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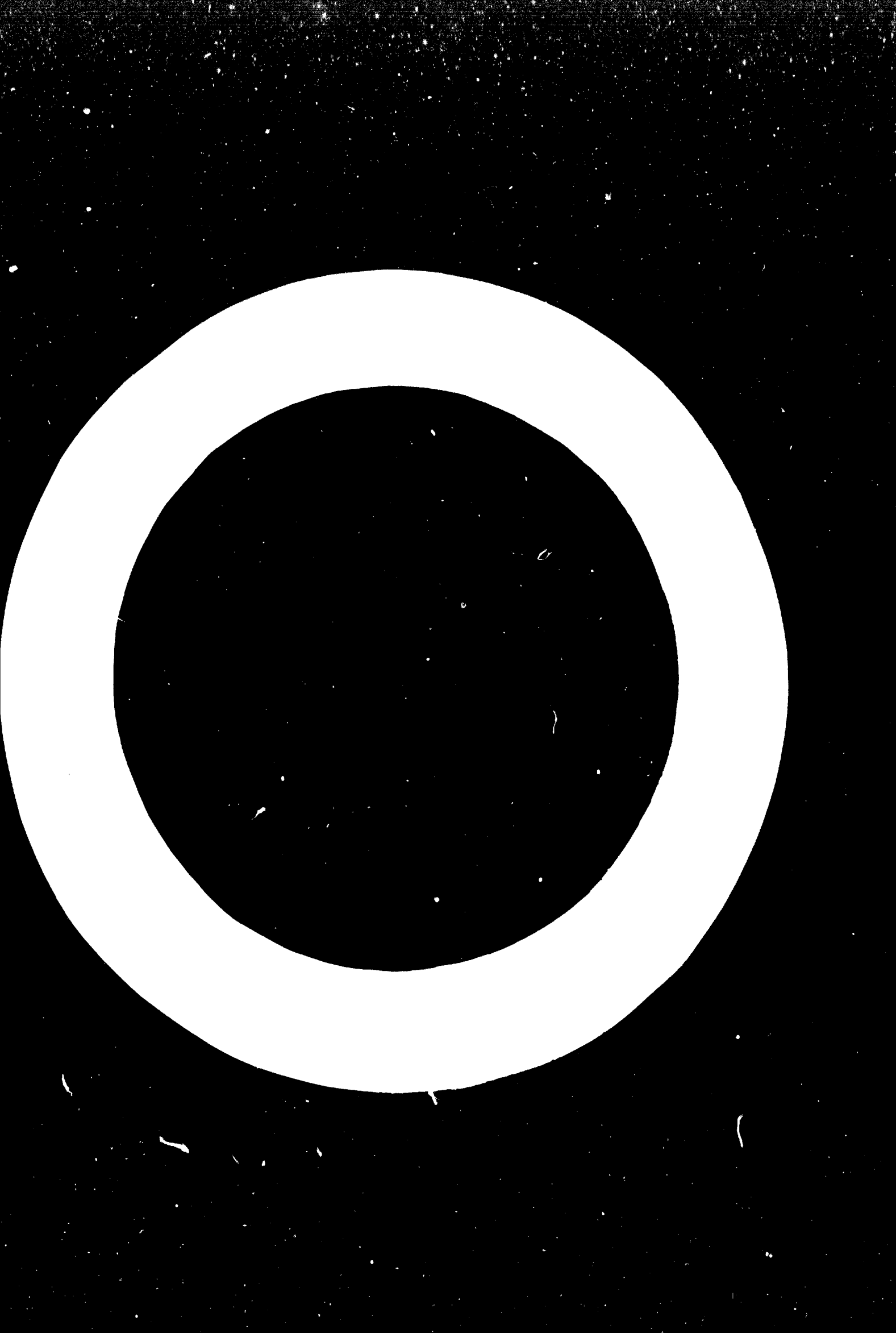
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EXPERIENCE OF A REGIONAL INDUSTRIAL PROPERTY OFFICE^{2/}

by

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- ^{1/} Organized jointly by UNIDO and BIRPI (United International Bureaux for the Protection of Intellectual Property, Geneva).
- ^{2/} The views and opinions expressed in this paper are those of the author and do not necessarily reflect the views of the secretariat of UNIDO.



