

*REVIEW of trends and events*

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*1990/1991*

*TMPDF*

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*Trade Marks Patents and Designs Federation*

## **ORIGINS**

The Federation, the first of its kind in the world, owes its origin to the creation in 1913 of a Committee of representatives of industry to oppose the British Empire Trade Mark which was then being considered. Successful in this and in its opposition to the Trade Marks Bill of 1918, it went on to make representations which resulted in the modification of the Trade Marks Act of 1919. By then the need for a body to represent the views of industry in this field had become clear, and the Federation was formally established in 1920.

## **OBJECT**

The Federation's main object has always been to bring about improvements in the protection afforded by intellectual property rights throughout the world to the advantage of inventors, manufacturers and consumers alike.

IPR are valuable assets, but while the need to safeguard them is obvious, the means of achieving this is far from simple. Laws differ from country to country and are often changed arbitrarily and without regard to the commercial consequences. At the same time, the speed of technological change and the growth in its importance have increased ever faster.

It is against this background, and in order to ensure that the interests of industry and commerce are effectively represented, that the Federation operates.

## **CONTACTS**

The Federation is regularly consulted by the Patent Office and other government departments and agencies both directly and through its membership of the Standing Advisory Committee on Intellectual Property (SACIP). It has long had a close relationship with the CBI, which it represents on the various IP working groups of UNICE, and with professional bodies in this country, such as the Chartered Institute of Patent Agents and the Institute of Trade Mark Agents. It also has representatives on the Users Committees of the Patents Court and the newer Patents County Court.

Outside the UK it has lines of communication to the EC Commission, has a representative on the Standing Advisory Committee of the European Patent Office (SACEPO) and is one of the non-government organisations invited to participate in meetings organised by WIPO.

## **MEMBERSHIP**

Details of membership may be obtained from the Secretary, whose address and telephone and fax numbers are given below.

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## REVIEW BY THE COUNCIL OF TRENDS AND EVENTS 1 APRIL 1990 TO 31 MARCH 1991

### INTRODUCTION

To mark the 70th Anniversary of the incorporation of the Federation in 1990 this Review was for the first time issued as a separate document. So well was this received – copies were requested by bodies which had previously shown only a passing interest in the doings of the Federation – that it has been decided to continue to produce the Review in this form as a useful reminder not only of what the Federation has done, but also of the context in which those doings should be seen.

Demands on the Federation and its members to speak out on behalf of industry and commerce on all matters related to intellectual property continue to grow, and the Council and Committees have this year expressed well-informed views on more issues than ever before. This is a tribute to the Federation which has become recognised more and more as a vein of knowledge and practical experience of intellectual property which is well worth tapping.

### DOMESTIC ISSUES

#### Litigation

##### ● Patents County Court

The Statutory Instruments designating the Edmonton County Court at Wood Green as the Patents County Court and establishing its Rules came into force on 3 September 1990 and the Court opened its doors for business on that day. The Federation was officially represented at the formal Opening of the new Court on 24 September 1990 in a ceremony performed by the Vice Chancellor, Sir Nicholas Browne Wilkinson, in the presence of Judge Ford. To date, the Court has accepted 47 cases of which 29 have been commenced in 1991. Six cases have been settled, two have reached the Preliminary Consideration Stage and one has been finally decided, with judgement being reserved following a one day trial. A procedural decision (refusing an extension of time) has been sent to the Fleet Street Reports for publication.

Messrs Gibson & Orton, who sat on the Oulton Committee, have continued to represent the Federation on the Patents County Court Users Committee which has met approximately six times during the year. The major contribution of the Users Committee during this period has been the development of the Patents County Court Users Guide which issued in December 1990 and which outlines the procedures of the new Court. One Users Committee issue in which the Federation has taken the lead is the extent to which documents filed in Patents County Court proceedings are available to the public. The Federation has agreed with a proposal that the Writ, the Pleaded Grounds and any published documents relied thereon should be disclosed following a Final Decision or any earlier settlement. This proposal is being put to other members of the Users Committee.

