The Secretary-General has the honour to circulate for the information of the Council the Members of the League and the Members of the Committee on Intellectual Co-operation, the following replies from the Governments of France and Germany to his circular letters Nos. C.L.100, 1923.XII, and C.L.159, 1924.XII, regarding the report of Senator Buffini on the protection of scientific property. (1)

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REPLY FROM THE FRENCH GOVERNMENT.

Translation.

Paris,
August 13th, 1925.

Sir,

I have consulted the various competent ministerial departments: Commerce, Justice, Education, and also the Academy of Science and the Technical Committee on Industrial Property, to which the draft international convention has been submitted simultaneously with the French draft law introduced by Joseph Barthélémy, Member of the Chamber of Deputies, on April 4th 1922. These administrative and scientific bodies unanimously agreed as to the high importance of Senator Buffini’s report. It is indeed a matter of abstract justice that scientists should be guaranteed a share in the often considerable profits which are made as a result of their creative work. Moreover, this

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(1) Note by the Secretariat: For the replies from other Governments, see Documents A.29.1924.XII, C.600.M.208, 1924, C.217, M.74, 1925, and C.393, M.134, 1925.XII.
notion of representing the idea, independently of its possible industrial applications, affects international intellectual life very closely. There is no doubt that a satisfactory organisation of scientific property would do much to remedy the existing difficulties described by Senator Raffini.

The recognition of such property, however, is not devoid of practical difficulties—difficulties of a scientific or of a legal nature—and it would seem that these difficulties must first be solved before the problem can be put in a concrete form.

1. In view of the fact that scientific research is often a matter of joint action, it is sometimes difficult to fix the exact share of any single person in an invention. Again, the economic value of a discovery varies according to the sphere chosen.

An exact definition of scientific property has therefore to be found which will cover every kind of research. The task of establishing this definition might be entrusted to selected specialists in each field of science.

2. When this property right has been defined, the exercise of it must not interfere with the application of inventions to industry, nor must it lead to inequalities which might damage the interests of nationals of States adhering to an international convention. These are the logical outcome of the principle of justice which underlies the scheme prepared by the Rapporteur of the Committee on Intellectual Cooperation. Hence the necessity for certain legal guarantees on the basis of international reciprocity.

On this point, the Technical Committee on Industrial Property has expressed its opinion in the form of certain general rules.
Scientific property it says, should consist in the inventor's right to receive royalties in respect of applications of his invention. This right would be limited to thirty years as from the deposit at the Industrial Property Office of a memorandum proving the said right. The deposit of such a memorandum would serve both as a declaration and as the establishment of the right, since it would be the only way of enabling it to be brought up against a third party.

It would be dangerous to organise the protection of scientific property in any one country if it were not recognised by the other signatories of the International Union of Scientific Property. Such a situation would end by making the industrial manufacturers of the country in question dependent upon foreign scientists, while scientists of the same nationality would not enjoy equality of treatment. For this reason the Technical Committee on Industrial Property, when consulted by the French Government, expressed its opinion that:

"every State must recognise by an internal law, the protection of scientific property, and that property must simultaneously be organised by an international convention; ... and every State adhering to the convention should undertake to enact a law in accordance with" the principles enunciated above which are accepted by every national legislation.

The French Government will certainly join, with all the sympathy inspired by its solicitude for the interests of civilisation as a whole, in the investigations undertaken for solving the scientific property problem, regarded in its most general aspect. But having regard to the opinions expressed by the bodies consulted and their reasons therefore, the French Government is obliged to reserve its final opinion for the present, both as to what new legislation is to be advocated and also as to the provisions of the international convention by which this matter may alternately be regulated.

For the Minister of Foreign Affairs.

(Signed) L. LAROTTÉ.
DRAFT LAW

submitted by M. Joseph BUTTLEMY (GERC), Deputy, concerning scientific property and the amendment of the law of July 5th 1844 concerning inventors' patents.

Referred to the Committee on Civil and Penal Legislation.

Article 1.

Any new discovery or invention of whatever nature shall confer on its author, under the conditions and for the period hereinafter laid down, the right to exact a royalty from all those deriving industrial profit from the invention.

Article 2.

Should the author of the invention not have complied with the formalities provided for in Article 3 of this present law, the royalty shall only be due as from the day on which he makes his application.

Article 3.

