Jocelyn Bosse* and Johanna Dahlin

Spectres of Intellectual Property in the Soviet Union: The Development and Recognition of the Inventor's Certificate

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Abstract: After the October Revolution in 1917, the legal protection for inventions in the Soviet Union underwent a series of transformations. One of the key changes was the emergence of the "inventor's certificate" as a socialist alternative to patents, whereby inventions were declared to be state property, but inventors were entitled to recognition and compensation. Patents were generally available in parallel to inventor's certificates, but the latter remained the preferred mechanism for encouraging the worker-inventor and mass inventing activity, as well as promoting the free flow of information that capitalist patent systems had failed to achieve. However, as the Soviet Union started to pursue membership of the *Paris Convention for the Protection of Industrial Property*, several socialist countries sought to amend the treaty to recognise their inventor's certificates as equivalent to patents. This sparked a debate amongst Paris Union members, during which the socialist countries portrayed the inventor's certificate in a manner analogous to Schrödinger's cat: it simultaneously was and wasn't a patent. While the debate was never fully resolved by the Paris Union members, this article revisits the history and international debates about the Soviet protection of inventions to consider what the uncertainty about the inventor's certificate might reveal about the circulation of technical information and the nature of global intellectual property law.

Keywords: USSR; inventor's certificates; patents; invention law; Paris convention; WIPO

1 Introduction

A spectre is haunting the global patent system – the spectre of the Soviet inventor's certificate. After the October Revolution in 1917, the patent system came under ideological attack for its perceived inherently capitalist nature. Alongside other forms of private ownership, the Bolsheviks nationalised all inventions and repealed

***Corresponding author: Jocelyn Bosse**, Queen's University Belfast, Belfast, UK, E-mail: j.bosse@qub.ac.uk. https://orcid.org/0000-0001-9752-6145
Johanna Dahlin, Linköping University, Norrköping, Sweden, E-mail: johanna.dahlin@liu.se. https://orcid.org/0000-0003-2040-913X

the patent law. In its place, the inventor's certificate emerged as a socialist alternative to patents, whereby inventions were declared to be state property, but inventors were entitled to recognition and compensation. Inventor's certificates were abolished just a few months before the collapse of the Soviet Union in 1991 and have been largely forgotten in the literature on intellectual property,[1] which could make it tempting to declare the end of history and the triumph of patents over other forms of legal protection for inventions.[2] However, inventor's certificates continue to haunt the patent system in several ways. A seminar for patent examiners at the European Patent Office in 2021 emphasised that inventor's certificates are "not just dinosaurs from 'patent information Jurassic park'": the disclosures in inventor's certificates remain a source of prior art, which are relevant to determining whether patent applications meet the validity requirements of novelty and inventive step.[3] Furthermore, many socialist countries adopted their own form of the inventor's certificate system, and a number of those certificates remain in force today.[4] Finally,

1 With the recent exception of Svitlana Lebedenko, "Russian Innovation in the Era of Patent Globalization," *IIC – International Review of Intellectual Property and Competition Law* 53.2 (2022): 173–193, and Karl Hall, "Patent Debates on Invention from Tsarist Russia to the Soviet Union," in *Patent Cultures: Diversity and Harmonization in Historical Perspective*, ed. Graeme Gooday and Steven Wilf (Cambridge: Cambridge University Press, 2020). See also, Van Anh Le, "Soviet Legacy of Vietnam's Intellectual Property Law: Big Brother is (No Longer) Watching You," *Asian Journal of Comparative Law* https://doi.org/10.1017/asjcl.2023.31 (2023). On the adoption of the new Soviet patent law that abolished inventor's certificates on 1 July 1991, see Gary V. Litman, "Reinventing a Law on Inventions: International Aspects of the New Russian Patent Law," *George Washington Journal of International Law and Economics* 25.1 (1991): 171–226.

2 An enduring challenge to the triumph of patents is the plant variety rights system for plant inventions: *International Convention for the Protection of New Varieties of Plants*, as revised on 19 March 1991, opened for signature 23 October 1978, 1861 UNTS 281 (entered into force 8 November 1981). However, on the ostracisation of plant variety rights within intellectual property law, see Brad Sherman, "Taxonomic Property," *Cambridge Law Journal* 67.3 (2008): 560–584, 560; Margaret Llewelyn, "Future prospects for plant breeders' rights within the European Community," *European Intellectual Property Review* 11.9 (1989): 303–310.

3 "Inventor's certificates – a forgotten source of prior art? (online seminar)" (23 November 2021) *European Patent Office* 8 <https://bit.ly/3VMsQp3>. Many Soviet inventor's certificates have been digitised and are available through databases, such as Espacenet, with the country code "SU," and these have been cited by examiners, e.g. in the opposition procedure relating to EP Application No. 11714979, filed 15 April 2011, *Grounds for Decision (Annex)* (14 February 2019) D1.

4 Inventor's certificates with an indefinite duration are still granted in the Democratic People's Republic of Korea (DPRK) under Article 19 of the *Invention Act 1998*; the DPRK also awards patents and has been a member of the Paris Convention since 1980. Cuba, which has been a Paris Convention member since 1904, implemented a dual system of patents and inventor's certificates in 1983, but abolished inventor's certificates in 2011 with the *Decree Law No. 290 on Inventions, Designs and Industrial Models*, which converted inventor's certificates granted after 2005 into patents, while inventor's certificates granted before 2005 remain in force with a term of 20 years.

inventor's certificates are still present in the provisions of certain treaties, notably the *Paris Convention for the Protection of Industrial Property* (Paris Convention), which explicitly recognised inventor's certificates shortly after the Soviet Union acceded to the treaty in 1965.[5]

However, patent law also haunted the Soviet Union. Despite the ideological opposition to private ownership of inventions, the patent system was reintroduced in 1924 during the New Economic Policy (NEP) and operated in parallel to the inventor's certificate throughout most of the Soviet period. Furthermore, as inventor's certificates spread to other socialist countries, a question arose in the late 1950s at the United International Bureaux for the Protection of Intellectual Property (BIRPI) about whether Soviet inventor's certificates were fundamentally similar in nature to patents, and therefore whether inventor's certificates should be recognised in the same legal category as patents in the Paris Convention.

This article seeks to examine the spectral nature of the inventor's certificate, which became most visible during the negotiations to amend the Paris Convention. The development of the inventor's certificate system in the Soviet Union explicitly rejected the capitalist underpinnings of the patent system and sought to facilitate technological advancement and promote the free flow of technical information, in ways that the patent system did not. However, intellectual property treaty negotiations eventually became wrapped up in the Soviet Union's desires for international legitimacy as a state, as well as participation in international trade relations. To achieve this recognition, the Soviet Union and other socialist countries argued that inventor's certificates could be seen as equivalent to patents, and therefore should receive the same legal status in the Paris Convention, in which they were partially successful. The outcome of the debates about the amendments to the Paris Convention positioned the inventor's certificate as analogous to Schrödinger's cat: it simultaneously was and wasn't a patent.[6] As the two parts of this paper will show, the duality was evident in the way the Soviet authorities framed the distinctions between patents and inventor's certificates during the creation of their system, whilst also emphasising the fundamental similarity between the two for the purposes of international recognition. This article argues that this uncertain status of inventor's certificates is not something to be ignored but should be taken seriously

5 See also, *Patent Cooperation Treaty*, signed 19 June 1970, 1160 UNTS 231 (entered into force 24 January 1978) ("Patent Cooperation Treaty") Article 43.

