

Editorial

ON 23 MARCH 1984 the fourth session of the diplomatic conference for the revision of the Paris Convention, held for one month in Geneva under the auspices of the World Intellectual Property Organization (WIPO) broke up without having reached any conclusion.

It is widely put about that patents constitute an esoteric subject which cannot be understood by the uninitiated, and that such matters are best left to the experts. This concept is doubly false. In the first place, patent law is no more recondite than other fields, although it is perhaps less taught, but it has been made into a *chasse gardée*, well tended by patent lawyers, patent agents and experts in industry, known in the trade as the "interested circles". Secondly, the experts seem so far to have shown themselves incapable of keeping the situation under control.

During the 1970s the world of industry was fortunate to have in charge of national patent offices a group of outstanding leaders who realized the need for reform. They accordingly established the Patent Cooperation Treaty, the European Patent Office, and the Community Patent. This made the patent system safe for the twenty-first century, but it was not done without considerable opposition from the interested circles.

The unfinished business remaining is the task of accommodating the developing countries within the world-wide rules of the Paris Convention. This Convention was essentially a product of the industrialized world, and what is now required is some concession made by the industrialized countries, and manifestly seen as such, that would recognize the special status of developing countries, and which would be recognized by them as a step towards their aspiration of a new international economic order.

One of the last acts of the older generation was to secure the acceptance by both industrialized and developing countries of a draft Article 5A to form the basis of the negotiations for the revision of the Paris Convention. This gave developing countries the right in restricted circumstances to grant an exclusive non-voluntary licence to a third party to work a patent which had not been properly worked by the patent owner in the country concerned. This deprived the owner of the right to work the patent, but this was regarded at the time as a reasonable concession which could well be made without causing any great harm to the patent system as a whole.

Ever since the diplomatic conference started in 1980, however, the industrialized countries, largely under pressure from the Americans, have gradually withdrawn from this position. At the last session Group B put

forward an unhelpful proposal, unacceptable to the 77, from which Group B refused to depart during the whole course of the "negotiations". This recalcitrance rebounded upon them, for the 77 started a microscopic examination into the somewhat loosely worded text of the Paris Convention, from which it emerged that non-voluntary licences could be permitted even in more favourable circumstances than contained in Article 5A, and that in fact some of the industrialized countries including the United Kingdom already had legislation to that effect. In the result Group B also saw that there was some need for revision of the Convention, and the delegations agreed before breaking up to a form of consultation with the secretariat on an unofficial basis, with a view to reconvening the conference, if progress was likely to be made, in about three years' time. There was also a failure to make any progress on the assimilation of inventors' certificates to the definition of patents, so as to secure the admission of the Eastern Bloc to the Convention.

It is a regrettable fact that generalship now seems to have disappeared from the patent world, and the new generation of comptrollers appears to have fallen completely into the clutches of the interested circles.

The United States is the only net exporter of technology, and as such has the greatest interest in the maintenance of a global patent system. The lesson so far to be drawn from international organizations is that they gradually degenerate, unless there are constant efforts to maintain their vitality by the introduction of new initiatives. It is doubtful whether the present policy of the present U.S. Administration in blocking movement in WIPO (and elsewhere) is altogether a wise one and what would now be welcome is for some governments to step in, with parliamentary advice, to secure some decisive results.