New Spanish Guidelines

An examination of the Spanish Industrial Property Registry and new guidelines for patents

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It has at times been said, and I think unfortunately quite rightly so, that there is insufficient knowledge of the Spanish Industrial Property Registry, which on occasions can lead to a deformation of its image. So I think that any opportunity which enables us to encourage an approximation toward the sectors interested, can contribute toward a better knowledge of the former and consequently allow cooperation which is to prove mutually beneficial, especially in the present circumstances, in which the Spanish integration process in the European economic area is going to impose certain modifications both in our administrative protection system of the different forms of industrial property and in the standards whereby it is to be ruled.

The Industrial Property Registry is aware that the profound transformations which of necessity must occur, call for prior advice by those who directly and indirectly are immersed in the specific world of Industrial Law. For this reason, on the one hand, it is furthering an approximation toward the specialized sectors of the doctrine on this subject, in order to obtain an improvement both in our legislative instruments and in the theoretical conceptions in force until now in our juridical regulations.

At the same time, I have to state with satisfaction the position maintained by Industrial Property Agents, who with their understanding are assisting the gradual introduction in the organization of the organization and operating techniques which present demands call for.

After making these prior clarifications, which on the other hand I believe are absolutely justified, and which enable us to contemplate the future reality which is approaching us with certain optimism, I am going to focus the subject of this exposition which, in principle, could well be divided into two parts, the present and the future of the Registry. In other words, what we are doing and what we intend doing.

Definition

To do so, we must start from the configuration given the Registry by Art. 1 of the Spanish Law 17/75 of 2nd May, which defines it as an "Autonomous Organization, depending on the Ministry of Industry and which is in charge of fulfilling the functions and exercising the activities entrusted it by the law itself, in a decentralization system". I do not wish here to go into the justification of this configuration, since it is sufficiently clarified in the Exposition of Motives of the said provisions, but I should like to indicate that the necessary adaptation of the office to the requirements derived from the great economic transformation and deep technological progress since 1929, date when the bylaw in force was promulgated, make it necessary to provide the organization with its own personality and patrimony which assisted the speeding up and agility of its working, without this implying a reduction in the juridical security of those administered, which in all events is guaranteed by the possibility of jurisdictional revision of registral resolutions.

Consequently, the present reality of the Registry lies in the juridical configuration to which I have just referred and in the aims and functions which Art. 2 of the Law of Creation attribute it, and which are no other than the realization of the administrative activity corresponding to the state on industrial property subjects, and the action as the instrument of technological policy in this field.

This double attribution of aims enables us to distinguish between two aspects of the Registry. On the one hand, that referring to the office rendering the public service of industrial property protection and, on the other hand, that which attends to technological development. I take the liberty of underlining a third aspect which affects the legislative reform which necessarily must be made, due to the deficiencies and important gaps in the current bylaw, which constitutes the last part of this exposition, and corresponds to what in its title we have called "future prospects of the Registry".

After centering in this way the subject we are going to deal with, the first aspect which will enable us to become acquainted with the current reality of the Registry is that which contemplates it as the legal instrument which develops the activity falling to the state regarding the recognition and maintaining of the different forms of industrial property.

THE REGISTRY AS AN ORGANIZATION ENTRUSTED WITH PERFORMING THE ADMINISTRATIVE ACTIVITIES FALLING TO THE STATE ON INDUSTRIAL PROPERTY SUBJECTS

The explanation of the activity of our organization must of necessity be preceded by a series of

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statistical data which I am going to seek to synthesize, not only to avoid the logical fatigue of the audience, but also because these figures will be fully published once the Report of the Organization has been approved by its Managing Board.

Referring exclusively to the 1979 financial year, the Registry's activities developed as follows:

Patents

During the last financial year, 10,859 registration applications were filed, of which 8,966 were of foreign origin, i.e. 82.57% of those presented, and only in 8,429 priority was claimed, a figure which accounts for 77.63% of the total applications.