6 Analogies to Schrödinger's cat have been made with patents, given the way claims are both valid and invalid until tested in a court of law: Margaret Llewelyn, "Schrodinger's Cat: An Observation on Modern Patent Law" in *Death of Patents* ed. Peter Drahos (London: Lawtext Publishing, 2005): 11–66; *Патентное право живое и мёртвое (Patent law alive and dead)*, ed. Alexey Ivanov and Elena Voinikanis, (Moscow: HSE Publishing House, 2021).

in debates about the protection of inventions and the nature of global intellectual property law.

2 Distinguishing Inventor's Certificates from Patents

Prior to the October Revolution in 1917, there had been several major shifts in the patent systems in Europe. The earliest patents were royal privileges that the sovereign could grant or withhold from their subjects. During the move away from privileges, Mario Biagioli has shown how the modern patent system developed in parallel with the shift from political absolutism to representative regimes. The patent specification played a central role, as it shifted the emphasis away from the production of material *things* and towards the knowledge that the invention represented in the form of the *text* of the specification.[7] The changing political understanding of the relationship between the state and its citizens also shaped the emergence of the "patent bargain" as a justification for the grant of patents – a metaphorical contract between the public (as represented by the state) that grants a limited-term monopoly as a *quid pro quo* for the disclosure of the invention to the public through the text of the specification.[8]

Alongside the emergence of disclosure in patent specifications came the focus on novelty, and with it, the expansion of the concept of prior art. Prior art is a term that describes "the state of a given field of technology prior to the introduction of the invention. … Prior art is the baseline against which the inventor is required to demonstrate the novelty" of the invention.[9] Whereas novelty was once assessed based on the inventions in operation, the knowledge disclosed in publications (including books and patent specifications) became prior art too.[10] The reciprocal recognition of priority periods in the Paris Convention, discussed later in this article, sought to address the consequences of the expanding definition of prior art.

However, the patent system came under critical public scrutiny in the mid-nineteenth century, especially from the free trade movement, which lead to advocacy for reform and, in many parts of Europe, the abolition of the patent system.[11] Brad Sherman and Lionel Bently have shown that, in the United Kingdom, these

7 Mario Biagioli, "Patent Republic: Representing Inventions, Constructing Rights and Authors" (2006) *Social Research* 73.4 (2006): 1129–1172, 1144.

8 Biagioli, "Patent Republic: Representing Inventions, Constructing Rights and Authors," 1144.

9 Biagioli, "Patent Republic: Representing Inventions, Constructing Rights and Authors," 1146.

10 Biagioli, "Patent Republic: Representing Inventions, Constructing Rights and Authors," 1147.

11 Fritz Machlup and Edith Penrose, "The Patent Controversy in the Nineteenth Century," *Journal of Economic History* 10.1 (1950): 1–29.

abolitionist debates fed into the crystallisation of the categories of intellectual property (whereby copyright was seen as separate from patents, and so on).[12] Nevertheless, the European movement for the abolition of patents collapsed in the 1870s, partially due to the emerging support for international patent protection that culminated in the *Paris Convention for the Protection of Industrial Property* (Paris Convention).[13] The Paris Convention was the earliest international agreement on patent law, which had 14 signatories when the treaty entered into force in 1884,[14] and created a "Union" that would remain open for signature indefinitely with the aim of encouraging as many states as possible to become members.[15] Since 1895, it was reported that the Russian Government also saw accession to the Paris Convention as a matter of importance: Russia made some legislative changes and established a Patent Law Reform Commission in 1903, but the necessary amendments to comply with the Paris Convention did not eventuate before the October Revolution.[16]

2.1 Abolishing the Capitalist Patent System, 1917–1924

After the October Revolution, the Bolsheviks aimed for a total transformation of society. Having chosen revolution, and not reform, the task was monumental. Although there were voices following the revolution that argued for the necessity of abolishing both law and property, the Bolsheviks did not do away with private property altogether, and instead sought full state ownership of the means of

12 Brad Sherman and Lionel Bently, *Making of Modern Intellectual Property Law: The British Experience, 1760–1911* (Cambridge: Cambridge University Press, 1999) 149–150.

13 Louise J. Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883* (Leiden: Brill, 2021), 205–206.

14 Original signatories in 1883 were Belgium, Brazil, France, Guatemala, Italy, Netherlands, Portugal, Salvador, Serbia, Spain and Switzerland, joined in 1884 when instruments of accession were deposited by Ecuador, Tunisia and the United Kingdom. Russia was represented by delegates at the 1878, 1880, 1883 and 1911 conferences: Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883*, 298–299, 332.

15 It was hoped that its open and evolutionary nature would also make it more likely for the Paris Convention to influence the laws of states which were not yet members of the Union: Paul Roubier, "Le droit unioniste de la propriété industrielle," *Journal du Droit International* 78.3 (1951): 676–770, 707–709.

16 A. Skorodinksy, "Lettre de Russie: Projet d'une révision de la Loi de 1896 sur les Brevets," *La Propriété Industrielle* 20.3 (1904): 44, 44–45; Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883*, 332–333.

production.[17] Among the institutions to be transformed was the patent system: at the time of the revolution, the 1896 Decree of Privileges for Inventions and Improvements was in force.[18] These capitalist patent laws were repealed and the Bolsheviks issued a decree in 1917 which nationalised authors' rights and patent rights "in the interest of government."[19] On 30 June 1919, Vladimir Lenin (1870–1924) issued the Decree on Inventing which again nationalised all inventions, or to be more precise, declared that all inventions that had been pronounced *useful* by the Committee for Inventing could be declared state property.[20] This could be done by means of an agreement with the inventor, or, if necessary, against the inventor's will. The Decree on Inventing recognised the inventor's *avtorskoe pravo* (author's right) by the granting of certificates that recognised the usefulness of their technical contributions, called *avtorskoye svidetel'stvo*, which literally translates as "author's certificate," but over time the term "inventor's certificate" became the Anglophone norm to avoid confusion with copyright.

The Decree on Inventing reflected socialist ideological opposition to patents, which saw recognition of intellectual property as going against the teachings of Marxism. One aspect of the critique was that the patent system was inherently capitalist and thereby inherently flawed. Soviet writers emphasised that it was not inventors who became rich, but large entrepreneurs, echoing the Marxist view that intellectual labour and talents were extracted to enrich the capitalists in a "vampire-like" manner.[21] Boris Mamlyuk also points out, in the context of copyright, that the relation between an individual and society was at the heart of the issue: for a true communist, "the state had rights to the given work because the actual creator of the work was not merely the individual author, but also the social medium in which he or

17 John N. Hazard, "Soviet Property Law," *Cornell Law Quarterly* 30 (1945): 466–487.

18 Many commentators viewed the Russian patent system prior to the October Revolution as "pre-modern" and "conceptually isolated" due to the ongoing use of the term "privileges," however, Hall points out that a series of reforms had initiated an examination system and enhanced the role of the novelty requirement, such that the system under the 1896 Decree of Privileges for Inventions and Improvements in fact constituted a modern patent system: Karl Hall, "Patent Debates on Invention from Tsarist Russia to the Soviet Union" in *Patent Cultures: Diversity and Harmonization in Historical Perspective,* ed. Graeme Gooday and Steven Wilf, (Cambridge: Cambridge University Press, 2020), 247.

