

Editorial

IT has now been decided that the second session of the Diplomatic Conference on the Revision of the Paris Convention will be held in Nairobi from 28 September to 24 October 1981. After the unhappy first session in Geneva last year, when the result of one month's deliberations produced little more than the election of the chairman and the conference voting rules, this presents an opportunity for all countries to bring the negotiations to a successful conclusion.

The Paris Convention, first concluded in 1883, has been for nearly a century the cornerstone of international patent regulation. This Convention established "national treatment" for all foreign owners of patents or their licensees coming from the members of the Union, subject to certain minimum rules. The rights of the applicants were preserved by the procedural device known as the "priority year," whereby a national who has filed an application in any member country will be given the same priority date for any similar application in any other member country, provided that the latter is made within twelve months of the original application.

There are now sixty-eight members of the Paris Union, the majority being developing countries. Many of these acceded to the Union when they were still colonial dependencies. This extended the protection given to inventors from the metropolitan powers but did not advance the industrialization of these territories. It became natural, therefore, that the developing countries as part of the post-colonial settlement should wish to see their aspirations under the new international economic order applied to the international patent system as well as to the rest of the world economic structure.

In 1974 a proposal was accordingly made within the World Intellectual Property Organization (WIPO) to study the possibilities of revising the Paris Convention to include additional provisions of special benefit to developing countries. This was a significant move by the developing countries, and indicated that in general they affirmed the recognized philosophy of the legal patent right and accepted it as part of the world's industrial property system. This proposal met with a forthcoming response from the leaders in the patent field from the industrialized countries, some of whom at least were confident that the wishes of the developing countries could be accommodated without any serious impairment of the effectiveness of the Convention.

A strong *ad hoc* group of experts from sixteen countries was set up, including representatives from Britain, Canada, France, the German Federal Republic, the Soviet Union, Sweden and the United States, to consider the proposals which have now become draft Article 5A.¹ A text was agreed upon, and unanimously approved by the Preparatory Committee set up for the revision of the Convention, subject to a reservation by the United States on universality. The draft provision contains the essential requirements of the developing

¹ The text of draft Article 5A is set out at 13 *J.W.T.L.* (1979) at p. 575.

countries, namely that their national legislation should be permitted to take certain measures in cases where the patent rights are abused, where the patented invention is not or not sufficiently worked, or where the public interest is involved. Such measures would include forfeiture and revocation in the case of abuses, forfeiture or revocation or the grant of non-voluntary licences in the case of failure to work, and the authorization to exploit the invention in the public interest, i.e. in particular national security, nutrition, health or the development of any other vital sectors of the national economy.

Draft Article 5A formed part of the basic proposals to be considered by the Revision Conference and it was to be expected that this text, upon which there seemed to be general agreement, would establish the principles for the revision. At the Conference itself, however, a general statement made on behalf of the Group B countries asserted the principle of universality, declaring that any special measures given to developing countries could only be transitional. This seemed to imply a rejection of the generally established line of the developed countries in GATT and many other places that developing countries should be accorded "preferential and more favourable treatment." Another statement from Group B gave no support for the principles set out in the draft article, but strongly criticized the text which seemed to be regarded as a basis for discussion only.

It now seems that the developed countries have stepped back from the initial support they gave to draft Article 5A and are no longer ready to endorse its principles. As this article contains what the developing countries regard as the minimum acceptable to them, it seems that the two groups are in danger of being set on a collision course. It is not in the interest of the developed countries that the developing countries should break away and form their own convention. To do so would result in a dualism that would be unworkable within the single roof of WIPO. Nor is it in the interest of developing countries to be excluded from a system embracing the industrialized world, for as industrialization and with it inventive capacity increases in the third world its inventors will need universal protection. Nor do we believe that the suggested establishment of bilateral agreements which is made in an article appearing in these pages would be effective to preserve the interests of industrialized countries.

The international patent system has taken great strides forward, particularly in the last decade with the concentration of searching and examining offices brought about by the Patent Cooperation Treaty, the establishment of the European Patent Office and the Community Patent. Its architects have every reason to be proud of their achievements. But even from the windows of the patent offices it must be possible to discern the turbulence in the world around, and there must surely be sufficient wisdom and foresight inside to make the necessary adaptations in order to preserve what has already been achieved.