

# Summary of the Paris Convention for the Protection of Industrial Property (1883)

The Paris Convention applies to industrial property in the widest sense, including patents, trademarks, industrial designs, utility models (a kind of "small-scale patent" provided for by the laws of some countries), service marks, trade names (designations under which an industrial or commercial activity is carried out), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

The substantive provisions of the Convention fall into three main categories: national treatment, right of priority, common rules.

(1) Under the provisions on **national treatment**, the Convention provides that, as regards the protection of industrial property, each Contracting State must grant the **same** protection to nationals of other Contracting States that it grants to its own nationals. Nationals of non-Contracting States are also entitled to national treatment under the Convention if they are domiciled or have a real and effective industrial or commercial establishment in a Contracting State.

(2) The Convention provides for the **right of priority** in the case of patents (and utility models where they exist), marks and industrial designs. This right means that, on the basis of a regular first application filed **in one** of the Contracting States, the applicant may, within a certain period of time (12 months for patents and utility models; 6 months for industrial designs and marks), apply for protection **in any of the other** Contracting States. These subsequent applications will be regarded as if they had been filed on the same day as the first application. In other words, they will have priority (hence the expression "right of priority") over applications filed by others during the said period of time for the same invention, utility model, mark or industrial design. Moreover, these subsequent applications, being based on the first application, will not be affected by any event that takes place in the interval, such as the publication of an invention or the sale of articles bearing a mark or incorporating an industrial design. One of the great practical advantages of this provision is that applicants seeking protection in several countries are not required to present all of their applications at the same time but have 6 or 12 months to decide in which countries they wish to seek protection, and to organize with due care the steps necessary for securing protection.

(3) The Convention lays down a few **common rules** that all Contracting States must follow. The most important are:

(a) **Patents.** Patents granted in different Contracting States for the same invention are **independent of each other**: the granting of a patent in one Contracting State does not oblige other Contracting States to grant a patent; a patent cannot be refused, annulled or terminated in any Contracting State on the ground that it has been refused or annulled or has terminated in any other Contracting State.

The inventor has **the right to be named** as such in the patent.

The grant of a patent may not be refused, and a patent may not be invalidated, on the ground that the sale of the patented product, or of a product obtained by means of the patented process, is subject to restrictions or limitations resulting from the domestic law.

Each Contracting State that takes legislative measures providing for the grant of compulsory licenses to prevent the abuses which might result from the exclusive rights conferred by a patent may do so only under **certain conditions**. A compulsory license (a license not granted by the owner of the patent but by a public authority of the State concerned), based on failure to work or insufficient working of the patented invention, may only be granted pursuant to a request filed after three years from the grant of the patent or four years from the filing date of the patent application, and it must be refused if the patentee gives legitimate reasons to justify this inaction. Furthermore, forfeiture of a patent may not be provided for, except in cases where the grant of a compulsory license would not have been sufficient to prevent the abuse. In the latter case, proceedings for forfeiture of a patent may be instituted, but only after the expiration of two years from the grant of the first compulsory license.

(b) **Marks.** The Paris Convention does not regulate the conditions for the **filing and registration of marks** which are determined in each Contracting State by domestic law. Consequently, no application for the registration of a mark filed by a national of a Contracting State may be refused, nor may a registration be invalidated, on the ground that filing, registration or renewal **has not been effected in the country of origin**. The registration of a mark obtained in one Contracting State is **independent** of its possible registration in any other country, including the country of origin; consequently, the lapse or annulment of the registration of a mark in one Contracting State will not affect the validity of the registration in other Contracting States.

Where a mark has been **duly registered in the country of origin**, it must, on request, be accepted for filing and protected in its original form in the other Contracting States. Nevertheless, registration may be refused in well-defined cases, such as where the mark would infringe the acquired rights of third parties; where it is devoid of distinctive character; where it is contrary to morality or public order; or where it is of such a nature as to be liable to deceive the public.

If, in any Contracting State, the use of a registered mark is compulsory, the registration cannot be canceled for non-use until after a reasonable period, and then only if the owner cannot justify this inaction.

Each Contracting State must refuse registration and prohibit the use of marks that constitute a reproduction, imitation or translation, liable to create confusion, of a mark used for identical and similar goods and considered by the competent authority of that State to be **well known in that State** and to already belong to a person entitled to the benefits of the Convention.

Each Contracting State must likewise refuse registration and prohibit the use of marks that consist of or contain, without authorization, armorial bearings, **State emblems** and official signs and hallmarks of Contracting States, provided they have been communicated through the International Bureau of WIPO. The same provisions apply to armorial bearings, flags, other emblems, abbreviations and names of certain intergovernmental organizations.

**Collective marks** must be granted protection.

(c) **Industrial Designs.** Industrial designs must be protected in each Contracting State, and protection may not be forfeited on the ground that articles incorporating the design are not manufactured in that State.

(d) **Trade Names.** Protection must be granted to trade names in each Contracting State without there being an obligation to file or register the names.

(e) **Indications of Source.** Measures must be taken by each Contracting State against direct or indirect use of a false indication of the source of goods or the identity of their producer, manufacturer or trader.

(f) **Unfair competition.** Each Contracting State must provide for effective protection against unfair competition.

The Paris Union, established by the Convention, has an Assembly and an Executive Committee. Every State that is a member of the Union and has adhered to at least the administrative and final provisions of the Stockholm Act (1967) is a member of the Assembly. The members of the Executive Committee are elected from among the members of the Union, except for Switzerland, which is a member *ex officio*. The establishment of the biennial program and budget of the WIPO Secretariat – as far as the Paris Union is concerned – is the task of its Assembly.

The Paris Convention, concluded in 1883, was revised at Brussels in 1900, at Washington in 1911, at The Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967, and was amended in 1979.

The Convention is open to all States. Instruments of ratification or accession must be deposited with the Director General of WIPO.