyright, international agreements included and laying emphasis on patent and trademark law of the most important foreign countries. The examination is a precondition to practice as patent attorney.

Not only industry and commerce, but state organs too take advantage of the professional knowledge of the Office. That goes without saying that state organs, ministries make use of the experiences of the Office in every question relating to industrial property. Even this activity of the Office is related to international affairs. /E.g.: One result of international co-operation is the conclusion of agreements between industries or branches of industries of different countries. These agreements comprise the protection of inventions and trademarks in connection with co-operation. The Office has been always consulted, when such agreements has been prepared./

The organization of the Office is adopted to the duties prescribed by legislation. The granting of industrial property rights are handled by special departments. Departments granting patents are divided according to necessities, - and according to financial possibilities, - and in the different departments the examiners handle a definite sphere of industry. University degree and industrial property examination is a precondition to work as examiner.

Another department is handling trademarks, industrial designs and appellations of origin. These activities are identical with those of any other office.

The activities of the legal and international department extend to codification, consultation in legal questions, preparation of international conferences, participation in the granting process of special rights.

I have mentioned, that innovation is a very important factor in technical development in socialist countries. The industrial property office is the central state organ for innovations. Legal matters concerning innovations are handled by the legal department, but the organization, control and propaganda in connection with innovation fall within the competence of the department of innovation. The department of innovation organises conferences on industrial property in industrial centres in view to call the attention of interested circles to the importance of industrial property. The same department prepares analysis concerning the remunerations of inventors and innovators and gives assistance to the execution and putting into practice of inventions and innovations considered as important.

Technological documentation is the most important working tool of the Office. The department of documentation and information handles the problems of classification and mechanization too and prepares search reports.

It is only a sketch of the Hungarian Office I am able to give you in the framework of a short paper. There are other departments too, like the financial department, the secretariat, the printing service etc., but the work of these departments does not concern directly our subject.

#### IV

I am afraid, I was not able to fulfil faultlessly my duty. To give full particulars about the administration and organization of industrial property offices in centrally planned economies would necessitate to examine very carefully all offices working in planned economy. Without this, it is only possible to state generalizations. As I have already mentioned, the fact that several offices of industrial property work in the framework of planned economy, does not mean that their activities are

entirely identical. Similarly, it would be inaccurate to say: there are only two types of industrial property organs, some function in planned economy, others in an economy without centralized planning, - with other words, in socialist and in capitalist system. I wouldn't believe that the duties and functions of the U.A Patent Office are identical with those of the Argentine Patent Office, though both work in a capitalist country. The economic situation of the two countries, particularly their industrial development are so different from each other that the industrial property offices of these two countries are working under entirely different circumstances. The reason of differences cannot be found only in the divergence of economy and industrial development.

Belgian and Holland industrial development is on the same level, nevertheless there is a great difference between the works of these two offices: Belgium's industrial property office has no backlog, but as a result of novelty examination, the Dutch Patent Office suffers heavily from it. The reason of difference in this case is the different patent system.

A similar situation can be found in socialist countries, - in countries with centrally planned economies. Their industrial development, economic circumstances may differ quite considerably from each other. E.g.: The rate of foreign trade in the Soviet national income is quite negligible, on the other hand, foreign trade in Hungary has a very important part in national income. This fact has a very considerable impact on the work and duties of the Hungarian industrial property office.

Most of the socialist countries introduced novelty examination. Besides the German Democr. Republic, Hungary is the first among them to introduce deferred examination. The reason, why we are introducing deferred examination is the great importance of foreign trade in national economy which has brought about a considerable increase of filings and registrations. As a result of this, the shadow of backlog is menacing the Hungarian Office and we couldn't find a better way to eliminate this awkward possibility, than to introduce deferred examination.

The new Hungarian law on invention, coming into force on January 1 1970, confronts the Hungarian Office with very serious problems. From this time on patents will be granted on plant varieties and on new species of animals. This means, that the Office has to organize new

services, which will be able to handle the examination of novelty or distinctness, stability and uniformity of the new cultivars, to register their names etc. There is no doubt about it that inventions and plant varieties are very different intellectual creations and the Hungarian Office has to adapt itself to the new exigencies.

Thus Hungary is the first socialist country granting patent on plant varieties, the protection of which corresponds more or less to the protection prescribed by the Convention for the Protection of New Varieties of Plants. Now we have to form examiners who must be agronomists, to organize the documentation for novelty search, study the systems and experiences of those countries, which grant protection on varieties of plants in compliance with the above mentioned international treaty etc. It is greatly to be hoped that the Hungarian Office will master the problems arisen from its new duties.

V

Industrial property offices work all over the world in given environments. This is well understandable, because industrial property rights are not separate and cannot be isolated from other forms of legal, social and economic activity. The development of industrial property offices has always been associated with these other legal forms in the past, it still is today, and will continue to be so in the future. Industrial property offices therefore must adapt themselves to economic, social and legal changes in their countries. The more they achieve this aim, the better they fulfil their duties.

In a short paper like this, it is impossible to deal properly with every important aspect of administration and organization of industrial property offices, nevertheless I hope, I was able to give you at least a general outline of the work of the Hungarian industrial property office, on the basis of which you may have got some ideas how industrial property office is working in centrally planned economy.





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