On the other hand, the number of files resolved in this form amounted to 10,806, of which 10,212 were concessions, a figure which is the equivalent of 94.51% of the total expressed. It must be stressed that of the total of applications mentioned, only 1,893 were of Spanish origin, which means 17.43%. The volume of patents concessions during the same period, grouping them according to the applicant's country of origin, gives us the following figures: 1. U.S.A. with 2,241 files; 2. Federal Germany with 1,727; 3. Spain, with 1,569 and 4. France with 1,362 patents granted.

Finally, the breakdown of patents granted in the different sectors of technology, according to their arrangement by sections, in keeping with the International Classification in force, attributes the first place to section "C", "Chemistry and Metallurgy", with 2,955 patents, followed by section "B", "Sundry Industrial Techniques, Transport", with 2,435 patents granted.

With regard to *Utility Models,* the number of registration applications amounted to 6,725 in 1979, of which the priority was claimed in 824 files, which is the equivalent of only 12.26% of the total stated. This low percentage is justified by the circumstance that in our country the number of models applied for and granted, of Spanish origin, greatly exceeds those of foreign origin. Otherwise, we have to say that 6,190 files were settled, of which 5,355 correspond to registration concessions, which accounts for 86.52% of the said total.

Finally, the volume of utility models of Spanish origin, applied for and granted in 1979 is considerably higher than that of foreign origin and offers an inverse proportion to that noticed in patents, because it represents 82.24% of the total applications and 82.69% of the total concessions.

Regarding *Models and Industrial Drawings,* the number of applications amounts to 2,360 and 431, respectively. This figure is slightly down on those in 1978, regarding models which confirms the tendency initiated years ago. Regarding industrial drawings, although the number of applications is higher than those filed the previous year, it is still below the average of the last three years.

Concerning *Distinctive Signs,* it is clear that the greatest volume of work is provided by trademarks. The number of registration applications reached 32,175 in 1979, of which 24,306 correspond to trademarks of products and 7,869 to trademarks of services. Those of foreign origin amounted to 3,447. The volume of priority claims with respect to these deposits is 144 for the first group, i.e. for product trademarks, and nine for service trademarks. In this registration form, a considerable increase has been noticed in the number of applications with respect to 1977 and 1978, in which the figures did not exceed 30,000 applications, in round figures.

In other aspects, we should stress that the figure of trademarks granted in 1979 amounted to 45,347 this exceeds the number of applications in the same period, because in this financial year the backlog existing has been completely absorbed, and a good number of trademarks applied for in previous years were also settled. Finally, in the resolutions–concessions ratio, the number of the latter represents 59.52% of the former, hence the volume of registration resolutions in 1979 amounted to 76,191.

Regarding *International Trademarks, Trade Names and Establishment Signs.* In 1979, protection in Spain was applied for of 5,131 international trademarks, which shows a slight increase compared with the previous year's figure of 4,892 files. The volume of trade name registration applications rose to 3,265 of which 2,727 have been settled, and 1583 granted, which proportionally are equivalent to 58.05% of the total files handled. Finally, and regarding establishment signs, 3,564 were applied for, and 2,674 were granted. This means 81.53% of the results were 3,280.

The numerical explanation which I have just referred to goes to show the great activity which the Registry performs in this specific task, and serves to justify the Mechanization Scheme which I consider advisable to deal with, although only briefly.

MECHANIZATION

The need for mechanizing the Registry is justified by the annual volume of cases handled. This volume is broken down as follows:

83,000 registration resolutions.

1,632,500 other resolutions and incidences.

470,000 internal inquiries.

1,320,000 external inquiries.

281,000 applications, resolutions and incidences published in the Official Industrial Property Gazette.

76,200 insertions in the Annual Indexes and files of approxinately 2,300,000 files.

The correlation between handling these files and the need for automatically processing them has been fully realized by nearly all developed countries forming part of the convention of the Union of Paris, which commenced their mechanization in the 1960's, and which currently is in position to provide speedy updated information, articulated according to data processing.

