

Relations with WIPO, 1965-70 (memoir extract)

Monty Hyams wrote fragments of memoir over the years. This is the longest.

It sets out as an overview of relations with the body that became known as the World Intellectual Property Organization. Soon it concentrates, however, on the first call for proposals for a World Patents Index, and negotiations during 1969-70 involving WIPO, Leasco, Pergamon and Derwent.

Much financial and operational detail is included and there are colourful memories of Robert Maxwell. Because of his calibre and standing, Monty depicts Dr Árpád Bogsch as the main man at WIPO, even though he did not become Director General till 1973.

Though undated, details place this account at 1988-9.

This chapter covers my relationship over the years with the Organisation in Geneva responsible for administering the various International Treaties relating to Intellectual Property, i.e. Patents, Trademarks and Copyright.

Originally it was known as Bureaux Internationaux Réunis pour la Protection de la Propriété Intellectuelle, with the indigestible acronym BIRPI. With the advent of the Patent Cooperation Treaty in 1970 the name was changed to Organisation Mondiale pour la Protection de la Propriété Industrielle (acronym OMPI) or World Industrial Property Organisation (acronym WIPO, not to be mistaken for a cleaning fluid). I will refer to it as BIRPI up to 1970, and as WIPO thereafter.

My story starts in 1965. The Director General of BIRPI at the time was a very likeable and reserved Professor Bodenhausen. The real authority lay with the First Deputy Director General, Dr. Arpad Bogsch. I will be referring a great deal in this chapter to Dr. Bogsch, so I had better tell you something about his background. He was born in Hungary, and emigrated to the United States where he became an American Citizen and worked in the Trademark Section of the United States Patent Office before joining the BIRPI staff in Geneva. Dr. Bogsch is extremely well versed in International Law, speaks many foreign languages fluently, and has a very astute brain. At BIRPI he reigns supreme, and nothing is done without his personal involvement and approval.

Although BIRPI represents nearly 80 Sovereign States, ranging from the superpowers down to the likes of the Holy See and Upper Volta, each member has just one vote, so that the developing countries are able to control political issues. However technical matters are dealt with by a small body known as ICIREPAT - the Committee for International Cooperation among Examining Patent Offices.

It was this Committee which was instrumental in persuading BIRPI to do some market research on a possible new service known as World Patent Index (WPI). Accordingly a pamphlet was circulated to industry in December 1965 to ascertain possible outside interest and support for such a service. The main object of WPI was to make life easier for the patent office staff who had to examine patent applications for novelty.

It was proposed that by recording certain bibliographical data in machine-readable form and storing the information on computer, it would be possible to identify those patent applications filed in different countries which related to the same invention, thereby cutting down the number of documents to be searched to about one-third, and allowing an examiner to choose a version which was in his or her most readily understood language.

Also all those inventions which dealt with the same subject matter as the one being examined could readily be identified, by searching under the appropriate sub-group of the International Patent Classification (IPC). Two further parameters would be searchable - patentee and inventor - this information being calculated to be more of interest to industry than to the patent offices. Finally a legal status feature was proposed, showing whether or not an application had been granted and, if so, if it were still in force.

The products of WPI would be printed lists of bibliographic details either as individual search reports, as weekly overall reports, or as a current awareness notification each time information on a requested topic appeared, such as patent applications in the name of a specified company or under a given sub-group of the IPC. Prices suggested were of the order of \$30 per item for customised reports, and \$600 for the 52 weekly overall bulletins plus annual index. It should be remembered that these prices should be multiplied by a factor of about ten to convert to present day values.

According to the proposals it was estimated that during the first ten years the system would have to process one million new inventions from eighty different patent offices, classified into one or more of the 40,000 sub-groups of the IPC. Data of this volume could only be handled by a large computer system, a relatively expensive novelty at that time. Because of the costs involved, the service would only be established if there was sufficient interest to make it self-supporting in the long run, and so the proposal document was accompanied by a questionnaire to be returned by May 30, 1966. Recipients were asked to indicate the extent to which they thought they might use each part of the service under certain fee conditions, and were asked for any comments or suggestions.