##### ● Patents Court Users Committee

In May 1990, following representations by the CBI and the Federation, Mr Justice Aldous invited the Federation to nominate a person to represent industrial interests on the Patents Court Users Committee, and the Council asked Mr Tony Gibson, a Vice-President of the Federation, to serve as its representative.

Two meetings of the Users Committee have since been held, in November 1990 and March 1991, at which a number of Practice issues have been discussed. These have focussed on ways of simplifying procedure to reduce delay and, where possible, cost in bringing actions to trial and in conducting the trial itself.

#### The Patent Office

##### ● All change in London and Newport

The Patent Office became an Executive Agency of the Department of Trade & Industry on 1 March 1990 – which was actually just within last year's review of trends and events. The Federation has welcomed this move in view of the flexibility and greater freedom of action which it was thought this would bring. The Patent Office also produced a Corporate Plan for the first time, a summary of which was given a limited circulation, and a Framework Document which most usefully set out the ground rules under which the new Executive Agency would operate. There has also been a suggestion that the Office might subsequently become a Trading Fund, but that was dependent on the passage into law of the Government Trading Bill.

Various measures were announced during the year resulting from the decision to move the Patent Office to Newport. In particular, the London filing facilities would be in the 'old' Patent Office in 25 Southampton Buildings and IPCD would be housed nearby in Hazlitt House. Actual implementation of these changes and the move by the bulk of the Patents Branch to Newport is expected later in 1991.

### **Copyright, Designs and Patents Act**

#### ● **Patents Rules and Forms**

Although the Copyright, Designs and Patents Act 1988 received the Royal Assent as long ago as 15 November 1988, some of its provisions (certain paragraphs in Schedule 5) did not come into force until 7 January 1991 when the new Patents Rules 1990 became effective. In addition to bringing these paragraphs of Schedule 5 into force, the opportunity was taken to amend the Patents Rules 1982 to effect improvements and correct anomalies. The Federation continued to proffer advice to the Patent Office on the drafting of the new Rules.

The Forms accompanying the new Rules have been criticised and the Patent Office has formally requested comments on them from the users including the Federation.

#### ● **Register of Trade Mark Agents Published**

Under Part VI of the Copyright, Designs and Patents Act 1988 a Register of Trade Mark Agents was envisaged, and further discussions took place during the year on the rules governing this Register. After making its initial contribution to the subject last year, the Federation took little further part in the discussions, deeming that since the people mainly affected would be practice members of the two Institutes, CIPA and ITMA, their representatives should lead the debate, both with each other and with the officials at the Patent Office. The new rules were finally agreed in the summer of 1990 and persons were invited to apply for entry on the new Register of Trade Mark Agents. This was published in March 1991 and contains some 650 names.

### **Trade Marks Law Reform**

#### ● **White Paper shows the Way Ahead**

Last year's Review hinted at the possibility of a White Paper on Trade Marks Law Reform, so it came as no surprise that on 19 September 1990 a White Paper was published entitled 'Reform of Trade Marks Law'. The Federation had lobbied for a new Trade Marks Act to incorporate the main recommendations of the EC Harmonisation Directive, so the appearance of this White Paper was seen as a most encouraging move. It went far beyond the requirements of the Directive and adopted a radical approach to trade mark law reform with a complete review of the law. Draft position papers had been previously circulated by IPCD but, nevertheless, the scope and extent of the recommended changes in UK trade mark law was a most welcome surprise. Discussions within the Trade Marks Committee began at once and there was liaison with the two Institutes, CIPA and ITMA. Eventually, before the time limit of the end of the year set by the White Paper, the Federation submitted detailed comments on the White Paper. A further paper outlining some additional points not previously covered appeared early in 1991 and both this and the White Paper were discussed at a SACIP meeting in January 1991. It is now to be hoped that all these moves will be translated into a new Act and all the signs point to a new Bill on Trade Marks being set before Parliament in the next Parliamentary Session.

It is impossible to detail all the proposals contained in the White Paper but the main features include the following:

All but a very few of the optional proposals in the Harmonisation Directive are to be taken up.