19 Boris N. Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," *Washington University Global Studies Law Review* 10 (2012): 535–592, 558.

20 "No. 341. Decree of the Council of People's Commissars," *Исторические материалы* <https://web.archive.org/web/20190210054048/https://istmat.info/node/38265>; See also *Government, Law and Courts in the Soviet Union and Eastern Europe,* ed. Vladimir Gsovski and Kazimerz Grzybowski 2 (New York: Frederick A. Praeger, 1960): 1181.

21 Karl Marx, *Capital: A Critique of Political Economy* Volume 1 (Moscow: Progress Publishers, 1887) 163.

she worked."[22] Soviet scholar, Sergey Raevich, called this the problem of "the public nature of production, and the private nature of value extraction."[23] Finally, the ideological criticism also targeted how the capitalist patent system promoted industrial secrecy. Although the principle of the patent bargain made the grant conditional on disclosure of the invention, market competition actually choked the flow of technical information as applicants strove to limit disclosure to withhold useful information from their competitors.[24] A socialist state should therefore "design systems to facilitate technical information exchanges that would allow the Soviet economy to achieve a level of technological growth far superior to that of the most developed capitalist countries."[25]

However, throughout the Soviet period (but particularly its first twenty years), there were many substantial changes to the legal protections for inventions. The revolution was immediately followed by a devastating Civil War (1918–1922), which ultimately consolidated Bolshevik power, but also made the 1920s into a time of pragmatic recovery necessitating ideological compromises. Thus, while many Bolsheviks considered individual proprietary rights to inventions as entirely out of place in a socialist state, the Soviet Union was haunted by intellectual property and eventually resurrected patent law to achieve its political and economic goals.

2.2 Building Socialism Through Compromise with Capitalism, 1924–1931

The NEP was announced in 1921. Sometimes dubbed a compromise with capitalism, it allowed for some market principles and private enterprises as a means to recover from wartime devastation and strengthen the state. This was justified by the Marxist view that a direct transition to communism was impossible, but necessitated socialism as a transitional stage in which elements of capitalism would survive.[26] In this

22 Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," 560.

23 Sergey I. Raevich, *The Policy of Inventiveness and Patent Law of Two Systems at the Time of a General Crisis of Capitalism* (Moscow, Leningrad: NKTP, 1934), as translated in Svitlana Lebedenko, "Revolution and Decline: Russian Innovation and Intellectual Property 1917–2020" (Doctor of Laws thesis, European University Institute, 2022) 44.

24 John Martens, *Secret Patenting in the USSR and Russia* (Santa Fe: Deep North Press, 2010) 32–33.

25 Martens, *Secret Patenting in the USSR and Russia*, 55. This critique also mirrored western debates and abolition movements: Machlup and Penrose, "The Patent Controversy in the Nineteenth Century," 1; Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883*, 94–95, 159–204.

26 Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," 540.

package, patents were seen as instrumental in attracting foreign investment and improving foreign relations to foster recovery and industrialisation after the Civil War.[27] As part of the NEP, the government promulgated the Soviet Patent Law on 12 September 1924.[28] The new law organised the Committee for Inventions, which operated along the lines of the patent offices in other countries.[29] It afforded equal rights for Soviet citizens and foreign inventors to obtain patents and provided an exclusive right for patent-holders to exploit and licence their inventions for a period of 15 years. The reinstatement of proprietary rights and private enterprise was controversial but was deemed necessary to gain access to foreign technological know-how that could be useful during reconstruction. However, since most industries remained under government control in the Soviet Union, there was very little scope for inventors to pursue private business activities with their patented inventions.[30]

If the 1919 decree was firmly rooted in Marxist-Leninist principles, these were absent from the new law. The reasons for this were purely pragmatic; even among many leading communists, it was believed that patent protection was necessary to attract foreign technology-intensive investments: "protecting intellectual property rights was indispensable to attract trade, and trade was indispensable to strengthening the Soviet state."[31] During the 1920s, the Soviet Union entered into a number of bilateral agreements with European states in order to normalise trade relations, and in each of these agreements the Soviet Union promised to secure the property rights of foreign investors, contradicting the nationalisation decrees issued a few years earlier.[32] The treaties also gave the Soviet Union something else it desired: international legitimacy and legal personality, as these agreements demonstrated recognition of the Soviet state under a constitutive theory of recognition under international law.[33]

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27 Olympiad S. Ioffe, "Law and Economy in the USSR," *Harvard Law Review* 95.7 (1982): 1591–1625, 1617–1618.

28 P.J. Federico, "Soviet Law on Inventions and Patents," *Journal of the Patent Office Society* (1961) 43: 5–96, 11. The legislative drafting commenced in 1921, under Lenin's leadership, but the tensions within the party about the deviation from Marxist-Leninist principles caused delays, such that the law was not passed until shortly after Lenin's death: Martens, *Secret Patenting in the USSR and Russia*, 36.

29 The decree from the Central Executive Committee and the Council of People's Commissars of the USSR entered into force on September 15, 1924.

30 Victor G. Olkhovsky, "The Principles of Soviet Patent Law and Social Organization of Inventions in the USSR," *Journal of the Patent Office Society* 17 (1935): 568–584, 568.

31 Martens, *Secret Patenting in the USSR and Russia*, 36–37; Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," 562.

32 Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," 548.

33 Mamlyuk, "Russia and Legal Harmonization: An Historical Inquiry into IP Reform as Global Convergence and Resistance," 549.

2.3 Encouraging the Worker-Inventor, 1931–1961

The reintroduction of patents soon came under ideological attack, with increasing intensity as the Soviet Union prepared to launch the first Five Year Plan in the late 1920s. By the end of 1927, new draft laws for inventing had already been developed. Not only was there ongoing criticism of the patent system being at odds with Marxist-Leninist principles, but also of the workings of the Committee for Inventions (including espionage allegations, which, in what can be seen as a preview of the purges, resulted in two people being shot and another nine sentenced to up to 10 years of hard labour). The ideological atmosphere that had allowed for a Western-style patent law was gone.[34]

The first Five Year Plan was launched in 1928 under the leadership of Joseph Stalin (1878–1953) and aimed to achieve rapid industrialisation of the Soviet Union. Technological optimism and utopianism were rife in the early Soviet state, as reflected in the slogan *Tekhnika reshaet vse* ("technology decides/solves everything").[35] A new approach to invention law was also devised to support the aims of rapid industrialisation, culminating in the Decree on Inventions and Technical Improvements, passed on 9 April 1931. Its preamble noted the widespread dissatisfaction with the outcomes of the NEP patent system:

> In spite of the enormous importance of mass inventions to the cause of the struggle for the speed-up of industrialization, the exploitation of inventions and the exchange of technical experience are most unsatisfactory. The work of the bodies set up to assist inventions is inadequate. The creative initiative of the worker-inventors is not sufficiently encouraged.[36]

The above preamble and the first Five Year Plan reflected the campaigns to foster inventions, where "mass inventing" or "worker inventing" were desirable outcomes. To resolve the shortcomings of patents and ensure the timely exploitation of inventions in the Soviet Union, the new law sought to bring about closer relations between the worker-inventor and the state.[37] However, this was not a complete return to the post-revolutionary abolition of patents. Instead, the decree reintroduced the inventor's certificates while keeping patents as a parallel option.