Record Data

In Spain, as from 1967, coinciding with the application of the new International Classifications, the Registry, through the Mechanizing Section of the Ministry of Industry, began to record application data which is due course could assist mechanizing the administrative processes performed. Alongside this, and in keeping with the conclusions

contained in studies on administrative organization, entrusted to different consultants, the Registry proceeded to draw up a mechanization project to enable it to acquire a computer to process the information already available in a suitable support. This process has culminated in the resolution adopted on June 2, 1980, by the Interministerial Data Processing Commission, which has authorized the tender conditions to apply in the purchase contract.

On the other hand, and in order to be able to obtain complete utilization of the time-machine available of the new equipment from the moment in which it is delivered by the successful bidder of the contract, the Registry has been carrying out a series of jobs throughout 1978 and 1979 for preparing files in magnetic supports, necessary for forming the basis of file data, which in turn is essential for the administrative follow-up of formalities, inquiries of the legal situation and bibliographic data, for recovering similarities and for obtaining the original to be published in the Official Industrial Property Gazette (B.O.P.I.).

Performing these works has enabled the Registry to adopt a calendar for enforcing the mechanizing scheme, whose staggering enables working to continue without disturbing in any way the administrative units of the organization. At the same time it can partly maintain the traditional system of information to the public without brusque alterations.

This new system, which was announced and whose form of application has been included in circular 1/1980 of the organization, published in the B.O.P.I. of June 1, can be qualified as innovating and at the same time cautious. The first qualification is possible because it pursues the introduction of new mechanized registry-books which will gather all the data of the files of the different registrations forms, abandoning hand annotations. The second is possible because the system is only applied to begin with those files whose presentation date in the Registry is after the first of May of the current year, although successive stages are foreseen in which its application will be extended to files prior to the date mentioned.

Furthermore, the mechanized system starts from setting up a card system of all files in force which enable both the payment of maintenance fees to be controlled, and the periodical determination of cancellations and expiries as they occur. It is completed regarding distinctive signs with the names available of files which are in force, being handled, or which can be rehabilitated through their expiry being published within the last three years, and regarding inventions with their bibliographic data published in the last 12 years.

THE REGISTRY AS AN INSTRUMENT OF THE STATE'S TECHNOLOGICAL POLICY ON INDUSTRIAL PROPERTY SUBJECTS

The exposition of the second of the functions granted the Registry by Law 17/75 calls for a preliminary precision and it is that not all the technological development policy is attributed it on an exclusive basis. In this point it shares its competences both with the General Directorate of Technology and Industrial Security, and with the Centre of Industrial Technological Development (CEDETI).

Strictly speaking, it can be said that the technological policy of the Registry is at present limited to technological information which, being only one of the aspects of the former, is nonetheless no less important.

Indeed, one of the essential reasons which led to the restructurization and change in the legal nature of the Industrial Property Registry, was the need that the organization should have a suitable technological information service, which would make possible the effective spreading of the valuable information it has accumulated.

It should not be forgotten that legislation on patents pursues as its basic objective, a greater technological development of the community and that the concession for a limited time of exclusive rights on the patented object calls for a prior communication, through depositing the respective specifications of the invention.

Hence, the technological information accumulated in the Patent Offices reaches an outstanding value which demands being kept, classified and adequately publicized, which can be performed both vertically, i.e. from basic research to applied research, and horizontally, i.e. from one social-economic sector to another.

The comments we have been making serve to emphasize that access to the sources of technological information acquire even greater value if the documents of patents available are not limited to those registered in the actual country, but which also include those granted by the most developed countries. For this reason, the Registry, aware of this reality, is developing its activity in this field in two directions.

It is setting up a permanently updated documental fund, fulfilling the informative functions indicated in the law, and, faciliting the media interested in access to this information.

The documental fund of the Registry relies as primary documents on a library which includes the B.O.P.I. of our office and the official gazettes of foreign patent offices, with summaries which assist the search on an international level, and with a collection of all documents of patents and models granted in Spain, all those published from 1956 onward appearing in a microfilm support. It also has a collection, also microfilmed, of all the documents of patents granted from 1970 in the U.S.A., France, the United Kingdom, Federal Republic of Germany and Switzerland. Secondary documents are made up of a collection of annual indexes of Spanish patents and models with references of the registries, published in numerical order of concession, by alphabetical order of applicants and by technical sectors of the international classification.

