OCCASION

This publication has been made available to the public on the occasion of the 50th anniversary of the United Nations Industrial Development Organisation.

DISCLAIMER

FAIR USE POLICY

CONTACT

Please contact publications@unido.org for further information concerning UNIDO publications.

For more information about UNIDO, please visit us at www.unido.org

UNITED NATIONS INDUSTRIAL DEVELOPMENT ORGANIZATION
Vienna International Centre, P.O. Box 300, 1400 Vienna, Austria
Tel: (+43-1) 26026-0 · www.unido.org · unido@unido.org

D00741

United Nations Industrial Development Organization

ID

Distr.
LIMITED

ID/WG.42/8
20 August 1969

ORIGINAL: ENGLISH

Expert Group Meeting on the Organization and Administration of Industrial Property Offices 1/

Vienna, 6 - 10 October 1969

WORKING OF INVENTIONS IN THE COUNTRY AS AN INSTRUMENT OF INDUSTRIAL DEVELOPMENT 2/

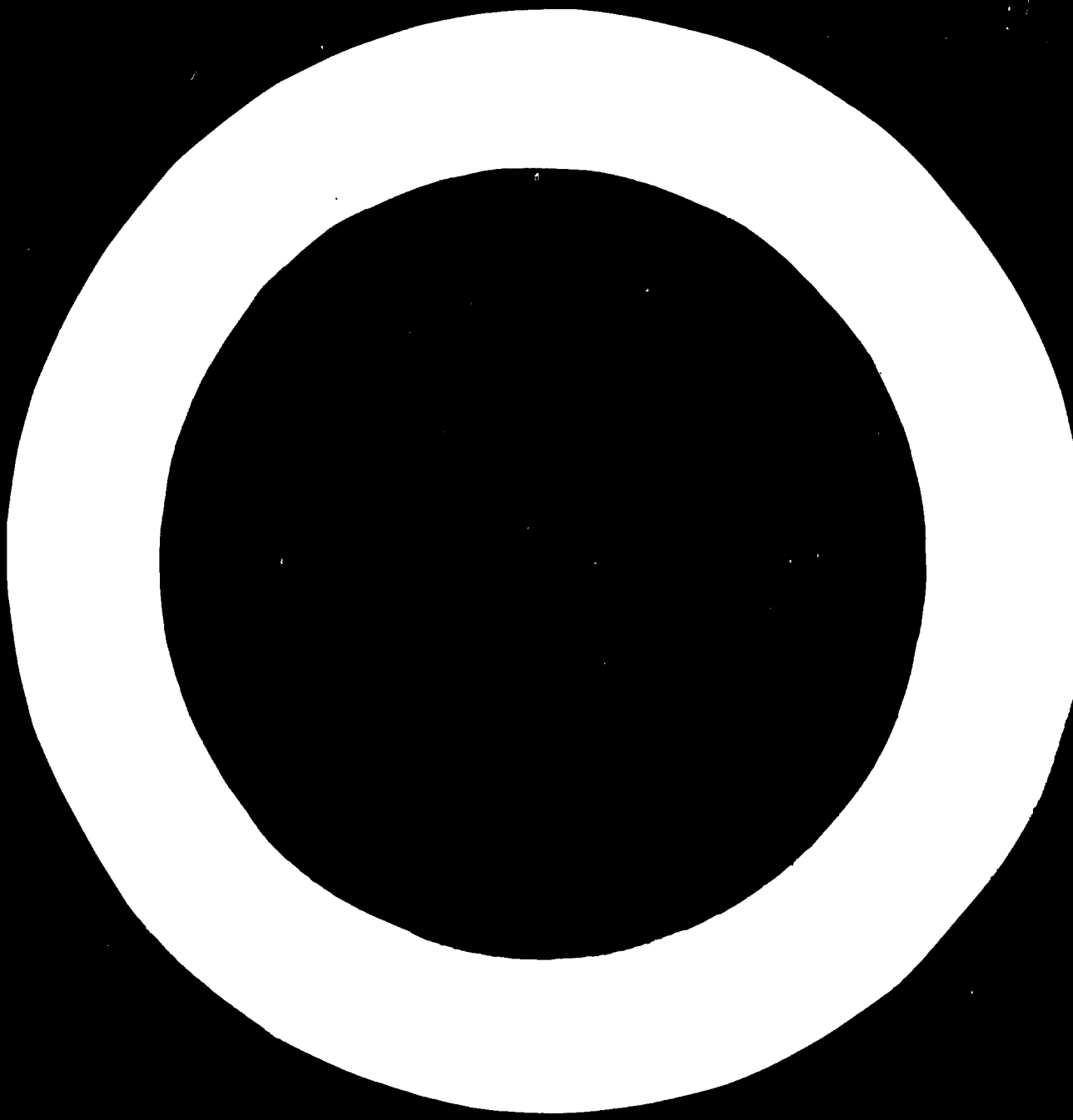
by

Mohamed Abdelmonem Rizk
Director of Registration Office
United Arab Republic

1/ Organized jointly by UNIDO and BIRPI (United International Bureaux for the Protection of Intellectual Property, Geneva).

2/ The views and opinions expressed in this paper are those of the author and do not necessarily reflect the views of the secretariat of UNIDO. This document has been reproduced without formal editing.

id.69-4243



Introduction:

Inventions play an important role in industrial development, which is one of the main objectives of any developing country. They lead to economic development while raising the standard of living and promoting human prosperity by the facilities they put at the disposal of man.

The growth of inventions and their variety, and the advance achieved in this direction after the close of the 18th century, opened vast fields of new activities before mankind. Those were the early manifestations of technical and scientific evolution. The period that followed was one of intensified and elaborate research work which resulted in the spread of applied sciences in every field of activity, and there is no telling what bearing this has had on the life and future productivity of man.

But intensified research calls for the use of highly complicated equipment and appliances, and it reaches its full bloom in rich countries which can afford to meet the high costs involved. Unaided, developing countries could hardly be expected to finance far-reaching research programmes out of their meagre exclusive resources. They do not have the funds to allocate year after year, for long range research, and they have to depend for progress in their struggle for industrial development on discoveries and inventions made elsewhere. Such inventions if they are to be any good to a developing country, have to be adequately worked in that country, be the provisions made for the purpose what they may.

