responding publication outside of Peru.

Patents are granted for ten years from the issue date but must actually be worked in Peru in two years, subject to an extension of the compulsory working period for another two years if this is requested before the original two-year period has expired.

Any person may obtain a compulsory license when the patentee is importing the patented product into Peru or when local working is insufficient to meet the demand. Such a licensee must work the patent within six months.

A patent owner must sell his product to anybody who demands it and refusal to sell or quoting of too high a price are causes for cancellation of the patent.

For Peruvian inventions, the inventor must be named but this does not apply to foreign inventions

Confirmation patents are no longer granted. Summaries of applications are published within thirty days in the Peruvian Official Gazette and may then be opposed within thirty working days. There is also novelty examination by the Examiner.

Designs and industrial models are protected for five years from date of issue which term is not extendible but working is not necessary. Applications for designs and industrial models must be filed no later than one year after any application outside of Peru.

The law now provides for compulsory registration of trademarks. Use of a trademark without registration constitutes a violation of the laws. Trademarks are registered for five years from the registration date and may be renewed indefinitely provided they are in use. Trademarks first registered before April 27, 1971, may be renewed without the requirement of use, but this does not apply to trademarks applied for after January 26, 1971. Trademarks used without registration will have a priority of one year until January 26, 1972, for registration against any other applicant. Certification marks and collective marks are recognized by the new law, but service marks are no longer allowed and service marks previously registered will not be renewed.

Registration of trade names is not required but optional.

All industrial property rights may be licensed but such licenses must be recorded. License agreements or assignments to a person or entity domiciled in Peru must be previously approved with the Office of Industrial Property, and if payment abroad is provided, the Ministry of Finance must also approve. No such approval is required for assignments or licenses where the parties are not domiciled in Peru.

All license agreements made prior to the new law must be recorded before April 24, 1971, and failure to do so may cause a fine.

ARGENTINA

The Argentine Supreme Court decided some time ago that importation into Argentina of a pharmaceutical substance obtained outside of Argentina through a process patented in Argentina does not represent patent infringement. Nevertheless we are informed that under Argentine practice intermediates for pharmaceutical products can continue to be patented provided they are new.

**About the Editor of the Column: Norman St. Landau is International Counsel for Johnson & Johnson, New Brunswick, New Jersey.*

THE NEW CANADIAN PATENTS LAWS PROPOSED

by
*Philip T. Mitches**

Early in the month of April, 1971, the Economical Council of Canada issued its long awaited report on Intellectual and Industrial Property.

Some ten years earlier the Honourable J. L. Ilsley headed a Royal Commission inquiry into the Industrial and Intellectual Property Laws of Canada and suggests, in one of his reports, major revisions to Canada's patent legislation.

The recommendations of the Ilsley Commission (as it is commonly known) were never implemented and now a decade later the same Industrial Property Laws have been reconsidered and in particular the thirty-five year old *Patent Act*.

The report represents a culmination of some four and one-half years of work on the part of the Council in response to a specific reference from the Government of Canada. In accepting this reference, the Council recognized the importance of bringing the key topics with which the reference was concerned within the ambit of the long term economic objectives to which the Council's attention was directed in its legislative terms of reference.

These terms of reference were set up on a certain reference and press release by the President of the Privy Council of Canada in July, 1966, and are summarized as follows:

> "In the light of the Government's long-term economic objectives, to study and advise regarding:
> (a) the interests of the consumer particularly as they relate to the functions of the Department of the Registrar General (now the Department of Consumer and Corporate Affairs);
> (b) combines, mergers, monopolies and restraint of trade;
> (c) patents, trade marks, copyrights and registered industrial designs."

The Economic Council was further requested to carry out studies that would be,

> "... a first and necessary step in the determination of a cohesive economic policy in relation to these important matters considered as a whole and in relation to each other with a view of bringing the policy in these matters into harmony with the overall economic policy of Canada and the needs of the consumer and other important segments of the economy."