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34 Martens, *Secret Patenting in the USSR and Russia*, 38–42.

35 For technological utopianism, see Paul R. Josephson, *Would Trotsky wear a bluetooth? Technological Utopianism under Socialism, 1917–1989* (Baltimore: JHU Press, 2010).

36 Olkhovsky, "The Principles of Soviet Patent Law and Social Organization of Inventions in the U.S.S.R," 571.

37 It seemed logical in a planned economy to encourage invention through a system of state rewards: W.R. Cornish, *Intellectual Property: Patents, Copyright, Trade Marks and Allied Rights,* 2nd ed (London: Sweet & Maxwell, 1989), 72 [3–010].

In practice, the dual system distinguished between inventions by Soviet citizens and foreigners. Patents, primarily intended for foreigners, were issued for a term of 15 years and required the invention to be worked in the Soviet Union during the first three years of its term or be subject to a compulsory licence.[38] Despite increased ideological vigilance, pragmatism prevailed in this compromise: it allowed Soviet inventors to patent abroad via reciprocity, and likely facilitated contract negotiations between Soviet industries and international companies. Another aspect that favoured patents was that their annual fees were a source of hard currency, which was always in short supply in the Soviet Union.[39]

Inventor's certificates, in contrast, required assignment of ownership to the state. The worker-inventor could not exclude others from using the invention, but received monetary remuneration for such use on a fixed scale calculated according to the annual savings that the invention brought to the industrial field. Inventions that did not bring savings but rather improvements in quality, work conditions, or safety measures were also rewarded on the fixed scale.[40] Esteem was also an important incentive,[41] and inventor's certificates further secured for the inventor certain exemptions and social privileges, such as improved housing, vacations, higher education, and promotion to research positions.[42] Thus, as several American commentators have noted, the system was designed to provide incentives for *employed* inventors.[43] Both patents and inventor's certificates had novelty and industrial application requirements. Although, in principle, a Soviet inventor was free to choose to apply for either a patent or an inventor's certificate, the only reasonable option was the latter. The government favoured them for ideological reasons, and discouraged royalty-based systems even if the beneficiaries were Soviet citizens.[44] Patent

38 Requirements to work the invention in the jurisdiction have been included in many patent laws: Marketa Trimble, "Patent Working Requirements: Historical and Comparative Perspectives," *UC Irvine Law Review* 6.3 (2016): 483–508.

39 Martens, *Secret Patenting in the USSR and Russia,* 44.

40 Lebedenko, "Revolution and Decline: Russian Innovation and Intellectual Property 1917–2020," 57.

41 Lebedenko, "Revolution and Decline: Russian Innovation and Intellectual Property 1917–2020," 57.

42 John P. Nikonow, "New Patent Laws in the Soviet Russia," *Journal of the Patent Office Society* 13.9 (1931): 437, 437; Olkhovsky, "The Principles of Soviet Patent Law and Social Organization of Inventions in the U.S.S.R.," 571. However, in the 1950s, the leaders of the Committee for Inventions and Discoveries noted that this did not perfectly translate into appropriate rewards for inventors: payments were often delayed, the calculated remuneration often underrated the value of the invention, and it often took a long time to implement the inventions and technical improvements in the relevant state enterprises. M. Hoser, "Patents of the USSR," *Journal of the Patent Office Society* 40.4 (1958): 241–251, 246.

43 Charles Prince, "The New Soviet Patent Law," *Journal of the Patent Office Society* 28.4 (1946): 261–291; Homer O. Blair, "Inventions in the Soviet Union," *The International Lawyer* 7.2 (1973): 485–491.

44 Prince, "The New Soviet Patent Law," 262.

applications carried high fees, while inventor's certificates had none. Whereas a patent holder had to bear the costs of commercialising their invention, the ownership of inventions by the state came with the responsibility for exploitation of the invention: the law stated that "each useful invention shall be implemented in all enterprises of the industry, where it can be applied with the benefit."[45]

The new 1931 law was to work in tandem with the mass inventing campaign mentioned earlier. During these campaigns, there was emphasis on Stakhanovism and over-fulfilment (such as reaching the goals of the Five Year Plan early), and in this atmosphere, minor rationalisation proposals that could increase short-term productivity was favoured over truly innovative inventions that carried a greater risk and where the potential benefits were long-term. Following the 1959 legislation, usefulness became the key criterion for inventor's certificates, which paradoxically can be seen as an obstacle to innovation. As more pathbreaking inventions were perhaps more difficult to put to immediate use, some inventions with great potential were in fact deemed "useless" as the responsible organ could not see any immediate application.[46]

In the decades that followed, the key changes were not to the regulatory framework but to the organisational form of the administration and processing of applications. The entire Soviet Union was affected by the terror and purges in the 1930s and the Committee for Inventions was no exception. The mass inventing campaign had faced difficulties reaching targets, resistance from state enterprise directors who did not use suggested inventions, and struggles to promote exchange of technical information between state enterprises. The Committee for Inventions was abolished in 1936 and its former head was arrested and shot in 1937. The administration of inventions became decentralised and fragmented, there were changes to the framework and procedures several times, including attempts at recentralisation, in the the coming decades, which were shaped by the terror, World War II, and new rounds of repressions.[47]

Following Stalin's death, there was a return to a centralised invention system: the Committee for Inventions and Discoveries was established in 1955 and "quickly rose in prominence and received generous state support."[48] This prefigured a revision of the law on inventions. Inventor's certificates were part of broader government efforts to increase inventive activity, such as invention campaigns and changing institutional infrastructure. The new Statute on Discoveries, Inventions and Rationalization Proposals, enacted on 24 April 1959, added scientific discoveries as a category for protection and established a new certificate for discoveries, with

45 Lebedenko, "Revolution and Decline: Russian Innovation and Intellectual Property 1917–2020," 49.
46 Blair, "Inventions in the Soviet Union," 486.
47 Martens, *Secret Patenting in the USSR and Russia*, 55, 97.
48 Martens, *Secret Patenting in the USSR and Russia*, 133.

both inventions and discoveries handled by the Committee for Inventions and Discoveries.[49] The new law kept patents alongside certificates, although patents could not be obtained for chemical products, medical compositions, foodstuffs and articles of refreshment and pure scientific discoveries.[50] As with previous statutes, patents were valid for a period of 15 years from the filing date, whereas inventor's certificates had an indefinite duration. Although the rights to the invention were exclusively assigned to the state, this meant that Soviet inventors could "receive remuneration from the user of his invention indefinitely."[51] The State also "assumes the responsibility for exploiting the invention, having regard to the expediency of its introduction."[52] The legal requirements and rewards from inventor's certificates were deliberately geared towards benefitting Soviet citizens as "worker-inventors." As before, Soviet inventors tended to seek protection through the inventor's certificate system, and rarely obtained patent protection.[53]

2.4 Encouraging the Circulation of Knowledge

The inventor's certificate system was designed to promote the free flow of knowledge. Lifting legal restrictions on knowledge flows was seen as pivotal in the Soviet aim of rapid industrialisation and catching up with the West,[54] and this is an area where Soviet commentators emphasise the difference with patents. However, perhaps paradoxically, Peter Maggs and James Jerz suggest that the goal of promoting flows of information may also help explain developments in the 1960s and the Soviet decision to accede to the Paris Convention "after having remained aloof from it for so many years."[55] As in earlier decades when retaining patents were seen as instrumental in relation to foreign trade, there was a general desire to conform to international business practice and attract more foreign investments, but the need to obtain patent information also played a role.

