

UNION CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY

Note: The Agreement was concurred in by the Senate, S.R. No, 69, May 10, 1965.

The Philippine instrument of ratification was signed by the President, July 21, 1965 and was deposited with the Swiss Government, August 11, 1965. The Agreement entered into force with respect to the Philippines, September 27, 1965. It was proclaimed by the President, Proc. No. 3, S. 1966.

Reference: The Agreement is also published in 74 LNTS, p. 289. The Presidential proclamation of the Agreement is published In 62 O.G., p. 1911.

German Federal Republic, Australia, Austria, Belgium, United States of Brazil, People's Republic of Bulgaria, Canada, Cuba, Denmark, Dominican Republic, Spain, United States of America, Finland, France, Great Britain and Northern Ireland, People's Republic of Hungary, Indonesia, Ireland, Israel, Italy, Japan, Liechtenstein, Luxembourg, Morocco, Mexico, Monaco, Norway, New Zealand, Netherlands, People's Republic of Poland, Portugal, People's Republic of Roumania, Rhodesia and Nyasaland, Sweden, Switzerland, Czechoslovak Republic, Turkey, Union of South Africa, Viet Nam, People's Federal Republic of Yugoslavia,

Being unanimously moved by the desire to protect in as effective and uniform a manner as possible industrial property rights,

Judged it opportune to make certain modifications and additions to the International Convention of 20th March, 1883, establishing the International Union for the Protection of Industrial Property, revised at Brussels on 14th December, 1900, at Washington on 2nd June, 1911, at The Hague on 6th November, 1925, and at London on 2nd June, 1934,

Resolved to send representatives to the Diplomatic Conference which took place at Lisbon from 6th to 31st October, 1958,

And have agreed as follows:

CONVENTION OF PARIS FOR THE PROTECTION OF INDUSTRIAL PROPERTY OF 20TH MARCH, 1883 REVISED

at BRUSSELS on 14th December, 1900, at WASHINGTON on 2nd June, 1911, at THE HAGUE on 6th November, 1925, at LONDON on 2nd June, 1934, and at LISBON on 31st October, 1958

ARTICLE 1

(1) The countries to which the present Convention applies constitute themselves into a Union for the protection of industrial property.

(2) The protection of industrial property is concerned with patents, utility models, industrial designs, trademarks, service marks, trade names, and indications of source or appellations of origin, and the repression of unfair competition.

(3) Industrial property shall be understood in the broadest sense and shall apply not only to industry and commerce proper, but likewise to agricultural and extractive industries and to all manufactured or natural products; for example, wines, grain, tobacco leaf, fruit, cattle, minerals, mineral waters, beer, flowers and flour.

(4) The term "patents" shall include the various kinds of industrial patents recognized by the laws of the countries of the Union, such as patents of importation, patents of improvement, patents and certificates of addition, etc.

ARTICLE 2

(1) Nationals of each of the countries of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals, without prejudice to the rights specially provided by the present Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided they observe the conditions and formalities imposed upon nationals.

(2) However, no condition as to the possession of a domicile or establishment in the country where protection is claimed may be required of persons entitled to the benefits of the Union for the enjoyment of any industrial property rights.

(3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the election of domicile or the designation of an agent, which may be required by the laws on industrial property, are expressly reserved.

ARTICLE 3

Nationals of countries not forming part of the Union, who are domiciled or who have real and effective industrial or commercial establishments in the territory of one of the countries of the Union, are treated in the same manner as nationals of the countries of the Union.

ARTICLE 4

A.—(1) A person who has duly filed an application for a patent, or for the registration of a utility model, or of an industrial design, or of a trademark, in one of the countries of the Union, or his successors in title, shall enjoy, for the purpose of filing in other countries, a right of priority during the periods hereinafter stated.

(2) Every filing that is equivalent to a regular national filing under domestic law of any country of the Union or under bilateral or multilateral treaties concluded between countries of the Union shall be recognized as giving rise to a right of priority.

(3) By a regular national filing is meant any filing that is adequate to establish the date on which the application was filed in the country concerned, whatever may be the outcome of the application.

B.—Consequently, the subsequent filing in any of the other countries of the Union before the expiration of those periods shall not be invalidated through any acts accomplished in

the interval, as, for instance, by another filing, by publication or exploitation of the invention, by the putting on sale of copies of the design or model, or by use of the mark, and these acts cannot give rise to any right of third parties, or of any personal possession. Rights acquired by third parties before the date of the first application which serves as the basis for the right of priority are reserved under the domestic legislation of each country of the Union.

C.—(1) The above-mentioned periods of priority shall be twelve months for patents and utility models, and six months for industrial designs and for trademarks.

(2) These periods shall start from the date of filing of the first application; the day of filing shall not be included in the period.

(3) If the last day of the period is an official holiday, or a day when the Office is not open for the filing of applications in the country where protection is claimed, the period shall be extended until the first following working day.

(4) A subsequent application for the same subject as a previous first application within the meaning of paragraph (2) above and filed in the same country of the Union, shall be considered as the first application, of which the filing date shall be the starting point of the period of priority, provided that, at the time of filing the subsequent application, the previous application has been withdrawn, abandoned or refused, without being open to public inspection and without leaving any rights outstanding, and has not served as a basis for claiming a right of priority. The previous application may not thereafter serve as

a basis for claiming a right of priority.