The specific problem in Canada sighted by the Commission is that more benefits accrued to foreigners from the Canadian patent laws than to Canadian inventors. Of approximately some 304,360 patents in effect in 1967 only five per cent were owned by

Canadian firms or individuals and of the rest nearly seventy per cent were of United States origin and of the remainder most were European. Further only fifteen per cent of the issued and valid Canadian patents had actually been worked in Canada and only about twelve per cent of Canadian patents held by foreigners had been licensed to Canadian firms.

The Council stated that it was troubled by instances where "the patent protection makes it possible for the imported article to be sold at a significantly higher price in Canada... than sold in other countries, particularly the country of origin. In order to prevent such abuse the Council recommends that "the basic patent right be re-defined so that neither the holder of a Canada Patent, nor his licensees, could prevent the import into Canada of a patented article or product" from any other country where the article also enjoys patent protection.

Further in order to assist more equitable pricing of patent products in Canada as against the country of origin compulsory licenses to Canadian manufacturers on a non-exclusive bases would be granted after five years from the patent application date (under the present legislation, excluding patents relating to food and drug which are under special provisions and as such an applicant can make application to the Commissioner of Patents for a compulsory license as soon as the patent is issued) compulsory license whether exclusive or non-exclusive can only take place if there is an "abuse" after three years from the date of issue of the Canada Patent pursuant to section 67 of the Patent Act. Such "abuses" include among other things not working the patent in Canada "on a commercial scale" without satisfactory reason provided of course that it is "one capable of being worked in Canada".

The Commission stated some five criteria that are of particular importance in the assessment of the Canadian Patent system as a whole namely,

(a) Relative to the size of its economy, Canada has an unusually large number of patents outstanding.
(b) For many years, only about 5 per cent of Canadian patents granted have gone to Canadian nationals.
(c) Only about 15 per cent of recent Canadian patents granted have actually been worked in Canada. However, nearly half the total patents were worked outside of Canada (a small minority of this group being worked both inside *and* outside of Canada). Close to another half of the inventions covered by Canadian patents were not worked anywhere in the world.
(d) Some 12 per cent of Canadian patents held abroad have been licensed to Canadian firms, and some 10 per cent of Canadian patents held in Canada have been licensed to other Canadian firms.
(e) Worked inventions covered by Canadian patents are typically first put to use abroad some significant time before the Canadian patent is granted.

Some of the basic recommendations of the Council with respect to patent system are as follows:

1. That the administrative structure of the patent office should be re-designated that the Commissioner of patents become "Commissioner of Intellectual and Industrial Property" and embrace the duties of the patent, trademark, copyright, and industrial design (design patent) Acts.
2. Canada patents should, in the future, be granted on a first to file rather than a first to invent bases.
3. That the present grace period for prior use — the two year period (in the United States one year period) during which the invention may be used or sold and still be eligible to receive a patent grant — should be eliminated.
4. The patent term should run from the date of application (rather than date of issue) and be the 17 year term.
5. Publication of patent application should take place by the patent office within 12 months after the filing of the complete specification.
6. That Canada should continue its efforts to have the PCT instituted.
7. That there should be a reporting system to the Commissioner of Patents with respect to all compulsory and voluntary licenses pursuant to Canadian patents..
8. That a renewal fee system should be instituted after the period of five years of the patent's life.
9. The patent rights should be so defined that neither the holder of a Canada patent or any licensee thereunder should have the right to prevent the importation into Canada by any person of the patented article, or an article made by the patented process, from other countries where the article or process enjoys patent protection.
10. The patent rights should also be so defined in the Act that the patentee is accorded only a basic exclusive right, without any supplementary right to engage in practises prohibited under anti-trust and competition policy legislation.
11. All Canada patents should normally become eligible for an automatic non-exclusive license to manufacture in Canada five years after the application for patents.
12. It should be provided that a compulsory license in the case of patents for "complementary technology" may be granted by the Commissioner of Intellectual and Industrial Property, subject to appeal to a new Patent Appeal Board, before the expiry of the five year "head-start" period specified above for other patents.
13. A Patent Appeal Board should be set up to justly and expeditiously deal with appeals from certain decisions of the Commissioner among these would be appeals on the matter of "complementary technology" patents and in that respect the board would be the court of last resort. *"Complementary technology" patents are those patents which "by reason of the refusal of the patentee to grant license or*

licenses on reasonable terms.... the working or efficient working in Canada of any other patented invention which makes a substantial contribution to the art is prevented or hindered..."