49 See James M. Swanson, *Scientific Discoveries and Soviet Law* (Gainsville: University of Florida Press, 1984); Y. E. Maksarev, "Legal Protection of Scientific Discoveries in the USSR," *Industrial Property* 8.3 (1969): 69.

50 Blair, "Inventions in the Soviet Union," 488.

51 Blair, "Inventions in the Soviet Union," 490.

52 "Fundamentals of the Civil Legislation of the USSR and the Union Republics, as adopted by the Supreme Soviet of the USSR on December 8, 1961," *Industrial Property* 6.4 (1967): 77.

53 M. M. Boguslavsky, "The Legal Nature of Inventors' Certificates," *Industrial Property* 18.4 (1979): 113, 113.

54 Lebedenko, "Russian Innovation in the Era of Patent Globalization," 173.

55 Peter B. Maggs and James W. Jerz, "The Significance of Soviet Accession to the Paris Convention for the Protection of Industrial Property," *Journal of the Patent Office Society* 48 (1966): 242–262, 260–261.

In line with this focus on knowledge flows, the Soviet Union had in the post-war decades built up a great capacity for organising and distributing patent information. E. Artemiev, the Deputy Chairman of the Committee for Inventions and Discoveries, outlined this centralised system of patent information and patent services in *Industrial Property* for the benefit of the international reader. He emphasised that the legal principle of invention's belonging to society prevails in the Soviet Union and provides the basis for unimpeded circulation of patent information. Artemiev suggested that this centralised patent information system was unique, not to be found anywhere else in the world. He also pronounced it a success, having "rapidly resulted in an increase in the number of inventions."[56] This outline of the work of the All-Union Technical Patent Library (and other, regional, parts of the system) is both idealised and self-congratulatory. However, the monumentality of it is striking: the information system covered both domestic and international inventions, aiming for a near totality of inventions worldwide.[57]

However, Maggs and Jerz suggest that the efforts to organise, disseminate and use patent information in the Soviet Union were not paying off. Given the significant delay between filing and publication, not least in the US, the "disclosure" part of the patent bargain was too slow, and:

> Soviet scientists may work for years on a problem, the solution to which has already been filed at the United States Patent Office. Given the present rapid expansion of the Soviet economy, the royalties involved would be a small price to pay for the contributions these inventions could make to Soviet economic development [...] Payment of substantial royalties would of course involve a drain on limited Soviet foreign exchange resources. To some extent this drain might be compensated by royalties received by Soviet patents abroad.[58]

Artemiev's letter was published in 1969, several years after the Soviet Union joined the Paris Convention. The potential difficulty in obtaining timely information from the published patent specifications thus did not immediately diminish the faith in disseminating technical information. The Soviet effort at increasing the circulation of technical knowledge did not altogether fail; Svitlana Lebedenko even suggests "the Soviet period was a peak moment of Russian innovation."[59] Inventing activity was indeed larger than patent activity in other industrialised countries, and with 10

56 E. Artemiev, "Letter from the USSR," *Industrial Property* 8.8 (1969): 222.

57 Artemiev, "Letter from the USSR," 222, 224. The efforts at centralising patent information in the 1960s should be seen in parallel to the equally monumental Soviet efforts at efficiently organise scientific information, cf. Hammarfelt & Dahlin, "Abstracting it all: The Soviet Institute of Scientific Information (VINITI) and the promise of centralisation, 1952–1977" (forthcoming).

58 Maggs and Jerz, "The Significance of Soviet Accession to the Paris Convention for the Protection of Industrial Property," 260–261.

59 Lebedenko, "Russian Innovation in the Era of Patent Globalization," 175.

million members in the Soviet inventor's society, mass inventing can be said to have been achieved. Patent services were available to inventors at most enterprises and research institutes (although, as mentioned, it was firmly the inventor's certificate that attracted Soviet inventors).[60]

The emphasis on making knowledge accessible and freely circulating is in stark contrast to many accounts of Soviet society which emphasise how secrecy was endemic.[61] Although there was no trade secrets law in the Soviet Union, the law on inventor's certificates explicitly provided for secrecy in certain circumstances, under which many military inventions were made secret.[62] Loren Graham has also famously characterised innovation in Russia as plagued by "lonely ideas" – the absence of a social environment where great ideas can be turned into economic development. Graham takes a much more negative view on the inventor's certificate system and argues that the absence of a proper patent system was a main source for these shortcomings. However, as shown above, inventing activity flourished during the inventor's certificate regime and the focus on organisation and dissemination of patent information may be seen as ways to combat loneliness. Nevertheless, Graham's argument can also be interpreted to mean that the main asset of patents is not incentivising invention, but going from invention to innovation.[63]

Following the Second World War, inventor's certificates as a legal form of protection spread to many other of the new socialist states, and the Soviet Union also took a more active role on the international stage. Intellectual property and international trade were seen as essential for the free flow of technical information, which would help to build the economic and political power of the Soviet state. The pursuit of international recognition raised questions about whether the inventor's certificate was the same as a patent, or not. This issue was a matter that BIRPI and later WIPO gave attention to from the late 1950s and onwards, and as we will see, the socialist countries in these discussions generally stressed the similarities between the two forms of protection.

60 Boguslavsky provides some data on the ratio between the applications of inventor's certificates and patents by Soviet citizens: Boguslavsky, "The Legal Nature of Inventors' Certificates," 113.

61 Cf. Asif Siddiqi, "Soviet Secrecy: Toward a Social Map of Knowledge," *American Historical Review* 126.3 (2021): 1046–1071.

62 Much inventing activity was also taking place outside the formal IP regulation. In the 1930–1950s, forced labour, often (but not always) unrecognised played a not negligible role as sources of invention.