Infringement rights are to be extended to similar goods and services.

The procedures for assignment and licensing will be considerably simplified.

The 'trafficking' portion in the Registered User Section of the Act will be abolished.

The distinction between Parts A and B will be abolished.

The renewal period is to be changed to 10 years.

Defensive registrations will disappear, but there will be provisions for the protection of well known marks.

The distinction between 'trade mark' and 'service mark' will disappear and there will in future be only 'trade marks' which can be protected for either goods or services.

The need to prove that a mark is inherently capable of distinguishing in law will be dropped and in future it will only be necessary to prove that it is capable of distinguishing in fact. It should therefore become much easier for trade marks to be registered. The definition of 'mark' is to be extended, e.g. to include shapes.

A person aggrieved by the issuing of groundless threats by a trade mark owner will in future have a remedy. (This will bring trade mark practice in line with patent practice.)

Collective marks are to be introduced.

Multi-class applications will be permitted.

The Government intends to adhere to the Madrid Protocol, as soon as the law permits.

### **Business Use of Copyright Material**

#### ● **CBI/CLA Discussions**

During the year the Federation has been represented at these discussions and has strongly supported the CBI line that the amount of infringement of copyright, principally by the photocopying of published material such as technical journals, which is not covered by the 'fair dealing' provisions of the Act, is minimal. In the case of those industries, such as the pharmaceutical industry, where multiple copying of certain such material can occur, special arrangements can be made and most definitely are made.

In the latest round of discussions the CLA was eager to have businesses introduce a draconian system of record keeping associated with practically all of the photocopying machines in the business and the Federation has strongly resisted this on the basis that it can in no way be cost justified.

Discussions are continuing and the working party hopes to issue a final report in the summer of 1991.

### **EEC**

#### **From the Commission**

##### ● **The CE Mark**

In June 1990 it transpired that the EC Commission had earlier in the year published a draft Regulation which, if adopted, would make it mandatory for manufacturers to affix a symbol consisting of the letters CE in a stylised form onto any goods which were sold and which conformed to the 'new approach' to technical harmonisation and standardisation, adopted by the Council of Ministers in 1985. Since that time Directives had been adopted, dealing with 9 disparate groups of products. The Federation's objection to this proposal lay not so much in the idea itself but in the fact that the draft Regulation arbitrarily abrogated all rights which any proprietor might already have in a trade mark resembling the CE mark. It was felt that this was a denial of equitable rights and suitable protests were made. In a subsequent draft of November 1990, the total abrogation of rights was modified by a clause permitting owners of any prior registered similar marks to be allowed to continue to use them for at least 5 years. Even though the Federation still considered this inequitable, it was felt that no further concessions were likely. Furthermore, as instances of use of the CE mark began to be seen in the market place, it was apparent that it was rather unlikely that this quality symbol could, in practice, be confused with a trade mark.

##### ● **Proposal for a Council Regulation on the Protection of Geographic Indications of Origin Certificates of Specific Character for Foodstuffs**

The Trade Marks Committee looked at this particular proposal and found, as with the CE Mark above, that it provided for the expropriation of intellectual property without compensation. Trade Mark owners could find that a mark which they might have used for many years was made invalid by the provisions of this proposed Regulation. Yet again it appeared that a particular Directorate was discussing subject matter without having proper regard to intellectual property rights. There are already two international conventions on the subject of protecting geographical names:

The Madrid Agreement of 1981 protecting indications of source, and  
The Lisbon Agreement of 1958 for the protection of appellations of origin.

Both were set up under the auspices of the Paris Convention which is itself the subject of possible revision. In addition, WIPO has a Committee of Experts studying new proposals for the protection of geographical names based on the Madrid and Lisbon Agreements. Furthermore, protection for geographical indications has been proposed as part of an agreement on trade related

aspects of intellectual property rights in the GATT/Uruguay round. Yet this draft Regulation does not recognise any of this activity.