In their Progress Report published December 1966, BIRPI indicated that 1134 replies had been received from 24 countries. Mean annual income was only of the order of \$1.4 million, hardly enough to cover the cost of setting up and production. There was opposition to the plan by two large pharmaceutical firms on the grounds that, if established, it would help industrial pirates to know, for any given invention, in which countries patent protection had not been sought, and whenever important patents had been abandoned or had lapsed.

No formal conclusions were drawn from this Progress Report, but since no follow-up Reports were issued, it was assumed that the whole matter had been abandoned. Then why, you might ask, have I dealt at such length on the subject of the World Patent Index? Well, you will see from what follows, that in fact the matter was far from dead, and things were going on behind the scenes which eventually were to have far reaching consequences.

The original WPI proposals had been worked out by BIRPI in consultation with Jim Terragno of Westat Research Inc. Terragno, who is now President of Pergamon- Orbit-

Infoline Inc., worked in the United States Patent Office at the same time as Dr. Bogsch, and was asked by him to try and find a commercial operator to take on the responsibility for the World Patent Index.

Through our United States contacts we were alerted to the fact that Leasco Systems & Research Corporation had worked out with BIRPI a Draft Contract which would be voted upon at a Committee Meeting to be held in Geneva on June 17, 1969. Moreover, Leasco had submitted with their application a statement that they were hopeful that Derwent Publications would be collaborating with them. This was all the more surprising since on May 2nd. of that year we had received detailed, rather onesided proposals from Leasco (and its consultant Terragno) for cooperation, with the request that the approach should be kept secret from BIRPI.

We had secretly seen the Leasco/BIRPI Draft Contract, but felt that in view of the financial risks involved, it would be prudent not to bid but to see what progress we might make with Leasco, since we were convinced they would find it hard to proceed without our help. At the June 17th. meeting in Geneva we learned that the Committee decided to defer a decision until September 16th. in the hope that something tangible would result from the Leasco/Derwent negotiations; and to await a promised offer from World Patent Services Ltd., a Corporation owned jointly by Pergamon Press Ltd. and International Computers Ltd.

In retrospect I am convinced that the sudden interest in Derwent by Leasco in May 1966 owed much to the intervention of Robert Maxwell, who by then had no longer any intention of continuing with International Computers Ltd. For it was at the beginning of June 1966 that Leasco Data Processing Equipment Corp. launched a takeover bid for Pergamon. There is a lovely story told of one of the ploys that Maxwell used to impress Leasco's Saul Steinberg. Even if not strictly accurate, the story is worth telling as being typical of Capt. Bob's opportunism.

As a Labour Member of Parliament at the time, Maxwell had acquired responsibility for overseeing the catering arrangements in the House of Commons. This duty, he had discovered, entitled him to one meeting a year with the Prime Minister.

Maxwell's timing was immaculate. When Saul Steinberg arrived at London Airport for business discussions with Maxwell, the latter's chauffeur met him with an apology that his boss could not be there in person, due to an unexpected urgent call from the Prime Minister. Steinberg was driven to No. 10 Downing Street, from whence the illustrious Capt. Bob eventually emerged as though it were an everyday occurrence.

The intervention of such a powerful and determined character as Robert Maxwell was rather worrying, and introduced a whole new dimension into the affair. Particularly so when one morning towards the end of July 1966 I was invited round to Fitzroy Square where Maxwell triumphantly waived a legal document in front of me. This, he alleged - I had to take his word for it - is Leasco's bid to carry out the World Patent Index in conjunction with BIRPI, and signed irrevocably by me as a Director of Leasco. As you know, I will have no difficulty in persuading my friend Arpad Bogsch to accept, so why don't you do yourself a good turn and accept the invitation to come in with us.

However I had learned from experience to be wary of working with Maxwell, and the City was already buzzing with nasty rumours of difficulties surrounding the Leasco/Pergamon deal. In fact, Maxwell dropped me back at my office in Holborn on his way to a rather eventful meeting with Rothchilds, advisers to Leasco.

Not to go along with the Leasco/Maxwell proposition made sense; but to ignore it altogether did not. So about a fortnight before the "closing date" of September 16th. I informed Dr.Bogsch of Derwent's intention to bid for the WPI contract. Initial reaction from BIRPI was one of disbelief - had not Leasco assured them of Derwent cooperation. Having reassured Dr.Bogsch that this was not so, he insisted that in view of the shortage of time and all the work that BIRPI had carried out over long drafting negotiations with Leasco, any offer by Derwent would have to follow the existing Draft Contract as closely as possible, with any minor modifications that could be agreed between us in the time available.