Foreign Data Bank

For investigation and access to the foreign patent fund, the Registry has the bank of data furnished by the International Patent Document Cen-

tre (INPADOC), which contains the bibliographical references of the documents published in over 40 countries, which represent about 90% of world technology patented.

However, access to the Spanish documental fund at the moment presents greater difficulty because classification work of patents and models on the last level of detail have begun very recently. In fact, they are still being carried out. This means that the most important means of access to information is considerably decreased by not being able to specify accurately the objects of inventions and therefore not knowing the specific sector of technology to which they belong. Nevertheless, it is the intention of the Registry to complete the reclassification of the Spanish documental fund entirely within approximately three years. This important aspect of technological information then will be in a position to render a service to users.

Finally, regarding documental diffusion, which is at present reduced to the reproduction on paper of the original document, reproduction work is being tackled on microcards of all the documental fund after 1950, and all the documents admitted for handling to be published in the B.O.P.I. These works, completed with magnetic tape recordings of all the legal life data of files will, through the application of suitable data processing, enable registry information to meet the clarify, extension and speed which the sectors concerned demand.

FUTURE PROSPECTS OF THE INDUSTRIAL PROPERTY REGISTRY

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As repeated throughout this exposition, in the last 15 years Spanish Industrial Property Law has been subjected to great changes. Prior to this, and apart from the Convention of the Union of Paris of March 20, 1883, we can affirm that practically no movement of international cooperation in the industrial property field succeeded in obtaining the desired fruits. Hence, industrial property was regulated almost exclusively by the national laws of each country.

This lack of positive results on an international level was due among other causes, to the fact that each industrial property system grew in each country, being protected by the principle of territoriality, taking the international consequences which could be derived from the granting of a trademark (and especially) of a patent into account very little, and without adopting measures which could satisfy and reconcile conflicting interests and claims posed on a supranational level.

However, in recent years this situation has changed. First, the growing interpenetration of international markets has varied general economic approaches, increasing the interest and importance of these markets. It has therefore compelled industry to seek protection through patents and trademarks in the greatest possible number of states.

Second, and as a result of the foregoing, the very economic function of industrial property rights, and essentially of patents, has varied. As against the direct industrial or commercial exploitation of the patented invention, the indirect exploitation arises with increasingly greater drive, through license contracts. Thus, companies prefer to divulge their technology rather than exploit it on an exclusive basis, so as to create new links which will bring them greater profits.

For all of these reasons, as Gomez Segade affirms, the need has arisen of retackling patents rights with more modern layouts which reconcile the need for rapid and effective protection of modern technology with the flexibility and strictness necessary to prevent blocking the industrial sector, adopting resolutions which organize thoroughly international cooperation with a great geographical basis, for granting patents of invention.

The fruits of the efforts made to achieve those objectives have been the Patent Cooperation Treaty (PCT), the Convention on the Concession of European Patents (European Patent Convention), and the Convention on Patents for the Common Market (Community Patent Convention).

The objective of the PCT is to assist depositing the same invention in all those countries in the world in which, being parts of same, the applicant wishes to obtain protection. This is obtained by presenting a single application, called an international application, in any of the national patent offices of a contracting state (receiver offices) and indicating in the request the states in which they wish to obtain a patent (appointed offices).

European Patent

The European Patent Convention establishes a sole concession procedure of the so–called European Patent, which in turn branches out into a handful or bundle of national patents. The Community Patent Convention regulates uniformly the effects of European patents granted by virtue of the previous convention, so that it will give rise to a single patent, which will be transmitted, will expire and be cancelled in relation to all these states uniformly.

Thus, compared with the previous situation in which an inventor seeking to protect his invention in more than one country had to apply for as many patents and countries concerned, with the consequence of lack of security, having to pay different and numerous fees and duplicating the work of the different national offices, a new situation now arises. It is basically characterized by the following elements:

1. The Prior Examination of Novelty is speeded up of Patent Offices.

2. In countries in which the system is followed of no prior examination, the granting is made possible of strong patents of bigger economic value.