Protection of industrial property and how to approach it:

It was not long before practice in this field revealed the need for legal protection both in the interest of the inventor, and to safeguard the common good. The fact that most of the developing countries were until lately under colonial rule where legislation could not be altogether unbiased by the demands of the colonizing country, did not help to make the approach to the question easy. In most of these countries, it was deemed appropriate to grant the invention certain protection for a certain period after which it becomes a common property. The private ownership recognized for the inventor by the State-constituting a right of industrial property-entitles the inventor to make use

of his invention by himself or through giving to others the right of doing so: The country regards the usurpation of an invention a punishable crime.

On the other hand in the interest of the people, it put the accent on the exploitation of the invention in the countries, giving the chance, among other things, to inventors to indulge into fair competition, and seeing to it that no one of them should have recourse to imitation or to usurpation. Towards this different laws have been enacted in different countries and the provisions on the working of a right are found to vary considerably from country to country.

International Co-operation of Industrial Property:

Differences in legislations and clashes of interests as between one country and another in the struggle for economic development and commercial flourishment, have led to the creation of the International Organization for Industrial Property, and to the helding in 1883 of the Convention on the protection, of Industrial property rights, in which convention 79 countries, including U.A.R. adhered to its findings.

Recognising the importance of inventions and their bearing on industrial development, and observing the role of patents in enhancing the beneficent spread of technology to developing countries, the United Nations General Assembly adopted a resolution in 1964 whereby International bodies and organizations, in co-operation with the BIRPI have been requested to spare no effort in meeting the need of developing countries for technical, legal and administrative assistance. Towards this end a model law on inventions was adopted by BIRPI in relation to developing countries. Next, regional industrial property offices were started under its guidance, and, thirdly, a special training system has been devised for preparing qualified officers to man these offices.