Because Derwent was already well established in the patent information business, whereas Leasco was not, the terms of our contract needed to be modified quite considerably. However, in order to please BIRPI, the changes in our proposal were kept to a minimum and were agreed as a result of protracted meetings between our solicitor Geoffrey Cohen, and BIRPI's Roger Harben, a very amiable British expatriate related to the then famous broadcaster on culinary matters and well-known chef Philip Harben. Although the Draft Contract was a very lengthy and complicated document, its main provisions were fairly straightforward and are outlined below, with major differences between the Leasco and Derwent proposals being pointed out.

For its part BIRPI was obligated to obtain copies of all patent specifications and gazettes from all its member countries as soon as published, so that the data could be machine input by the contractor for mounting onto computer. BIRPI would also agree that WPI information supplied to the National Patent Offices should be for their internal use only unless agreed otherwise, in which case a surcharge might be applied. Leasco was particularly interested in the business of supplying copies of patents, and wanted BIRPI to warrant that the British Patent Office would not invoke Crown Copyright against it. We made no such demand. However we did insert a clause obligating BIRPI itself to publicise the WPI service, and to encourage its member National Offices to do likewise, especially amongst their deposit account holders.

The contractor for its part had to operate the WPI service from one or more computers in Geneva, as well as servicing and invoicing European customers from this location. The financial restrictions were particularly harsh. The contractor had to bear all costs of WPI and reimburse BIRPI for all expenses. These included all salaries and benefits of BIRPI staff working full time on WPI, and any redundancy payments; all salaries including overtime of BIRPI staff working on WPI part time, with a deposit of \$1000 per month to cover this; and the cost of rental equipment, office space etc. Also included was the travel and subsistence allowance of all BIRPI staff and Standing Committee members on WPI missions. This was to involve first class travel tickets, a daily subsistence allowance of \$25 and a daily fee of \$50 with an advance deposit to BIRPI of \$15,000 each year.

Because Leasco had no existing patents related products, the two royalty arrangements were quite different. Leasco payments to BIRPI were based to sales of products as set out in the original WPI proposal, plus income from the sale of paper and microform copies of patent specifications. Annual payment due would be 1% on the first half million dollars, 2% on the next half million and 1% in respect of each next million dollars, with a non-returnable advance payment of \$24,000 - and remember, all at 1969 prices.

Our royalty proposals were far more attractive to BIRPI. Sales would be based upon all Derwent patent related products, including our existing patents abstracts publications. There would also be a microfilm and aperture card service carried out in association with Kodak. An important feature of the aperture cards was that our English language abstract would appear on the first frame of all documents, which would prove to be extremely helpful for

patent examiners dealing with foreign language specifications. BIRPI would receive each year as royalty 2% of sales up to \$4 million, 3% on the next \$4-\$6 million and 4% thereafter, with a guaranteed minimum of £24,000. Based on Derwent's current patents related sales of \$30 million per annum, the BIRPI royalty would have reached the million dollar mark. However usage by patent offices and industry, together with savings through the supply of gazettes and specifications, may well have justified this figure.

The Contract would have a life of 20 years, but whereas in the case of Derwent there was no provision for prior termination other than through violation, BIRPI could break its contract with Leasco after four years without penalty. Leasco could break the contract earlier, but the penalty would be \$1.2 million after one year, with an additional \$0.5 million for each further year, with delivery to BIRPI of all relevant tapes and programs.

Having been assured by Leasco that cooperative arrangements were being worked out with Derwent, Dr.Bogsch naturally became very apprehensive at receiving a separate bid from us. He must surely have queried the position with Leasco who, alerted to the situation, asked if we would join them in a request to BIRPI to put off the Committee Meeting until November 30th. by which time it was possible that cooperative proposals would be put forward.