The author of an invention or discovery which cannot be patented under Articles 1, 3 and 30 of the law of July 5th 1844 shall be entitled to have his right certified by means of a "material form or principle patent" (Brevet de corps ou de principe) issued under the conditions laid down in section 2 of the said law. In such cases the right to a royalty shall exist as from the day on which the patent is applied for.

Article 4.

The material form or principle patent shall not confer upon its holder the exclusive right to use the discovery or invention for his own profit, but merely the right to issue compulsory permits for the use of the said discovery or invention.
Article 5.

Scientific property, whether or not certified by a patent, shall remain in existence during the whole life of the author and for 50 years after his decease, under the conditions laid down in Article 1 of the law of July 14th 1886.

Article 6.

The rate of the royalty shall be fixed by agreement between the parties or, failing such agreement, by the Court.

Article 7.

On the expiry from any cause, of an inventor's patent issued in accordance with the law of July 5th 1844 the author of the invention previously patented shall receive on application, an author's patent giving him the advantages mentioned in the preceding articles.

Article 8.

There shall be added to Article 5 of the law of July 5th 1844 a paragraph to read as follows:

"The patent shall only be issued to persons asserting that they are themselves the authors of the discovery, invention or application in respect of which the patent is applied for. The author of the invention may, notwithstanding any agreements to the contrary, demand the cancellation of a patent taken out in a name other than his own. Should he have ceded the right derived from the inventor's patent, he shall on the expiration of that patent, recover his rights of scientific property in his invention with the advantages which the law provides in this respect."
Article 9.

Article 4 of the law of July 5th 1844 shall be amended to read as follows:—

"Patents shall be granted for 5, 10, 15, 20 or 25 years. The annual tax shall be payable in respect of every patent."

The last paragraph of the same article, providing that the patent shall lapse should the tax not be paid, shall be abrogated.

Article 10.

Article 32 of the law of July 5th 1844 as amended by the law of May 31st 1856 shall be abrogated and replaced by the following clauses:

If any patentee shall have introduced into France articles manufactured in foreign countries and similar to those protected by his patent, the said patent shall be repealed unless there be any international convention to the contrary. Nevertheless the Minister of Commerce shall be entitled to authorise the introduction of (1) models of machinery; (2) articles manufactured in foreign countries if intended for public exhibition or for experiment with Government approval. Any patentee who has not put his discovery or invention into operation in France within a period of 5 years dated from the date of the signature of the patent or who has ceased to operate it during five consecutive years may be obliged by decision of the Court to issue licences to use the same to all applicants. In cases of public utility the patentee may be required, by a decree stating reasons to grant such licences at any time during the existence of the patent.

Article 11

There shall be added to Article 31 of the law of July 5th 1844 the following clause:

"Nevertheless no one shall have his own publications brought up in opposition against him."
Sir,

The German Government has welcomed this draft Convention of Senator Ruffini's, as a laudable effort to improve the lot of scientific workers. It has taken steps to ascertain as far as possible the views of those concerned regarding the draft, and has thought it best to await the receipt of their replies before giving an opinion on the subject. The Patent Office of the Reich, which is the supreme authority for the administration of industrial property, the Association of German Industries (Reichsverband der Deutschen Industrie), the Union of German Hochschulen, the Prussian Academy of Science, the Central Institute of Natural Sciences, and the Prussian Chamber of Experts have, amongst others stated their views. The outstanding fact revealed by a careful consideration of all these opinions is that the two opponent groups interested, that is to say the scientists whose interests the Convention is to protect, as also those which would have to bear the burdens entailed by the proposed innovation, have essentially come to the same conclusion. They have unanimously given special weight to the following considerations:

The fundamental idea of the scheme, namely that the scientific discoverer should derive an economic advantage from the technical inventions and literary and artistic works based upon his discovery, is obviously just.
enterprise of others. The determination of the numerous discoveries upon which complicated technical inventions are based would often meet with insuperable difficulties and involve the inventor and industry in interminable law-suits. Apprehensions on this score would paralyze equally the zeal of the inventor and the spirit of enterprise in industry.

In view of the above opinions, the German Government considers that the problem dealt with in the Raffini projet is so many-sided and would have such far-reaching effects upon present economic relations that a further study of its fundamental principles will be required before such a scheme can be decided upon. In its view the first point to be considered is whether the above difficulties can be obviated by a sharper delimitation of the branch of science to which the regulation is to apply. In consideration of the extraordinary importance which this problem presents, the German Government will follow with the keenest interest the further development of the matter and will at all times be prepared to co-operate in the solution of the problem.

(Signed) Dr. DAMKORT.