Measures of Industrial Property Rights in Developing Countries:

Developing countries differ considerably in their economic, social and cultural structure. There is no doubt that they have in common the objective of catching up with developed countries as far as industrial progress is concerned. This objective can be achieved only through protecting the rights of industrial property

Protection of industrial property rights does not yield the consequences aimed it without an effective legislation which encourages inventors, patentees and investors.

Each of the developing countries follows a certain system for such protection stressing always the specific requirements obtaining in it and its economic situation.

Industrial property rights specifically those relative to patent rights are under certain circumstances contrary to the interests of the particular community, which situation calls for certain adjustments.

Thus, States intervene in relation to the exercise of patent rights, to prevent the abuses resulting from the non-working of a patent on the basis of conventional previsions in force.

Paris Convention regulated the cases in which restrictions may be applied to the rights of a patentee. Reference should be made here to the provisions of Article 5 of this convention (See I appendix).

Articles 30, 31, 32, 33 of the U.A.R. Act No. 132/1949 have provided also for the compulsory exploitation of inventions and the expropriation thereof for public utility. (See II Appendix).

It should be noted with reference to the actual situation in Egypt, that notwithstanding the existence of these provisions in text, it is almost non-existing in practice.

From the foregoing provisions we can observe that the principal abuse which could be made of a patent, namely, non-working, is the subject of two sanctions, having serious consequences for the patentee, viz, the grant of a compulsory licence and revocation.

Non-use of patents relating to inventions owned by foreigners prevent the development of national industries which, among other things are meant, to provide employment for nationals and utilize available national resources.

Another factor is the fear that a foreign patentee may drive other producers of such patented articles out of the market thus monopolizing the importation of such articles and putting the foreign patentee in a position to impose higher prices on domestic consumers.

Compulsory licensing or expropriation of patents is naturally related to different matters such as national defence, public health, the fluctuations that take place in the international balance of trade, the development of special resources available in the country and so forth.

In many countries failure to make the necessary payments, whether annual or periodic, in their due course is liable to terminate the acquired rights of the patent concerned.

Such forfeiting of claims is, in some developing countries made automatic by letting the patent lapse for non-working within a certain period.

Granting a compulsory licence for the working of unexploited patents is found to be sufficiently effective to prevent abuses resulting from the non-exercise of patent rights.

Many countries in connexion with patent licences and technological agreements adopt certain legislative, administrative or judicial actions to prevent restrictive agreements including clauses prohibiting the licensee from exercising his various rights or limiting his output thus putting him under obligation to pay royalties for unexploited patents.

Government agreement to the terms agreed upon between foreign patentees and domestic licensees or assignees has for its main objective the chance to ascertain the reasonableness of royalties and the transfer abroad of royalty payments.

It may be advisable in this respect to establish standard forms of contracts to facilitate the exchange of know-how and to preclude to a reasonable extent the problem of restrictive agreements.

Such standard agreement forms must not be couched in expressions that might lead to confusion or create handicaps but they must include such general provisions or safeguards as are already agreed upon by the patent office or other Governmental Institutions. They must also be such as not to stand in the way of further development of the measures adopted to protect the rights of the community.

The interest of the public must be taken into consideration before any attempt to institute limitations of the sort.

Deplorable lack of know-how constitutes a serious handicap to workers in this field. They need to learn how to react to situations not quite of the ordinary nature and not specifically outlined in forms. Much progress could be achieved through the circulation of detailed techniques in this respect. The patent system could be so arranged as to meet this lack, and contribute

to the transfer of technology. Patents granted to national or resident inventors may ultimately prove instrumental in the creation of indigenous technology.

Again it would be difficult for national enterprises to measure up to the achievement of foreign capital and techniques. These have a background of experience altogether lacking where national enterprise in developing countries is concerned.