63 Loren Graham, *Lonely Ideas: Can Russia Compete?* (Cambridge: MIT Press, 2013).

3 Equating Inventor's Certificates with Patents in the Paris Convention

Two core principles arose from the Paris Convention. The first was the idea that foreigners must be treated as nationals. Much of the concern during the drafting of the Paris Convention was about reciprocity, as evidenced by one incident of Americans refusing to send inventions to the Austro-Hungarian Empire due to the inadequate protection for foreign inventors. Article 2(1) sets out the principle of national treatment (or non-discrimination), whereby nationals of any Convention member country must enjoy the same legal rights and protections as nationals of the country of filing.[64] The second principle was perhaps the most significant, which was the recognition of priority periods: Article 4 introduced the system of so-called "Convention priority," whereby applicants for a patent in one member country are given the same "priority date" and a twelve-month window to pursue foreign filing without destroying the novelty of a subsequent patent application in another country.[65]

From the 1950s, the benefits of "Convention priority" became an increasing concern for the socialist countries with an inventor's certificate system. With the spectre of the negotiation of new patent treaties, it seemed that more countries would adopt the stricter approach of absolute, worldwide novelty, which would expand the scope of the prior art and create barriers for holders of inventor's certificates in seeking patent protection abroad – unless they could take advantage of the same treatment given to patents under the Paris Convention. This prompted a rhetorical shift from socialist countries, which downplayed the *sui generis* nature of inventor's certificates and positioned them as fundamentally equivalent to patents.

3.1 Debating the Significance of State Ownership

The question of recognition of inventor's certificates in the Paris Convention was first raised by the Socialist Republic of Romania at the revision conference in Lisbon in 1958. Romania had been a member of the Paris Convention since 1920 and a socialist republic since 1947.[66] The initial proposal was to insert the words « *certificats*

64 Paris Convention Article 2(1); Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883*, 268–270.
65 Paris Convention Article 4; Duncan, *The Role of Theoretical Debate in the Evolution of National and International Patent Protection: From the French Revolution to the Paris Convention of 1883,* 312–316.
66 Romania adopted the inventor's certificate system in 1950, alongside other countries in the same period: German Democratic Republic (1950, there known as an economic patent or *Wirtschaftspatent*), Bulgaria (1950), Poland (1950), Hungary (1948).

d'auteur » ("author's certificates") into Article 1(4), which is the provision that explains the term "patents" for the purposes of the Paris Convention.[67] This would treat inventor's certificates as equivalent to all other patents for the purposes of the whole treaty – a suggestion that was met with immediate resistance.

At the meeting in Lisbon, the resistance to recognising inventor's certificates was centred on state ownership. Israel took the view that the inventor's certificate was "completely contrary to the concept of a patent" because it constituted a surrender of the exclusive rights to the invention.[68] Romania responded that it was not a "surrender" because it recognised the inventor and provided compensation proportional to the economic benefits of the invention. Czechoslovakia, Bulgaria and Hungary supported the proposal, emphasising that the only difference between an inventor's certificate and a patent was that the former belonged to the state; inventors were free to choose whether to apply for a patent and retain the exclusive right to the invention, or to apply for an inventor's certificate and transfer the ownership to the state in return for compensation. "It is just another form of patent," they said.[69]

There were many differences between patents and inventor's certificates. The latter had an indefinite duration, monetary rewards on a fixed scale, along with workplace and social privileges, which raised questions about whether those privileges possessed an equally real and practical value for foreign nationals.[70] However, the main focus of the debate was the ownership by the state. The delegates at the Lisbon Conference agreed that the matter required further study and decided to postpone a decision to the next conference, after more thorough investigation of the matter.[71] BIRPI subsequently decided to convene a study group in Geneva in 1964 to examine the issue, which was followed by a meeting of a Committee of Experts in 1965. It should be noted that, whilst the Soviet Union firmly favoured the terminology

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67 *Actes de la Conférence de Lisbonne: Union internationale pour la protection de la propriété industrielle (6–31 October 1958)* (BIRPI, 1963) 496. Romania introduced the dual patent and inventor's certificate system in 1950 with Decree No. 214/1950 and the Resolution of the Cabinet Council No. 943/1950, which also created the Committee for Inventions and Discoveries: Izabela Bratiloveanu, "Historical Considerations of Invention Patenting," *Fiat Iustitia* 1 (2016): 21, 25.

68 Original text: « *le certificat d'auteur était tout à fait contraire à la notion du brevet* » (author's translation).

69 Original text: « *C'est seulement une autre forme de brevet* » (author's translation). *Actes de la Conférence de Lisbonne: Union internationale pour la protection de la propriété industrielle (6-31 October 1958)* (BIRPI, 1963) 497. The United States sought to mediate the positions: it agreed that Article 1(4) was not the place for inventor's certificates, but suggested that it could be appropriate in the definition of "industrial property" in Article 1(2), where patents are listed alongside a range of subject matter, such as trademarks, unfair competition, and industrial designs. Romania agreed and submitted a revised proposal to insert "inventor's certificates" into Article 1(2).

70 "Study Group on Certificates of Authorship," *Industrial Property* 3.4 (1964): 66, 68.

71 "Study Group on Certificates of Authorship," 68.

of "author's certificates," and this phrase was initially used by the study group, the Committee of Experts later changed to "inventor's certificates."[72] When the study group was first established, BIRPI took care to point out that it was not to concern itself with the advantages or disadvantages of certificates or patents, but to "examine the possibility of establishing provisions, on the international level, for certificates of authorship and especially the possibility of introducing the notion of certificates of authorship in the Paris Convention."[73] The study group was comprised of experts from 10 states, six of which were socialist, and a delegation of experts from the Soviet Union was invited to join the study group as observers.[74]

The dividing line was drawn between socialist and capitalist countries. Several delegations from socialist countries held the view that patents and certificates of authorship were so similar that "the Convention, in its present wording, in fact included author's certificates under the term patents, and that the Paris Convention contains an explicative enumeration which allows the inclusion of author's certificates among the titles of protection."[75] Other countries (US, UK, Netherlands, Israel), however, took a different view and stressed what they perceived as a fundamental difference between the two types of document:

> the patent was a monopoly given by the State to the inventor which he was free to exploit for his own gain; the author's certificate was basically a system whereby the inventor assigned his rights to the State (except, naturally, his moral rights); and kept no monopoly rights to himself and depended upon the State to give him his reward.[76]

According to the experts from these countries, this difference was of such a nature that inventor's certificates were not included by the present text and that present convention did not oblige any country to recognise priority on the basis of certificates.[77]

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72 "Study Group on Certificates of Authorship," 77. "Some Delegates preferred not to use the word 'authors' at all, since this was liable to create confusion with authors of literary and artistic works protected by the Berne Convention. But after hearing the preferences of those countries, notably the USSR, which now grant this form of protection, and the difficulties which the use of different wording in the Convention would create for them, it was agreed, at least in the French (authentic) text to use the words « *certificats d'auteur d'inventions* »: "Committee of Experts on Inventor's Certificates," *Industrial Property* 4.4 (1965): 75, 77.

73 "Study Group on Certificates of Authorship," 68.

74 "Study Group on Certificates of Authorship," 77: Bulgaria, Czechoslovakia, Hungary, Israel, Netherlands, Poland, Rumania, UK, US, Yugoslavia.

75 "Study Group on Certificates of Authorship," 78.

76 "Study Group on Certificates of Authorship," 78.

77 "Study Group on Certificates of Authorship," 78.