3. The costly expenses are reduced of companies holding patents in relation to the same invention.

In short, with this new international system, it is sought to make protection quicker and less costly through patents of the same invention in several countries, a system being established that when it comes entirely into force, it be regulated by a series of texts, regarding the EEC, which, as Fressonet has emphasized, form five concentric circles.

The central circle will be made up of the national patent and the remaining circles will be formed by the community patent, the European patent, the PCT and, finally, the great circle of the CUP.

Naturally, the enforcement of some of these treaties in the countries which have signed them, involve the modification of national legislation.

With this we do not mean that national legislations will necessarily have to be modified of the member countries of these treaties. These supranational provisions except in a few cases leave national legislations intact. In this way, any country may sign these conventions and keep its internal regulations unharmed. But although this is possible, it is obviously not desirable. Indeed, the application of these texts, provides a considerable change in the protection processes of inventions in European countries. For this reason, in practice, these countries have begun a harmonization process of internal law with international standards, so as to avoid the risk of seeing patents coexist in the same territory which, bearing the same concession date, are subject to different juridical regimes.

The results of this harmonization process and reform urged by these conventions have been promptly seen. This has happened in the following countries:

Germany – After promulgating the new Patents Law on January 2, 1968, it was modified on December 3, 1976.

Switzerland – With the Federal Law on Patents of Invention of June 25, 1954, revised on December 17, 1976.

France – Whose legislative path I believe is very interesting for our country, which issued Law No. 1 of January 2, 1968, on Patents of Invention, completed by Law No. 489 of June 11, 1970, and recently modified by Law No. 742 of July 13, 1978, and the Decree no. 822 of September 19, 1979, concerning applications for patents of invention and utility certificates, to the concession and keeping in force of these titles.

Finally, the United Kingdom, Sweden and the Netherlands, which have updated their laws in the late 1970's.

Spain's Position

In view of this reformist and unifying movement, one could ask, What should Spain's position be with respect to the European patent system? In our opinion, this position is determined by the process of our country's integration into the European Economic Community and, by the set of advantages and disadvantages involved in the adherence to these instruments, which will enable us to graduate the requirements it would be desirable to meet for our membership to take place in optimum conditions for Spanish industry and trade.

It is undeniable that Spain forms part of the cultural, social, political and economic area of the remaining European countries. And our vocation is also known of joining the EEC, after our formulating a petition in this connection. From these assumptions, it is easy to deduce that Spain's current absence in European patent institutions far from favors our interests and can even damage them. In the same way that thanks to her active presence in work of the Diplomatic Conference in Munich, Spain succeeded in introducing wide reserves with respect to chemicals, pharmaceuticals and foodstuffs, its subsequent participation in the Interim Committee, which was in charge of setting the European Patent Organization into practice, would have been desirable. By being left out, we run the risk of a whole system being set up without taking our particular interests into account.

It must, however, be made clear that with this I do not mean that Spain is already going to sign these conventions. First, this is a subject which at present is being studied in the Industrial Property Registry. And I can affirm, without any doubt whatever, that no measure will be adopted without duly assessing the interest of our industry. Second, the proposal would correspond to this organization, in any event, but never the decision reganding our integration in European patent law.

The fact is, and this is what we are guided by, that the standards contained in the conventions currently in force, constitute a relative harmonization of material patent law in European countries, which is why, as we have seen, they have adopted the necessary measures to reform their national legislations and to adapt them to the new guidelines.

And it is also true that, irrespective of our possible subsequent incorporation into these conventions on patent subjects, our national legislation must adapt itself to new currents which are circulating in Europe on industrial property matters. This is so because our legal provisions are antiquated and obsolete, and do not serve to solve a large number of the problems which currently arise. Also, only in this way will home industry enjoy adequate protection when it seeks to compete in foreign markets. It is obvious that the protection which our legislation grants them on industrial property, is absolutely insufficient and unsure. Additionally, since Spain is immersed in the European area, to avoid deficiencies and damages for our economic interests we must come as close as possible to the European system.

The reform of Spanish legislation should be made, as Bercovitz has pointed out, establishing a transitory stage which, starting from the present situation, foresees the changes which are to be gradually introduced.