The African and Malayan Industrial Property Office (AMPI) was set up under an agreement signed at Libreville on 17 October 1967 by twelve Heads of State, with a view to the protection of industrial property in their territories. In addition, since 24 October 1967, the Togolese Republic has become a party to the Libreville Agreement, and negotiations are in progress with the Democratic Republic of the Congo, Cameroun, Senegal, and Mali.

The main reasons which led to the signature of this Agreement have often been stated: guarantees for investments, the honoring of international commitments entered into by the former colonial Power, the strengthening of international co-operation.

The Agreement is based on two fundamental concepts: uniform legislation on the one hand and a central office on the other. The uniform legislation is embodied in the Agreement itself and in its annexes. This uniformity has made possible procedural centralization within a common office, which applies the prescribed procedures on behalf of the member States and issues the documents of title approved. Thus each title issued by the Office is divided up into as many national titles as there are member States, each being subject to the jurisdiction of the courts of the State concerned.

With regard to the structure of the Office, it is made up of the Administrative Council and the management. The Administrative Council possesses one representative from each State, in the person of the Minister concerned with industrial property. The Council supervises the administration of the Office, approves the regulations needed to give effect to the Agreement, and appoints the higher management staff - the Director, the Deputy Director and the Controller. The task of the management is to operate the Agreement - that is, to organize services, recruit staff, procure equipment and apply the procedures laid down. The performance of these varied tasks constitutes the experience of our young office.

THE VARIOUS DEPARTMENTS

1. ORGANIZATION OF SERVICES

The Office has five essential functions: a technical function, an administrative function, an accounting function, a representational function and a supervisory function. These five functions are the basis for the organization of the various departments.

The technical function, covering the actual operations of industrial property management, has given rise to the so-called technical departments, consisting of the patents department, and the trade marks, designs and industrial models department.

The administrative function is performed mainly by the department of administration, the main tasks of which are personnel management, management of equipment, the authorization of expenditures, the library and publications. It thus covers all the activities of the auxiliary units of industrial and commercial enterprises except for accounting.

The accounting function has led to the establishment of a special department, the Accounts Office, responsible for the care of assets, stocks and securities, receipts and expenditures.

The supervisory function is carried out at two levels:

- At the "strategic" level (decisions of the Administrative Council, recorded in the minutes of each annual Council);
- At the "tactical" level (decisions of the management in pursuance of the former decisions).

With regard to supervision of the execution of the Administrative Council's decisions, this is carried out a posteriori. To assist it in determining whether its decisions are being duly carried out, various reports are available to the Council - first of all, the report of the Director-General, which covers the whole of management, including administrative, technical and financial matters. With regard to finance, the Council also has at its disposal the reports of the external auditor on the regularity of the various financial operations, and the Controller's report.

Permanent, day-to-day supervision of the "tactical" decisions is the responsibility of the Director, who acts within the framework of the Administrative Council's resolutions and ensures their implementation. He is helped in financial matters by the Controller, who gives opinions and confirms the legitimacy of all commitments.

It might perhaps be considered regrettable that there is no specialized supervision a posteriori, performed by someone from outside the Office, over the activities of the technical and administrative departments. This is due to the technical difficulties involved in these questions and, above all, the need to preserve the secrecy of the documents in the care of the management, under regulation 11 of the regulations governing the Administrative Council. Consequently, supervision in this domain can be exercised only by the Director himself.

A "supervisory commission", with broad powers, can, however, be set up to consider any particular difficulty which arises in the functioning of the Office.

Institutionalized supervision is thus replaced by ad hoc supervision.

Co-ordination of the work of the technical departments in the performance of the tasks assigned to them is delegated by the Director to the Deputy Director, whereas the Director himself represents the institution to the outside world - in relations with member States, foreign industrial property offices and international organizations. This organizational structure, which meets the present needs of the Office, is designed to ensure simplicity, clarity and efficiency. It allows a reduced administrative apparatus and avoids duplication between departments. Naturally, the structure will evolve as the Office's responsibilities grow. In this regard, the arrangement whereby the trade mark department deals also with designs and models can probably be seen as a provisional solution, justified both by the small volume of work in this field and the affinities between trade marks, designs and models from the point of view of administrative formalities. It should also be borne in mind that, although the Libreville Agreement of 13 September 1962 covers only patents, trade marks, designs and models, the term "industrial property" extends also, under article 1 (2) of the Paris Convention of 20 March 1883 (Lisbon revision) to service marks, trade names, indications of source, appellations of origin and the repression of unfair competition.