Although the UK is not a member of either of the above Agreements, the draft Regulation, if adopted, would require the UK to protect geographical indications of origin, and although very few of the Federation's members have any direct interest in geographic indications of origin, it is believed that the proposals have implications for trade mark owners in general which require close comment on the Commission's proposals. Amongst other things, agricultural products and foodstuffs are nowhere properly defined and the labelling proposals could easily lead to conflicts with current labelling regulations.

The President of the Federation has written to IPCD raising these concerns.

### ● Dealings with Commercial Agents

In the Autumn, the EC Commission published the first draft of a revision of its Notice on Commercial Agency Agreements which had remained unchanged since 1962. The Federation welcomed the proposed revision insofar as it effectively transformed the Notice into a block exemption for commercial agency agreements and extended it to cover services. This was considered to be a useful derogation, particularly in the developing fields of information technology and computerised services. It did, however, contain a restriction that the business affected by any Agreement should account for at least one-third of the agent's activity, which was thought to be somewhat arbitrary. Moreover, it was by no means clear how the one-third was to be measured and, in addition, the definition of competing product ranges was so vague as to give rise to uncertainty.

These views were communicated to the DTI which subsequently informed the Federation that, as a result of comments received, the Commission would issue an amended draft and consult on it before publishing a final notice.

### ● Comparative Advertising: Draft Directive

The EC Commission has made some proposals for a Directive on Comparative Advertising. Two rather differently worded drafts were received during the year and it is not clear which is the current version. The Federation has firm views that any form of comparative advertising is odious and, moreover, not in the interests of consumers. Comparisons made in advertising are never entirely fair and the advertiser only wishes to use his competitor's name or mark in order to denigrate it. Comparative advertising is still trade mark infringement in the UK and the Federation believes that situation should continue.

It should be noted in this context that a possible relaxation of the rules on comparative advertising for the UK was proposed in the Government's White Paper. But any change in UK law would presumably have to conform to an EC Directive on Comparative Advertising, if this were eventually agreed.

### ● Green Paper on Industrial Designs

The EC Commission is nearing completion of its work on a Green Paper setting out its proposals for a Directive to approximate the registered design laws of member states and a Regulation to set up a Community Design Registration system. Some members of the Federation's Copyright and Designs Committee attended an informal discussion with Commission officials responsible for the Green Paper and learned that the Commission's proposals, although based on work done by the Max Planck Institute, contain some new approaches based on the Commission's own studies.

The Commission has concluded that Community Design Registrations should be granted without a search and examination. The Commission studied existing examination systems and found that, without exception, they were ineffective, created delays and expense for the applicant and served no useful purpose.

It is understood that designs dictated by function are to be excluded from protection but that there will be no 'must match' exclusion. The Commission officials involved are of the view that concerns about protection of car spare parts have been greatly exaggerated and that few such articles will be protectable because in general they have insufficient novelty.

The proposed Directive will require major changes to the UK's recently amended design laws. These changes may well restore some of the ground lost when the Copyright, Designs and Patents Act 1988 came into effect.

### ● Protection of Computer Programs : Draft Directive

The draft Directive was amended by the European Parliament during the First Reading to incorporate a number of amendments of which the most important concerned a right of decompilation. Subsequently the Directive was again amended by the Commission and by the Council of Ministers and issued in December as a Common Position text. The text of the Common Position was adopted unanimously by the Member States and passed back to the European Parliament for a Second Reading in April.

No amendments were adopted during that Second Reading of the European Parliament and the way is now clear for issuance of the Directive.

- **Standardisation: Green Paper**

In October 1990 the European Commission issued a Green Paper entitled 'The Development of Standardisation : Action for faster technological integration in Europe'. This in a short statement mentions that the problem of industrial and intellectual property has become a serious issue within the context of standardisation and outlines an approach to the issue for further discussion. The Green Paper suggests the rigorous application in the European Context of the rules of the International Standardisation Organisation (ISO). The Federation can support this but is concerned that reference is also made to intellectual property rights being made freely available. The Federation view is that, given the background of different rules existing in different industrial sectors for handling IPRs which are the subject of standards, the danger exists of the European Commission finally treating a highly complex issue in an over-simplistic manner with the possible end result being a regime of granting compulsory licences.