Need to Modify

This need to modify our legislation has also been recognized and clearly and categorically expressed by the Ministry of Industry and Energy. Hence, in 1975, the then Minister of Industry, Alvarez Miranda, declared in the Cortes (Spanish Parliament), "The Industrial Property Bylaw has become out–of–date with relation to today's needs. The speeding up of technical progress, the diffusion on a world level of discoveries and patents and correlations between the different branches of knowledge have introduced such a number of variables and

prospects, that we are compelled to tackle the immediate modernization of the administrative and juridical instrument which regulates activities in this field of our technological future".

Consequently, the reform should affect our Industrial Property Bylaw comprehensively, both regarding the regulating standards of Distinctive Signs and Inventions.

Referring to distinctive signs, it must be said that international achievements in this point are very inferior to those obtained regarding patents.

Despite this, there is no doubt that in the future reform, the guidelines laid down in the *Memorandum on Community Trademarks* will have to be taken into account, thereby adapting our legislation on distinctive signs to the criteria which the European authorities will presumably adopt. And, basically, attention will be devoted to such subjects as the creation of the right over trademarks, on the basis of the combination of principles of notoriety and registration, specified in the case of dispute between notoriously used trademarks and that of the trademark registered subsequently by the principle of consolidation which will prevent the impugnation of a trademark registered in good faith once a given period of time has elapsed; the compulsory use of the registered trademark to avoid discrepancies between the registration and extra-registral reality, and the assignment and trademark license, all subjects not regulated, or what is even worse, regulated deficiently in the Industrial Property Bylaw, as recently explained by Fernandez-Novoa.

Regarding the reform of legislation on inventions, above all it should be stressed that Spain already enjoys a wide reformist tradition on the subject. Indeed, as is well known, two preliminary projects have already been drawn up in our country — one by the Institute of Political Studies and one by the Official Commission of the Ministry of Industry. However, for reasons known to all, neither of these preliminary projects has become law.

These two preliminary projects, although generally speaking they involved an undeniable improvement in the situation currently existing, have been superseded, at least in some of their points, as a result of the advances which have been produced regarding patents on an international level, which leads us to tackling future reform again.

Administrative Procedures

Entering into the aspects of the reform of patent legislation which especially worries the Industrial Property Registry, above all we must mention the problems of the administrative procedure of granting patents. Our system of granting patents without any type of examination or prior report regarding the state of prior art is an aleatory system because the value of patents depends on their appraisal, without the administration guaranteeing it at all. It is furthermore dangerous for third parties, as they do not know the real value of the patented invention, and whether or not it is worth obtaining a license for that invention.

However, it does not appear advisable to adopt the opposite system of subjecting all patent applications to a thorough examination, which are presented to the Spanish Office. This is for several reasons.

First, because, as already put forward in the preamble of the Preliminary Project of the Institute of Political Studies, "the existence of a prior examination of the essential requirements in no way guarantees that the patents granted are valid". Second, setting up that system would imply a technical and human effort which the Registry could not undertake today. Indeed, above all, it would be necessary to have a sufficient number of specialized personnel to attend to the volume of work which is foreseeable. Furthermore, a document center would be necessary, with duly classified information, enabling it to be determined with sufficient guarantees whether or not the invention is new on a world level.

In view of these difficulties, to which we have to add those derived from the personal experience accumulated by the countries which follow the system of prior examination of the invention it is wished to patent, we can affirm that this system is not the most suitable one, at least for the moment, for a country like ours.

However, these disadvantages should not prevent us from seeking to adopt a system which in some way strengthens the economic value of patents. And this could be a mixed system, like that regulated by the French Law on Patents of Invention of January 2, 1968, completed by the Law of June 11, 1970, and finally modified by the Law of July 13, 1978, and by the Decree of September 19, 1979:

These provisions lay down a patent concession system whose key part is made up of the documental report on the state of prior art.

The report on the state of prior art implies quoting documents of patents and literature associated with them, within technical control, both of the invention for which it is applied, and in similar ones.