Article 11 of the Libreville Agreement, moreover, provides that "any other task relating to the application of industrial property rights may be entrusted to the Office by a unanimous decision of the Administrative Council ...". This extension of the work of the Office has indeed already begun, since a convention on indications of source and appellations of origin is in the process of adoption.

Finally there is the question of adding an integrated printing shop to the existing offices.

This proposal would have three advantages:

- It would solve the problem of printing patents. The present system is long and expensive, involving conventional letterpress printing. The proposal is to introduce print-offset (photographic reproduction and offset printing). A substantial saving of printing cost is expected, as well as a comfortable reduction in printing time.
- It would put an end to dependence on foreign printers, who alone are in a position to offer favourable terms at present, member States lack the facilities or cannot compete in price.
- It would help to increase the internal efficiency of the Office through better organization, in the form of greater integration and improved co-ordination between the various departments. It is true that this expansion of activities will give rise to a personnel problem.

2. PERSONNEL

The staffing table approved for the Office provided for a total staff of twenty-one, which is rather small for a Central Office serving thirteen States. The legislators thus chose efficiency rather than quantity. But efficiency depends also on various considerations relating to recruitment methods, qualifications required, and the scope of the tasks undertaken.

(a) Methods of recruitment

Taking recruitment methods first, we must distinguish between supervisory staff and operational staff.

Supervisory staff are recruited at the level of the member States, with due regard to equitable geographical distribution. Theoretically, recruitment is by competition on the basis of a detailed description of the functions to be performed and the qualifications required. The recruitment formula laid down in the governing texts is thus that of individual candidatures considered in terms of technical competence.

In practice, however, member States have acquired the habit of proposing one of their citizens automatically to replace another leaving the Office. It is difficult for the recruiting authority, whether it is the Chairman of the Administrative Council or the Director, to reject a candidate proposed by the Government of a member State. The tendency is thus in the direction of a system of governmental candidacies. But it is common knowledge that this practice has disadvantages, technically and administratively, in addition to the fact that, in view of their diverse national origins, problems can arise in the working relations between these senior staff members. The situation is different in the case of the operational staff since they are recruited on the basis of individual applications in the country in which headquarters is situated. On the other hand, consideration needs to be given to the level of qualifications required both for operational staff and for supervisory staff.

(b) Level of qualifications

The supervisory staff have qualifications that vary from university entrance level (baccalauréat) to a university degree. Experience in certain functions of the national administration is also taken into consideration. In addition, senior staff must go through a period of practical training before starting work. This takes place either in a foreign industrial property office or in an international organization - for example, the Institut National de la Propriété Industrielle in Paris or the Centre d'Etudes Internationales de la Propriété Industrielle at Strasbourg.

We feel, however, that there are certain professional qualities which are at least as important as strictly technical qualifications. It is essential, in our view, that the head of a technical department, for

example, should be conscious of the importance of industrial property questions and of their economic and financial significance; it is essential for him to be aware of the responsibilities assumed by the Office administration in carrying out the procedures for the protection of rights; it is equally important that he should be methodical and well organized. He also has a duty to instil all these qualities in the clerks under him, because OAMPI clerks do not receive any training before starting work. The educational level required of them, that of the classe de troisième (fourth year of secondary education), seems rather low considering the scope of their duties and responsibilities. Thus, according to the annex table, the clerk filling post A in the trade marks department is responsible for:

- (i) Receipt of applications for filing of trade marks, including:
 - Establishing records of applications and trade mark files;
 - Correspondence concerned with regularising the filing of trade marks;
- (ii) Receipt and control of printing blocks of trade marks;
- (iii) Maintaining the card index of trade marks filed;
- (iv) Classification of the files of trade marks and of archives;
- (v) Central card index of trade marks and annual list of those who have filed trade marks;
- (vi) Providing information both internally and to the public;
- (vii) Annual statistics;
- (viii) Receipt of the declarations of maintenance in force of trade marks.