3.2 Restricting the Negotiations to Convention Priority

After the initial resistance to including inventor's certificates within the definition of a patent, Romania submitted a revised proposal at the Lisbon Conference to insert an additional paragraph into Article 4 stating, "Within the meaning of Article 4, applications for certificates of authorship shall be equivalent to applications for patents," and therefore eligible for the right of priority.[78] The mutual recognition of Convention priority remained at the heart of the discussion during the study group convened in 1964. The expert from Hungary also pointed out that an acceptance of inventor's certificates for priority purposes might be an encouragement from non-member countries to join the Paris Convention.[79] During the discussion, there was general agreement that "the subject matter for which authors' certificates for inventions are granted might properly be considered to be industrial property within the meaning of the convention," but rationalisation schemes and diplomas for discoveries under Soviet law were not "industrial property" and therefore fell outside the scope of the Paris Convention.[80] The meeting ended with general conclusions that desired more certainty but that "there was no reason to consider the system of authors' certificates as contrary to the spirit and aims of the Paris Convention."[81] The Director of BIRPI therefore suggested that they should aim for an amendment at the Stockholm Conference in 1967.

A proposal for draft amendments (along with an explanatory statement) was sent to the member states in 1964, along with an invitation to a follow up meeting entitled "Committee of Experts on Inventors' Certificates," held at the BIRPI Headquarters in Geneva on 15–18 March 1965, and attended by 27 member states and three observer states (one of which was the Soviet Union).[82] Early in the meeting the Soviet representative announced the Soviet Union intended to become a member of the Paris Union. In the words of the meeting rapporteur, "This important announcement was received with the acclamation of all present. The Meeting offered its congratulations not only to him but also to the Director of BIRPI for the part he had played in bringing this about."[83]

The Soviet decision to join the Paris Convention was in some ways surprising and a deviation from previous policy, which could be seen as expressing an optimism to be able to benefit from investments in new technology. However, as far as foreign inventors

78 *Actes de la Conférence de Lisbonne: Union internationale pour la protection de la propriété industrielle (6–31 October 1958)* (BIRPI, 1963) 498.

79 "Study Group on Certificates of Authorship," 78.

80 "Study Group on Certificates of Authorship," 67.

81 "Study Group on Certificates of Authorship," 79.

82 WIPO, *Records of the Intellectual Property Conference of Stockholm* (vol. 1, 1971): 179.

83 "Committee of Experts on Inventors' Certificates," 76.

and patents were concerned, John Martens suggests that an incident in the late 1950s was crucial in changing the Soviet attitude to international intellectual property. The Soviet Union exported locomotives to India as part of a foreign aid package, but upon arrival, it turned out that they contained parts that infringed on patents held by a British firm in India. The Soviet Union was forced to pay royalties, using hard currency that was always a scarce resource, which sparked a re-evaluation of patents: "The lesson was clear: if the Soviet Union were to become a world economic power, it had to invest in improving its understanding of international patenting."[84] The decision to join the Paris Convention also sent a signal that "the Soviet Union was prepared to accept international norms in the protection of patent rights," with the effect that foreign patenting in the Soviet Union increased in the years following 1965.[85]

The draft proposal pre-circulated for meeting with the Committee of Experts contained text to amend Article 4 of the Paris Convention which had been prepared by BIRPI and the Swedish Government. The proposal was "to ensure that a right of priority within the meaning of that Article could be claimed on an application for an inventor's certificate just as it can now be claimed on a patent application." It was clear from the outset of the meeting that there was general consensus on this issue: "On this point therefore it was simply a question of finding the best form of words."[86]

Although the meeting was focused on Convention priority under Article 4, the statement from the Soviet representative at the meeting continued to emphasise the broader similarity between the two forms of protection: the approach "towards the recognition of the rights in an invention is the same both in the case of authors' certificates and in the case of patents. The main difference concerns the consequences of the issuance of the documents."[87] The Soviet representative pointed to instances where foreigners have received Soviet inventor's certificates and made clear that "[w]hen Soviet inventions are patented abroad, applications […] are filed for the same inventions for which Soviet citizen authors usually obtain authors' certificates. The number of such applications is constantly increasing."[88]

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84 Martens, *Secret Patenting in the USSR and Russia*, 132.

85 Martens, *Secret Patenting in the USSR and Russia*, 133.

86 "Committee of Experts on Inventors' Certificates," 75. It should be noted that the delegations from socialist countries still wanted to go further and fully assimilate certificates to patents throughout the entire Convention. The majority of the delegations were hesitant, raising both procedural objections, (i.e. a reluctance to consider proposals that had not been pre-circulated), and reiterating the view that the nature of inventor's certificates made them different from patents in some fundamental ways, such that it would not be appropriate to equate them in other provisions of the Convention.

87 Declaration of the Delegation of the Union of Soviet Socialist Republics. Translated from Russian and reproduced in "Committee of Experts on Inventors' Certificates," 77–79.

88 Declaration of the Delegation of the Union of Soviet Socialist Republics. Translated from Russian and reproduced in "Committee of Experts on Inventors' Certificates," 78.

The Soviet representative also pointed out that the Paris Convention is based on the sovereignty of the participating states. Thus, "every State has the right to establish such forms of the protection of industrial property as correspond to the social and economic conditions existing in that particular State." While conceding that "there are differences between an author's certificate and a patent as far as the use of inventions is concerned," the Soviet representative firmly asserted that from the point of view of the Paris Convention, "the international impacts of both the patent and the author's certificate fully coincide; both a patent and an author's certificate granted abroad interfere with the novelty of the invention in the countries whose legislation demands world novelty."[89] The statement concluded as follows: "The recognition of the international impact of an author's certificate is an unavoidable consequence of keeping to the principles of the peaceful coexistence of States."[90] The meeting with the Committee of Experts agreed on proposed amendments to Article 4, but no further revisions of the Convention were put forward to the Stockholm Conference.

The Stockholm Conference took place from 11 June to 14 July 1967. Several important events occurred at this conference, including the adoption of the treaty establishing the World Intellectual Property Organization (WIPO), which replaced BIRPI.[91] The draft amendments to Article Four agreed upon by the Committee of Experts were accepted, but no further proposals of amendments were accepted before the Conference order to ensure the required unanimity. Thus, after the Stockholm Conference, inventor's certificates were only recognised as equivalent to patents for the purposes of foreign priority under Article 4, "under the same conditions and with the same effects as applications for patents,"[92] but not any other aspects of the Paris Convention.

3.3 Reopening the Question of Equivalence

The socialist countries had not dropped the question of fully recognising inventor's certificates throughout the rest of the Paris Convention. The discussion continued

89 Declaration of the Delegation of the Union of Soviet Socialist Republics. Translated from Russian and reproduced in "Committee of Experts on Inventors' Certificates," 79.

90 Declaration of the Delegation of the Union of Soviet Socialist Republics. Translated from Russian and reproduced in "Committee of Experts on Inventors' Certificates," 77–79.

91 *Convention Establishing the World Intellectual Property Organization*, signed 14 July 1967 (entered into force 26 April 1970); Gillian Davies and Sam Ricketson, "The foundation of the World Intellectual Property Organization: what came before," in *Research handbook on the World Intellectual Property Organization: The First 50 Years and Beyond,* ed. Sam Ricketson (Cheltenham: Edward Elgar, 2020): 1–25, 1.