Initially we agreed, but were then informed by our parent company, The Thomson Organisation, that such cooperation would not be acceptable in view of the Maxwell involvement, bearing in mind the upheavals in the City that were going on at the time. Leasco had dropped its bid for Pergamon on August 14th., Robert Fleming had resigned as Pergamon's advisers, and a Board of Trade Inquiry into the affairs of Robert Maxwell had just commenced, with Thomson involvement.

We were faced with the embarrassing situation of having to inform BIRPI on September 15th. 1969 that the September 16th. meeting should go ahead after all, as there was now no question of our being able to collaborate with Leasco.

Unfortunately we were not at liberty to disclose fully the reasons for the change of heart.

The ad hoc Committee on Contracting for the WPI service duly met in Geneva on September 16th. Initially Dr.Bogsch maintained that the Derwent offer was not a proper proposal, and the Russian and German representatives agreed. The United States delegate did not, so eventually Dr.Bogsch was persuaded to circulate the Derwent offer. No mention was made of the Leasco/Pergamon situation, and it may well be that the Committee was unaware of its existence or possible consequences.

I had been invited to attend the meeting, along with Ray Meyer of Kodak who would be cooperating with us on the aperture card feature of WPI. We had been ordered to report by 10a.m., but were kept waiting in a side room until 11/2 hours later. At noon we were told that the Committee would be breaking for lunch, and upon their return were informed that our presence was no longer required.

The decision of the Committee, received in writing a few days later, was very one sided, as might have been expected. It ruled that the Director of BIRPI, Prof. Bodenhausen, should invite Leasco and Derwent to make a joint or collaborative offer for WPI, but that if no such offer was forthcoming by October 31st. then BIRPI should conclude an Agreement with Leasco along the lines already submitted, subject to approval by the Committee at its next meeting in Geneva on November 18 th.

One thing that puzzled us at the time was that Leasco Information Products was represented in Geneva not by its President Melvin Eagle or its consultant Jim Terragno, but by its Vice President Richard Sloop, who seemed to know very little about the subject. Moreover, all subsequent negotiations had to be carried out with this new character, and not surprisingly no agreement was reached by the deadline of October 31st. Three days after this deadline had passed I received a very remarkable letter which helped to explain the reason behind Mr. Sloops arrival. It was on the private notepaper of Melvin Eagle, and was signed also by Jim Terragno. It made no reference whatsoever to Leasco, but was written on behalf of a corporation - unnamed - which they were in the process of establishing dedicated to the development and sale of business information products and services. The proposition gave detailed reasons why this corporation should serve as the North American marketing representatives for all Derwent products. Amongst the credentials of the two signatories was that they had "participated with BIRPI over the past four years in the conception and development of the World Patent Index" and had "numerous consulting contracts with the U.S. Patent Office and BIRPI".

It was quite clear that there had been a split in the Leasco camp, probably through disillusionment on the part of Saul Steinberg, and the Leasco proposal was never proceeded with. Nor did we do any deal with the Eagle/Terragno partnership. One would have expected BIRPI to have returned to the Derwent proposal, but nothing was heard from them and the WPI project was abandoned. Apart from the mistrust of Derwent by BIRPI that seems to have arisen, Dr. Bogsch was heavily involved in negotiating the Patent Cooperation Treaty, so that the WPI project had to take a back seat anyway. As far as Derwent was concerned, we had been shelving our new Central Patents Index project pending the possibility of having to carry our World Patent Index, and in view of the BIRPI decision we were quite happy to go ahead with our original plans, reported fully elsewhere. I gather that the Eagle/Terragno partnership never really got off the ground - Melvin Eagle starting a peek-a-boo system without great success, and Jim Terragno taking up an appointment in Washington with Pergamon Information Systems Inc.

The whole question of the World Patent Index unexpectedly started up all over again one year later in November 1970 through the intervention of Ed Brenner, ex US Commissioner of Patents and by now employed by us as a consultant. It is probable that Dr. Bogsch had started the ball rolling, since under the Patent Cooperation Treaty BIRPI (now WIPO) itself became an examining authority, and therefore were in need of the advantages provided by a WPI service. Pride would have prevented him from contacting us direct, but it would appear that in Washington on November 7th. 1970 he discussed the position with Ed Brenner, who acted very swiftly thereafter, including fixing a meeting with Dr. Bogsch in Geneva for the week commencing November 15th. after a visit to us en route with a Draft Contract.

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