In such cases where the foreign patentees technological and managerial know-how or capital are needed by the national enterprise which is short of these all-important factors, the foreign patentee in the developing country tends to be too grasping and demanding in his terms and pressure for endless guarantees.

Thus, apart from its actual economic significance patent protection may be psychologically helpful in dealing with foreign patentees and investors.

Terms and conditions of licensing agreements of particular concern to Governments of developing countries are often characterized by their exacting undue financial sacrifices from the national licensees. These result in seriously burdening the balance of payment. Furthmore unduly restrictive features of licensing agreements tend to reduce the benefits sought from patented inventions in developing countries.

The loss to the developing country from excessive payments charged as licensing fees and royalties of profit transfers to foreign patentees goes beyond the burden these impose on it to the handicaps they lay in the way of subsequent social and economic benefits which the working of the inventions might produce to the developing country utilizing its resources to a fuller degree.

Importance of Foreign Capital in Industrial Development:

There can be no doubt that the investment of foreign capital in developing countries is indispensable. The pursuit of such investment may have to follow different leads according to the possibilities that open before the developing country. This has to use a variety of ways and means to attract capital and wait for results. Not infrequently, help comes from least expected quarters and deflects attention from anticipated sources. Beggars very often find it impossible to be choosers. And so it often happens that other factors than need interfere in the situation and determine the final choice of source, politics not excluded. National feeling in the developing country is bound to play an important part, but even this is not proof against the pressure of

play an important part, but even this is not proof against the pressure of actual situations. The inevitable thing to bear in mind is that nations cannot stand aloof vis-á-vis the flagrant needs of developing countries for help in this direction. International organizations, institutions and conferences have been unanimous in their repeated requests for the advanced countries to be ready with handsome appropriations help give a push to oncoming countries in their pursuit of economic development and stability.

We have a conspicuous illustration of this in our first five-year industrial plan in our country. This plan has actually realized 6.5% as an annual increase rate. It depended to no small extent on foreign capital most of which was in the form of Government loans, the rest being in partnership enterprises.

In fact nearly one third of our investments during the first five-year industrial plan came from abroad, otherwise it would not have been possible to arrive at this increase rate.

The need for steady development and an appropriate climate for investment:

Admitting that our first five-year industrial plan, pursued to its legitimate goal, has none-the-less exhausted our capacity for making further outlays of expenditure, to put a stop to development work cannot be the proper line to take. What has been achieved through foreign loans and partnership investments of capital from abroad very worthwhile as it was, was only a prelude to what could be further achieved through further loans and co-operative financing.

Developing countries cannot after the start effected in promoting industries cannot afford to make a halt, nor to lend themselves to fear unsuspicion. Trust breeds trust and the thing they have to fear most in attempting developing plans is fear, if they are not to lag behind the economic convoy. Developing countries must continue in the face of everything to invite foreign capital for investment in this field and must persevere in this effort until economic stability is established. They need to be careful, of course, but not hesitant in drawing foreign capital in, which brings with it backgrounds of experience they cannot afford to overlook and not to be guided by.

They owe it to foreign capital to undertake to shield foreign capital and not to let it be subject to risks of any description such as nationalization, confiscation, expropriation and so forth.

Towards this end:

1) The fields of investment must be carefully studied in advanced and pre-determined stages and goals be fixed. They should be clear as far as the use of the foreign capital is concerned so that it must be applied in a determined frame where, it can afford and move "directly and precisely". Prohibited fields should be clearly designated to leave foreign capital to produce, untrammelled by such obstacles.

2) This determination should be relatively stable and not subject to sudden shocks in rapid coincidence.

3) As taken before foreign capital should be spared all such risks as nationalization, confiscation and expropriation subject of course, to measures which public interest may render inevitable.

4) To ensure movement of foreign capital in and out, complex restrictive administrative procedures should be as much as possible avoided.