The Federation intends to monitor closely the further actions of the European Commission on this issue. In the short term, the Federation believes that the issue will be highlighted in the working of the European Telecommunications Standards Institute (ETSI), and the solution finally adopted by this body will need careful examination in view of the precedent it would form for a European Standardisation Organisation as contemplated by the Green Paper.

## **Community Trade Mark**

- **All Quiet on the Front**

Little, if any, progress was made towards establishing a Community Trade Mark regime during the year under review. The twin problems of finding a site for the Community Trade Mark Office acceptable to all Member States, and settling on a language or languages to be used officially within the Office, continued to elude a solution. So, apart from a flurry of activity in the middle of the year when EFTA States expressed an interest in joining the discussions, a request which was summarily denied by the Commission, there was very little activity on the Community Trade Mark front.

## **European Court of Justice**

- **Alfa Farmaceutici v Syntex Pharmaceutical Limited**

This case was referred to the ECJ from an Italian court in Turin. It appears to have arisen as a result of a dispute between the licensor of a pharmaceutical preparation and its licensee, who was unhappy with the terms of the licence and who claimed breach of Article 85. However, the facts of the case were far from clear and the questions posed were somewhat misleading. It was felt that the case was not very suitable for the ECJ, but nevertheless the Federation argued for an intervention by HM Government, if only to prevent such a case from being presented to the Court in the future. However, in the event, no intervention was made by the UK.

- **Adam Opel AG v Alfa Holding A/S and Margarinefabrik Alfa-Solo A/S**

It is a peculiarity of Danish law that currently there is no statutory provision for the compulsory use of trade marks. So when the German Opel company could not get a Letter of Consent from the defendants to its application to register the trade mark OMEGA for cars, even though neither of the defendants had made any use of their older OMEGA mark for anything other than margarine, they sued. The case was eventually referred to the ECJ where the suggestion was made that the Danish trademark system prevented the free movement of goods and was contrary to Articles 30 and 36. The case continues.

- **Pall Corporation v P.J. Dahlhausen & Co.**

This case was referred to in last year's Review of Trends and Events. In February 1991, the ECJ handed down its decision, which was that a national rule which had the effect of prohibiting the use of the symbol ® in relation to a trade mark which had been registered in another member state, was capable of hindering Intra-Community trade and could not be justified as being necessary in order to satisfy any mandatory requirements.

- **SA CNL Socal NV v HAG GFAG ('HAG II')**

The case produced a landmark decision which was issued in October 1990. In it the Court reversed the Decision HAG I which first established the common origin rule. HAG II appears to have done away with this rule by which the proprietor of a trade mark could not prevent the import of goods under the same trade mark if the importer had at one time had a common origin with himself, however long ago and however remote. But there are some doubts about whether the rule has been entirely

abolished, or whether it might still apply in circumstances different from the facts of this case, when the mark in question had been sequestered in time of war and without the original German owner's approval or consent. That maybe will have to be dealt with in another case.

## **Patent Term Restoration**

- **EPO Proposal Welcomed**

The Commission still has in hand the draft Regulation of April 1990 for a Certificate providing up to 10 years restoration of term for medicinally active products, as reported in the 1990 Review. The Federation remains of the opinion that although this Regulation is necessary, it should be clearly accepted that other industries should be granted the same dispensation if they are in a similar position, e.g. agrochemicals and aircraft. France has already enacted a law, dated 25 June 1990, for restoration certificates for medicinal products with a term of up to 7 years.

In the meantime, the European Patent Office has made a proposal to the Administrative Council for the amendment of Article 63 to enable any Member State of the EPC to grant such extensions of term to a European patent as are provided in national law, without specifying a term of restoration. Member States may entrust and, in the case of Community patents, shall entrust implementation to the EPO. This provision makes no distinction between industrial sectors and is welcomed by the Federation.