Specific recommendations are made with respect to the proposed system of compulsory licensing, which the Commission assumes should operate "with a fair degree of certainty and speed" and in that respect makes the following recommendations:

(1) A basic royality rate should be given a legislation or regulation and this should be said in terms of the percentage of the actual (or, if necessary imputed) selling of the relevant articles or components.

(2) Individual patentees should be given the opportunity to petition and subsequently appeal for higher rates only on specific grounds of non-recovery from Canada of Canada's share of innovation costs (defined to embrace clearly the concept of equal total involvement process) which considers all factors both foreign and domestic which have resulted in the invention.

(3) At the discretion of the Commissioner and in the light of experience gained in the operation of such compulsory licensing system, the basic royality rate may be adjusted, possibly in such a way as to allow for special rates for certain industry and product categories.

Patent protection on computer programmes (software) be denied as this is the only socialibly desirable way for Canada to gain from the information revolution. In lieu of computer software patents a government public periodical up-date catologue of its own computer software programmes and utility as well as those of other producers who wish to be represented in the publication be prepared and distributed.

A review of the recommendations with respect to the commission's comments on industrial designs (design patents) copyrights, and trade marks will follow in the next issue.

**About the Author: Philip T. Mitches is with the firm, Mitches and Company, London, Ontario, Canada.*

THE FINNISH DESIGN PROTECTION ACT EFFECTIVE ON APRIL 1, 1971

*Editor — Pertti Kolve**

Finland has been until now one of the few industrially developed countries, which has not had any Design Protection Act. Now on April 1, 1971 we have got as a result of a co-operation with Sweden, Norway and Denmark a Design Protection Act which corresponds with the demands of international value. The Design Protection Legislation is almost identical in all of the Scandinavian countries which is of course quite an advantage when handling with these matters.

A short survey of the new act will be made in the following introduction.

DEFINITIONS

The term Design means the prototype embodying the appearance of an article or the prototype of an ornament. This means that the protection granted covers only the external appearance of an article and not the technical function of it as in the patent protection. Thus it is not possible to file any description in addition to the picture but the picture alone determines the scope of protection. It is therefore very important that the picture or pictures showing the design are clear when filing an application for registration. It is also possible however to deposite a prototype of the design together with the picture which may have quite an importance when deeming the scope of protection in case of an infringement. The definition of design covers as well decoration designs as designs with practical purpose.

NOVELTY

A design shall be registered only if it substantially differs from what is known prior to the filing date or the date from which the convention priority is claimed. The term "known" shall be deemed to cover anything that has become available to the public whether by reproduction, exhibition, vending or otherwise anywhere in the world. A design that is not yet available to the public but which is later made available shall be considered known in so far as the design is disclosed by an application made in Finland for a patent or a Trade Mark or a design registration which application is made or under the provisions in that respect is to be considered as having been made prior to the filing date concerning the design application which is tried. There are only two exceptions of the requirement of a total novelty namely a) the design applied for has been made public through evident abuse by a third party or b) the design has been shown at an officially recognized international exhibition. It is demanded that the application in these cases shall be filed within six months of the publication.

REGISTRATION

The registration of a design may be applied in the Patent and Registration Office by the creator of it or his assignee. A deed of assignment verifying applicant's right must be filed if he is not the creator. An application may comprise several designs on condition that the articles are related as to manufacture and use (up to 20 designs). Bulk registration is however not applicable to ornaments. The design registration is valid for five years counted from the date when the design application was made and can by requests be renewed twice for five years each time.

PUBLICATION AND OPPOSITION

If the application documents are complete and no obstacles to registering the design are found to exist the application shall be published. An opposition may