This is a huge task in relation to the educational level demanded and the salary paid. There is therefore a problem of arranging career possibilities so that the clerks feel part of the Office. There is otherwise no hope of keeping them indefinitely. The same applies, indeed, to heads of departments.

Apart from the responsibilities of each post and the need to recruit staff with appropriate qualifications, the amount of work to be performed must also be remembered.

(c) Volume of work

It is indispensable to forecast the volume of work. In the case of OAMPI, the forecasts have been made in a satisfactory manner. One must, however, distinguish between the situation at the start and the normal situation once work is fully under way.

With regard to normal working conditions, it had been forecast that the Office would ordinarily receive an annual average of 700 patents and 1,500 trade marks, it being understood that this forecast, based on the level of activity of a number of more or less comparable industrial property offices, must be treated with reserve.

Leaving aside the beginning year (1964), the work load has in fact amounted to around 1,100 trade marks and 400 patents. The original forecasts seem to have been reasonable considering both their small divergence from the actual figures and the inevitable difficulties encountered when beginning operations, difficulties which result in substantial delays.

As to the level of activity at the beginning stage, two series of operations were involved - the operations of maintenance in force required under the transitional provisions of the Agreement, and the normal applications received during the year. With regard to the former operations, the Office recorded 928 patents and 5,974 trade marks, which corresponds to two years' work in the case of patents and five years' work in the case of trade marks. Normal applications amounted to 2,003 patents and 4,104 trade marks, or five and four years' work respectively.

No one had foreseen this rush of work, which, combined with the inadequate numbers and lack of experience of the staff, could have caused a blockage in the procedures.

3. THE PROCEDURES

Applications arriving necessarily concern two branches of the Office - the technical departments for the administrative formalities and the Accounts Office for the levying of the statutory fees. There are thus two circuits to be completed, a technical circuit and a financial circuit.

Jobs arrive by two different routes - by post and directly, brought by hand by agents. The two cases require different treatment.

In addition, it is essential to keep check on all jobs. They must therefore be brought together at certain specific levels - the Director's Office, heads of departments, and the Accounting Office - in order to discourage any attempt at fraud. For the same reasons each file should be treated individually from both a technical and a financial point of view.

The importance of the organization of the circuits seems to have been partly forgotten when our Office began work. Serious difficulties resulted and were aggravated by the shortage of staff, recourse to unsatisfactory expedients (filing by list, global payments, etc.) and by the shortage of equipment.

4. FACILITIES AND EQUIPMENT

By this we mean both the premises and the equipment needed for the work of the Office. So far as the former are concerned, it should be emphasized that the Office began to operate in provisional premises that were not functional. But this was not their main disadvantage. They were, in fact, too small, so that already during its first year of work the Office overflowed into corridors and on to verandahs. The premises could not house the various departments properly and did not really allow them to organize themselves adequately. These temporary premises had been selected on the basis of work forecasts that were soon outdated, and the same applies to the equipment.

The shortage of working equipment made it difficult to meet the most basic needs of the organization. Whether it was equipment for the technical departments, for files, card indexes or printing blocks, whether it was equipment connected with the certifying of receipts or the calculation of annual fees, etc., in the Accounts Office, or whether it was for the library or for keeping old files, the available equipment was at the absolute minimum.

These were some of the main problems which have faced this young Office. We have naturally tried to solve them as far as possible.

Thus the problem of facilities is now largely solved: the Office has erected a functional building capable of meeting its needs at least for the next thirty years. Working tools, however, are still inadequate, particularly for the technical departments and for old files. It is hoped, however, to fill the gaps in the near future.