## **INTERNATIONAL**

### **European Patent Office**

- **The Future...**

The workload of the EPO and the difficulties of recruiting appropriately educated multilingual staff continue to be the main problems for the EPO. The latest figure for total applications (including PCT) for 1990 is 62,800. There is increasing use of the PCT with a growing number of Euro-PCT searches, which take priority over searches for ordinary European applications. The backlogs for searches and examination remain high with only 25% of searches being published with the application. The Federation remains concerned about this and especially with the willingness of the EPO to do PCT work for Japanese and US applicants while these backlogs persist.

Another problem is the EPO's vision of the future, which admirably foresees the need to make adequate provision for searching and examination and for the necessary buildings to house an expanded staff. There is, however, concern that the EPO is too optimistic about the rate of expansion of its business since the present world recession conditions may well be reflected in a pause in the rate of increase in European patent applications by 1994-5. If this is combined with a maximum rate of investment, specifically in a very large complex for searching at The Hague, a cash flow crisis could ensue and this would inevitably result in increased fees for users of the system.

- **...and the present**

The EPO is also turning its attention to the quality of its work, especially in the examining and opposition divisions. Specifically Dr Leberl, former head of the Austrian Patent Office and former Chairman of the Administrative Council of the EPO, has been asked to conduct an inquiry into patenting in the chemical field, with particular reference to broad claims and support for them, amendments especially disclaimers, inventive step and possible changes in chemical examining practice. The Federation has supplied an analysis of these problems and concludes that there is nothing wrong with the EPC, its rules or the decisions of the Technical Boards of Appeal. It is only the variable handling of the examiners, who are liable to be formalistic, who ask for too much experimental work in support of claims and who do not always correctly assess inventive step in accordance with the methods laid down by the Boards, which causes problems. The Technical Boards of Appeal have also decided to discuss these difficulties with the SACEPO.

The SACEPO has met twice and has discussed amendments to the Implementing Regulations and the Rules relating to Fees, the EPO's business plans, patent law harmonisation, the UPOV Convention, patent term restoration, the Community patent, and discussions to be held with the Boards of Appeal.

## **GATT**

### ● **TRIPS Agreement: A Hard Fought Round**

The negotiations for a TRIPS Agreement stalled in December 1990 when the Brussels GATT Conference broke down. However, it is believed that the USA will obtain a two year extension of its fast track legislation deadline until March 1993 and if the problems with agriculture can be negotiated, a TRIPS Agreement may yet be concluded by December 1992. At present the negotiations have hardly restarted, although some organisations have kept in contact with the Commission's negotiator, but with negative results.

The main problem is international exhaustion, wrongly treated as if it were within the usual range of national legislation and unfortunately not expressed in the neutral manner. The article concerning it should be deleted. Other problems are patentability, where there is a danger of excluding aspects of biotechnology as well as permitting exclusion on a permanent basis of pharmaceuticals, agrochemicals and food by developing countries; compulsory licences, which the developing countries wish to be in effect licences of right, especially for the sensitive sectors mentioned above; and anti-trust, not only outside the mandate for the negotiations but where the developing countries are pressing for any restriction of competition regarded as an anti-trust offence.

## **WIPO**

### ● **Patent Law Harmonisation?**

It is intended to hold a Meeting of Experts (originally to be a Diplomatic Convention) at The Hague in June 1991, but the results are in doubt. The United States has backed away from the original deal whereby it concedes first to invent and Japan concedes quicker examination, no pre-grant oppositions and broader interpretation of patent rights while Europe concedes a grace period. Moreover, the original possibility of persuading (because of impetus from the GATT negotiations) the developing countries to agree to liberal patentability, reasonable infringement rights and a 20 year term, is now receding.

It may now be asked whether it is sensible at all for the industrialised countries to attend such a meeting, let alone a Diplomatic Conference, while the position on patentability, infringement rights, term, anti-trust and compulsory licences in a GATT TRIPS Agreement remains in doubt.