D.—(1) Any person desiring to take advantage of the priority of a previous filing shall be required to make a declaration indicating the date of such filing and the country in which it was made. Each country will determine the latest permissible date for making such declaration.

(2) These particulars shall be mentioned in the publications issued by the competent authority, and in particular in the patents and the specifications relating thereto.

(3) The countries of the Union may require any person making a declaration of priority to produce a copy of the application (specification, drawings, etc.) previously filed. The copy, certified as correct by the authority which received the application, shall not require any authentication, and may in any case be filed, without fee, at any time within three months of the filing of the subsequent application. They may require it to be accompanied by a certificate from the same authority showing the date of filing, and by a translation.

(4) No other formalities may be required for the declaration of priority at the time of filing the application. Each of the countries of the Union shall decide what consequences shall follow the omission of the formalities prescribed by the present Article, but such consequences shall in no case go beyond the loss of the right of priority.

(5) Subsequently, further proof may be required.

A person who avails himself of the priority of a previously filed application shall be required to specify the number of that application, which shall be published under the conditions provided for by paragraph (2) above.

E.—(1) Where an industrial design is filed in a country by virtue of a right of priority based on the filing of a utility model, the period of priority shall be only that fixed for industrial designs.

(2) Furthermore, it is permissible to file a utility model in a country by virtue of a right of priority based on the filing of a patent application and vice versa.

F.—No country of the Union may refuse a priority or a patent application on the ground that the applicant claims multiple priorities, even originating in different countries, or on the ground that an application claiming one or more priorities contains one or more elements that were not included in the original application or applications whose priority is claimed, provided that, in both cases, there is unity of invention within the meaning of the law of the country.

With respect to the elements not included in the original application or applications whose priority is claimed, the filing of the later application shall give rise to a right of priority under the usual conditions.

G.—(1) If examination reveals that an application for a patent contains more than one invention, the applicant may divide the application into a certain number of divisional applications and preserve as the date of each the date of the initial application and the benefit of the right of priority, if any.

(2) The applicant may also, on his own initiative, divide a patent application and preserve as the date of each divisional application the date of the initial application and the benefit of the right of priority, if any. Each country of the Union shall have the right to determine the conditions under which such division shall be authorized.

H. Priority may not be refused on the ground that certain elements of the invention for which priority is claimed do not appear among the claims formulated in the application in the country of origin, provided that the application documents as a whole specifically disclose such elements.

ARTICLE 4BIS

(1) Patents applied for in the various countries of the Union by persons entitled to the benefits of the Union shall be independent of patents obtained for the same invention in other countries, whether members of the Union or not.

(2) This provision is to be understood in an unrestricted sense, in particular, in the sense that patents applied for during the period of priority are independent, both as regards the grounds for invalidation and for forfeiture and as regards their normal duration.

(3) The provision shall apply to all patents existing at the time when it comes into effect.

(4) Similarly, it shall apply, in the case of the accession of new countries, to patents in existence on either side at the time of accession.

(5) Patents obtained with the benefit of priority shall have in various countries of the Union a duration equal to that which they would have had if they had been applied for or granted without the benefit of priority.

ARTICLE 4TER

The investor shall have the right to be mentioned as such in the patent.

ARTICLE 4QUARTER

The grant of a patent shall not be refused and a patent shall not be invalidated on the ground that the sale of the patented product or of a product obtained by means of the patented process is subject to restrictions or limitations resulting from the domestic law.

ARTICLE 5

A.—(1) The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries, of the Union shall .not entail forfeitures of the patent.

(2) Each country of the Union shall have the right to take legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by the patent, for example, failure to work.

(3) Forfeiture of the patent shall not be prescribed except in cases where the grant of compulsory licenses would not have been sufficient to prevent such abuses. No proceeding for the forfeiture or revocation of a patent may be instituted before the expiration of two years from the grant of the first compulsory license.

(4) An application for a compulsory license may not be made on the ground of failure to work or insufficient working before the expiration of a period of four years from the date of filing of the patent application or three years from the date of the grant of the patent, whichever period last expires; it shall be refused if the patentee justifies his inaction by legitimate reasons. Such a compulsory license shall be non-exclusive and shall not be transferable, even in the form of the grant of a sub-license, except with that part of the enterprise or goodwill using such license.

(5) The foregoing provisions shall be applicable, *mutatis mutandis*, to utility models.

B.—The protection of industrial designs shall not, under any circumstance, be liable to any forfeiture either by reason of failure to work or by reason of the importation of articles corresponding to those which are protected.

C.—(1) If, in any country, the use of a registered trademark is compulsory, the registration shall not be cancelled until after a reasonable period, and then only if the person concerned cannot justify his inaction.

(2) The use of a trademark by the proprietor in a form differing in elements which do not alter the distinctive character of the mark in the form in which it was registered in one of the countries of the Union, shall not entail invalidation of the registration and shall not diminish the protection granted to the mark.

(3) The concurrent use of the same mark on identical or similar goods by industrial or commercial establishments considered as co-proprietors of the mark according to the provisions of the national law of the country where protection is claimed, shall not prevent the registration or diminish in any way the protection granted to the mark in any country of the Union, provided