92 Paris Convention Article 4(I)(1).

throughout the 1970s in the lead-up to the next revision conference to be held in Geneva,[93] through a formal body called the Preparatory Intergovernmental Committee on the Revision of the Paris Convention for the Protection of Industrial Property, which held five meetings in Geneva between November 1976 and December 1978. The Preparatory Committee established smaller Working Groups, including one on inventor's certificates, to help develop a set of "Basic Proposals" that could be circulated to the wider membership and discussed at the revision conference in Geneva in 1980.[94] This led to a proposal for bringing inventor's certificates "fully within the framework of the Convention" through amendments to Article 1.[95] The draft text published in 1979 proposed to add "inventor's certificate" to the definition of "industrial property" covered by the convention, and to add paragraphs that defined both inventor's certificates and, significantly, patents.[96] At about the same time as the publication of the basic proposal in 1979, M. Boguslavsky published a piece on the legal nature of inventor's certificates in the WIPO journal, *Industrial Property*, arguing that inventor's certificates and patents are equivalent legal forms, as they both offer monopoly protection over the invention. Returning to the debates raised earlier, although the owner of that monopoly in the case of an inventor's certificate is the state, Boguslavsky describes this right as being "of a derived nature," since the inventor has the choice between a patent and an inventor's certificate, and applying for the latter is an "act of volition on the part of the inventor, which […] may be described as a unilateral contract."[97]

The text of the Basic Proposal, however, reflected the growing tensions between various blocs or groups, roughly comprising the developing countries (or "Group of 77"), the socialist countries ("Group D"),[98] and the developed countries ("Group B"),[99] which was characteristic of not only negotiations around the Paris Convention, but of the international system more broadly at the time. While the proposal to include inventor's certificates in Article 1 was presented as a joint text, other parts of the proposal included two or three versions that reflected the positions of these

93 During this time, Czechoslovakia and Mexico adopted inventor's certificates in 1972 and 1976 respectively.

94 Sam Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary* (Oxford: Oxford University Press, 2015), [5.04]–[5.06]; "Paris Union. Preparatory Intergovernmental Committee on the Revision of the Paris Convention for the Protection of Industrial Property," *Industrial Property* 17.8 (1978): 216.

95 Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary*, [5.07].

96 "Basic Proposals for the Diplomatic Conference on the Revision of the Paris Convention," *Industrial Property* 18.11 (1979): 243, 244.

97 Boguslavsky, "The Legal Nature of Inventors' Certificates," 113.

98 Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary*, [5.01]. The so-called "Group D" members included Bulgaria, the Byelorussian SSR, Czechoslovakia, the German Democratic Republic, Hungary, Poland, the Soviet Union, and the Ukrainian SSR.

99 Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary*, [5.05].

respective groups. Inventor's certificates were not the most contentious issue under discussion, but there were some fissures between the blocs, for instance, about the approach to exceptions to protection.

However, more broadly, the tensions between the different negotiating blocs continued at the revision conference that began in Geneva in 1980 and continued over several sessions the coming years. Scholars have described the efforts to revise the Paris Convention at the Geneva Conference as "doomed."[100] There were many substantive proposals up for debate, but no changes to the wording of the Paris Convention were ever made – this had not so much to do with the nature of the inventor's certificates, but reflected a growing divide between developed and developing countries and the socialist bloc. The stalled negotiations also partly explain the United States' proposal to include intellectual property within the ambit of the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), which led to the creation of the World Trade Organization (WTO) and its Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement).[101] As time went on, socialism collapsed in many countries, and the inventor's certificates systems disappeared from most jurisdictions by the early 1990s, and therefore fell off the agenda for future revisions to the Paris Convention.[102]

4 Conclusions

The debates about the place of inventor's certificates in the Paris Convention reveal a great deal about the Soviet state's efforts to achieve international legitimacy while encouraging innovative activity amongst its citizenry in line with socialist principles. Scholars of intellectual property and international law tend to focus on Soviet deviancy from international norms,[103] yet the efforts to include inventor's certificates in the Paris Convention demonstrated a move towards conformity with the principles of international patent law. With the collapse of the revisions to the Paris Convention and the Soviet Union itself, the degree of equivalence between inventor's certificates remains uncertain. This has not been helped by the fact that, in the last few decades, to the extent that scholars of intellectual property mention inventor's certificates, they are treated as irrelevant, rather than an aspect of international intellectual property law which should be taken seriously (we could even go so far as to say that inventor's certificates have been

100 Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary*, [5.01].
101 Ricketson, *The Paris Convention for the Protection of Industrial Property: A Commentary*, [5.09], [15.03].
102 Árpád Bogsch, *The First Twenty-Five Years of the World Intellectual Property Organization from 1967 to 1992* (Geneva: The International Bureau of Intellectual Property, 1992), 35–36.
103 Owen Taylor, "Law and Socialist Revolution: Early Soviet Legal Theory and Practice" in *Revolutions in International Law: The Legacies of 1917*, ed. Kathryn Greenman, Anne Orford, Anna Saunders and Ntina Tzouvala (Cambridge: Cambridge University Press, 2021).

largely exorcised from the literature). This article has indicated, however, that certain differences between patents and inventor's certificates were obscured by the narrow focus on the significance of state ownership. We might wonder what questions remain unanswered, and what opportunities are foreclosed, by this refusal to engage with this alternative form of protection of inventions and its implications for global intellectual property law. Perhaps it is time for intellectual property scholarship to understand that which is repressed or unresolved in the discipline, for, as far as the story of invention law goes, we may discover that "the future belongs to ghosts."[104]

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Bionotes

Jocelyn Bosse
Queen's University Belfast, Belfast, UK
j.bosse@qub.ac.uk
https://orcid.org/0000-0001-9752-6145

Dr. Jocelyn Bosse is a Lecturer in Intellectual Property Law at Queen's University Belfast, United Kingdom. She has a background in both plant sciences and law. Alongside her teaching on the law of patents, trade marks, and geographical indications, her research explores the global *sui generis* protections for inventions, with a particular focus on plant varieties.

104 Quoted in María del Pilar Blanco and Esther Peeren, "The Spectral Turn/Introduction" in *The Spectralities Reader: Ghosts and Haunting in Contemporary Cultural Theory,* ed. María del Pilar Blanco and Esther Peeren (New York: Bloomsbury, 2013) 31, 33, citing Laurence Simmons, "Jacques Derrida's Ghostface," *Angelaki* 16.1 (2011): 129–141; Avery F. Gordon, *Ghostly Matters: Haunting and the Sociological Imagination* (Minneapolis: University of Minnesota Press, 2008).

Johanna Dahlin
Linköping University, Norrköping, Sweden
johanna.dahlin@liu.se
https://orcid.org/0000-0003-2040-913X

Dr. Johanna Dahlin is a Senior Lecturer in Culture and Society at Linköping University, Sweden. Her background is in social anthropology, and she has an interest in both intellectual and the more material manifestations of property. She is currently working on a study on secrecy and forced labour in relation to science and inventions in the Soviet Union.