### ● **Dispute Settlement**

In October, WIPO held a second session of the Committee of Experts on the Settlement of Intellectual Property Disputes between States. This session debated a memorandum of eight Principles which had been drafted by WIPO. Some countries, strongly led by Germany and supported by Switzerland and the EEC, wanted dispute settlement to be complementary to the dispute settlement procedures in GATT, while other countries led by India wanted WIPO to have exclusive jurisdiction over dispute settlement.

WIPO has now been asked to prepare the text of the provisions that could be included in a Treaty based on the eight Principles and taking into account the views expressed at the October meeting.

### ● **Hague Agreement**

The Hague Union for the International Deposit of Industrial Designs is currently under review by WIPO and changes to attract more members are being considered. The UK is not presently a member so that UK companies are unable to take advantage of the simple low cost route to registration of designs in Germany, France, Spain, Benelux and Italy which the Hague Agreement provides. The Federation has urged IPCD to take an active part in the development of the Hague Agreement with a view to eventual UK membership.

## **Biotechnology and Plant Variety Rights**

### ● **Reconciliation Closer**

Progress was made during the year on reconciling the differences between breeders of new plant varieties on the one hand and growers on the other. The Federation continued to support those who argue that there should be adequate protection for the seeds industry through the patent system, and it was encouraging to note that a consensus view appears to be emerging.

The UPOV Diplomatic Conference came to a successful conclusion on 19 March 1991. The twenty member nations unanimously agreed a new text for the Convention. This will give improved cover for plant variety right holders, and will make it easier to patent inventions in plant biotechnology.

Important changes include:

Extension of the minimum term of the right to twenty years (twenty-five years for trees).

Better cover for breeders for the harvested products of the crops grown from their seed (so imports of harvests from unlicensed seed can be prevented).

An option for countries to introduce protection for products directly obtained from harvested products (e.g. oils, flour).

Introduction of the concept of 'essentially derived' varieties. Where a new variety is predominantly derived from an existing variety (e.g. by repeated backcrossing or introduction of a single gene by biotech methods), the new variety will be dependent on the original variety and will not be able to be sold without the permission of the original breeder. This will not apply retrospectively.

Removal of the existing ban on protecting plant varieties by patents. This clears the way for possible amendment of the European Patent Convention.

The 'farmer's privilege' (to replant seed) has been codified. Governments may introduce exceptions to the breeder's right, allowing 'farmers' to use protected varieties for propagating purposes on their own holdings, provided the legitimate interests of breeders are safeguarded.

The outcome of the conference is seen as a useful advance in the protection available for innovative breeders. The new Convention is open for signature until 31 March 1992 and will come into force when ratified by five members.

### Madrid Protocol

- **100 Years of the Madrid Union**

The Madrid Protocol has still not been ratified by anyone, but discussions began on the draft Regulations which would need to be adopted before the Protocol could become a reality. A meeting was held in Geneva under the auspices of WIPO in November 1990 when the first 13 rules were considered. WIPO had proposed a joint document containing regulations both for the Madrid Agreement as well as for the Madrid Protocol and this proposal came in for some criticism from member States who presently adhere to the Madrid Agreement and at whose insistence a safeguard clause protecting the rights of the Madrid Agreement was included in the Protocol. A second meeting to discuss the Regulations is scheduled for May 1991, in Madrid, which will be combined with celebrations for the first 100 years of the Madrid Union.

### Unofficial Directories

- **Another Crop**

1990 saw the appearance of a host of announcements of forthcoming directories of patents and trade marks granted throughout Europe. Emanating mainly from Austria and Switzerland, these announcements took the familiar form of 'invoices', each of which incorporated a brief description of the patent or mark taken verbatim from official publications and was addressed to the owner. So many complaints were received from recipients that the Patent Office made representations to the Austrian and Swiss authorities, the former of which made investigations and promised action in any case where a recipient could prove loss. No such moves could, unfortunately, be made in Switzerland because this activity was not illegal there.

Very plausible attempts to persuade addressees to pay for insertions in directories, which are at best valueless and at worst non-existent, have been with us for some years but this was a new twist and both the Federation and the CBI published warnings in the hope that no one would be taken in by them.