Naturally, the documental report system is simple, quicker, and less costly than the preliminary examination, as what happens that a report is included in the file in which the elements of the state of prior art are incorporated, liable to affect the patentability of the invention. And furthermore, it has the advantage of granting greater reliability to patents already granted, without having to hinder the examination procedure, whereby Spanish industries may have the necessary means available to check the genuine value of patents granted in Spain, assisting them in the event of their impugnation before the courts and to appreciate the value of their own patents, and consequently to decide with full knowledge of the facts whether or not they are interested in protecting themselves in other markets.

Possible Solution

It is obvious that we also lack the material and human means to be able to carry out this report on the state of prior art. But this would not be an unsolvable problem. Indeed, the possibility could exist of utilizing the services of the old Interna-

tional Patent Institute in the Hague (currently the General Search Directorate) to obtain it.

However, this solution still poses problems. The former Institute in the Hague, apart from being the Body of the European Patent Office, is also the Organization of the PCT, as it is the authority entrusted with international search. For this reason, using it outside the PCT system would be almost impossible.

From what we have said until here, it can be gathered as a conclusion that a reform of the patent granting procedure in Spain to obtain a strong patent appears very difficult outside the framework of supranational law and more precisely outside the PCT.

However, the PCT would enable this prior report to be obtained, as its Article 15 foresees that if the legislation of a contracting state so allows it, both the holder of a national application and the national office itself, can subject that application to a search of the type of the international search, which is made in the same conditions as if it concerned an international application.

Furthermore, the PCT will allow the formation and enrichment of a documentation center, thanks to the possibility which exists of obtaining a translation of applications the international way and of reports drawn up by the administrations entrusted. This Center, as Bercovitz has pointed out, could be extended from the start to all technological publications written in Spanish and to the translations of foreign patents with legal effect in Spain.

Finally, the PCT also offers interest through its connections with the European Patent Convention. There is an organic relationship between these two conventions, consisting in the fact that the former International Patent Institute of the Hague is a Department linked to both institutions with functional relations which foresees various possible combinations between International PCT applications and the European Patent.

Summing up, this explains that although the aims and effects of the Patent Cooperation Treaty are relatively modest, this can be very beneficial for our country due to the particular circumstances which concur in it.

Examination

Regarding the official examination which the Spanish Office would subject the patent application to, it should be stressed, as the Registry has already anticipated on previous occasions, that this examination could affect the following points:

1. The formal requirements, demanded by Law.
2. Invention unity.
3. The manifest absence of patentability requirements. Basically, the administration could reject a patent application when inventions manifestly and notoriously lack novelty as already set forth in Art. 48 No. 6 of the Industrial Property Bylaw. It should be stressed that the documental report would assist the application of a provision including the content of the present provision to an enormous extent (See Art. 48, No. 6).

Furthermore, the Registry could turn down patent applications when the lack of an industrial nature of inventions were notorious. Consequently, the possibility would disappear which our Industrial Property Bylaw establishes of granting economic–commercial patents and on scientific discoveries, a possibility which, anyway, is more fictitious than real.

On reaching this point, we should say that this strengthening of the administration's powers would not mean that an examination would be made of the patentability requirements. Quite the opposite, the administration would only act when, in the light of the documental report, it is gathered manifestly and outstandingly that the invention it is sought to patent obviously lacks one of these requirements. So, applications would only be turned down for these reasons in very sporadic marginal cases. And, naturally, those applications would be rejected whose specifications or claims did not permit a documental report to be drawn up.

Another problem which our future legislation must tackle is that regarding the patentability of chemicals, pharmaceuticals and foodstuffs. There is no doubt that the pure and simple acceptance of the patent of a product will cause serious disadvantages to our industry. Perhaps for this reason the solution would be the non–patentability of the aforesaid products, but with a provisional nature, and on the understanding that this situation would be difficult to maintain indefinitely due to the obvious pressure of European legislation.

Finally, we must point out that the Registry believes it advisable to maintain the Utility Model, a figure which adequately answers our inventor's needs. It protects smaller inventions who lack sufficient inventive height or importance to be protected through patents, inventors only being demanded relative novelty, which would exempt them from the documental report, although naturally they will enjoy protection with less duration.