As to staffing, in spite of partly unsuitable methods of recruitment, the Office has been able to acquire a reasonably efficient staff, with the result that it will soon be able to catch up with its arrears. In terms of numbers, although the optimum desirable has not yet been reached, additional recruitment has brought the staff up to twenty-seven. It seems probable, however, that the Office could have avoided certain difficulties if it had sought the services, for some years, of a good-sized team of technical assistance experts who would have trained the clerks, completed the training of the heads of departments and given the Office a good start. Bilateral co-operation with some industrial property offices abroad or multilateral co-operation through certain international organizations would have been both less expensive and more profitable for OAMPI. It is possible, indeed, that the Office may make substantial use of this method in the future for specific technical tasks.

But the success of an experiment such as ours demands substantial investment of money. From this point of view OAMPI should not be looked on as a commercial organization which must be so managed as to make a profit, although article 20 of the Libreville Agreement might suggest this, with its principle of the sharing out of budget surpluses. The prospect of sharing of surpluses has unfortunate consequences in the functioning of the Office. It leads inevitably to the systematic limitation of expenditures with a view to increasing the amount to be divided. But when a central industrial property office is created, the purpose is not to make a profit, but rather with a reasonable limitation of expenditures (avoiding prestige spending or useless spending), to increase the resources available and thus ensure greater efficiency. In fact, no industrial property office in the world makes a profit; indeed, most offices have to rely on government subsidies. Such subsidizing should not necessarily be offset by the sharing of hypothetical surpluses with the inevitable unfortunate consequences of this in limiting the capacity of an office to perform its functions.

It is already a real achievement for OAMPI to have been able to balance its budget without help.

Thus the Office must be regarded as an instrument of economic promotion and its financial management should not in any way conflict with this.

The time has come to draw appropriate conclusions from the experience of this young Office. In this regard, it should be stressed that the creation of a central office like OAMPI to serve a group of developing countries is justified mainly by the need to bring together the human, material and financial resources essential for the effective protection of industrial property.

With regard to the human factor, it is important to recruit good staff. It is essential to ensure that those recruited have adequate qualifications and also appropriate professional qualities. The number of staff required naturally depends on the responsibilities assumed and the volume of work. A careful forecast is indispensable before work starts.

Material resources should naturally be suited to the needs of the organization, as regards both buildings and equipment. It would seem best to buy mass-produced equipment such as is used in other industrial property offices, in ample quantities to meet the needs of operation for a considerable period. On this subject it seems essential to look well ahead.

These first two requirements imply a third, financial in nature. The central office must have real financial autonomy and must be able to operate using its own resources without relying on subsidies from the member States (which are in any case difficult to obtain) and without being expected to pay back budget surpluses to the member States, at the expense of its potential for development. The organization should rather use its resources to improve the conditions of its staff, to improve its equipment and to fulfil its other obligations, particularly so far as publications are concerned.

Finally, a central office like OAMPI, with its membership consisting essentially of developing countries, should make wide use of international co-operation, both bilateral and multilateral. At the start it is indispensable to benefit from the assistance of competent individuals to train the local

staff and to start the organization off in such a way as to avoid procedural delays. This assistance may also prove necessary after work is under way, for the fulfillment of specific tasks.

The experience of CAMPI thus shows a concern with immediate problems relating to the patent. We are anxious to place the organization on a solid foundation before attacking the long-term objective of the transfer of technical know-how and the promotion of the economic development of the member States.

In this regard, several projects are under consideration.

The introduction of a novelty examination is being considered, since this practice is becoming increasingly widespread throughout the world. The recent example of the Institut National de la Propriété Industrielle, the French industrial property office, whose statute inspired that of CAMPI, is particularly significant.

It goes without saying that, in view of the limit of human, material and financial resources of CAMPI, the burden would be borne not directly by the Office but by the applicants, with the help of international co-operation either through the United International Bureau for the Protection of Intellectual Property (BIRPI), in the framework of the Patent Co-operation Treaty (PCT), or through the International Patent Institute, which would be one of the agencies entrusted with the investigation.

By this means, the States parties to the Agreement could benefit from the advantages of an examination system without losing the advantages resulting from the system of automatic issues.

To supplement this reform, consideration could be given to setting up an advisory office to advise the Governments of member States and their nationals in the particular, immediate interest which certain inventions would have for the development of their economies.

With these improvements, the Office would be able fully to carry out its mission, which is certainly to protect industrial property rights but also, above all, to promote economic and technical field progress.





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