Figure Indications:

Foreign investments of U.S.A. in 1966 reached the grand total of 76.000 Million Dollars, of which 55.000 Million Dollars were in private investments and the rest (21.000 Million Dollars) in Governmental loans.

These private investments were shared between developed and developing countries. Actually 37.000 Million Dollars went to developed countries while 17.000 Million Dollars only went to developing countries.

This gives us two saliant facts:

a) Four fifths of the total figure of Governmental loans went to countries already developed and advanced together with countries striving to push forward, and these four fifths constitute a high proportion of the total volume of private investment when compared with foreign Government loans which fact, reveals the importance of private investment in relation to foreign loans made available.

b) The second fact is that, a big part of the loans appropriated to foreign countries is represented in the surplus of the American agricultural products which are consumer articles while private investments made in developing countries were represented in productive enterprises bringing with them a wealth of technical experience, industrial property rights and know-how, which no doubt reflects very favourably on the productive and exportation capacity, as well as on the ability to make possible the replacement of imports in developing countries by local production.

From these two facts it can be easily inferred that the American private investments played a rather more important role than that of foreign loans in financing the developing countries.

Importance of Private Investments for the Developing Countries:

It can be safely stated in the light of the above that, employing proper incentives and encouragements, developing countries have chance to bring about the deflection of foreign capital to the sectors that strive to increase production which raises exportation capacity. From our standpoint as a developing country private investment is much to be preferred to Governmental loans in as much as it helps to create foreign commercial relations which in their turn would lead to the increase of exports. Not to, mention the invaluable technical experience and patent rights which would otherwise prove unavailable. It has already been pointed out that the purchase of such rights involves exhorbitant expenses.

Modern inventions and advanced technical methods utilized in production are constantly on the increase from year to year. It is not practicable to attempt to acquire all modern inventions rights. Whereas foreign private investments can be induced to bring in inventions rights created in their countries of origin.

International Arbitration System as a means of Maintaining Proper Mutual Relationships:

Owing to disputes that are likely to arise from the investment of foreign capital, an International centre has been established to settle such disputes. This centre is to render possible the reconciliation of clashing interests by serving as arbiter whenever investment disputes arise between involved countries. Such a centre would inspire confidence and greatly stimulate, the inflow of foreign capital into countries of need.

Actual experience has demonstrated the value of this centre as a reassuring factor and as a body which has competence to deal with thorny questions, be the causes of these what they may, not excepting political issues. Its institution amounts to a guarantee for the expeditious settlement of debatable questions by a neutral organization.

Undoubtedly the ratification of developing countries to this centre is considered as a practical expression of their anxiety to ensure the creation and maintenance of a congenial atmosphere for the growth of investment.

Many developing countries in Asia and Africa are among those who have given their warm approval to this centre, not to mention the big countries in Europe and America.

It is my belief that the U.A.R.'s attitude is equally favourable and that formal agreement will probably be forthcoming in the near future.

APPENDIX

I. **Paris Convention.**

"A-1. The importation by the patentee into the country where the patent has been granted of articles manufactured in any of the countries of the Union shall not entail revocation of the patent.

2. Nevertheless each of the countries of the Union shall have the right to take the necessary legislative measures to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent, for example, failure to work.

3. These measures shall not provide for the revocation of the patent unless the grant of compulsory licences is sufficient to prevent such abuses.

4. In any case, an application for the grant of compulsory licence may not be made before the expiration of three years from the date of the issue of the patent, and this licence may only be granted if the patentee is unable to justify himself by legitimate reasons. No proceedings for the revocation of a patent may be instituted before the expiration of two years from the date of the granting of the first compulsory licence.

II. The Articles of Law Governing the Working of Inventions in U.A.R.:

"30. If an invention is not exploited in Egypt within three years from the date of the granting of a patent or if the patentee fails to exploit it sufficiently to meet the country's need or if exploitation of the invention, is stopped for two successive years at least, the Patent Office shall be allowed to grant a compulsory licence for the exploitation of the invention to any person to whom the patentee has refused to grant the right of exploitation or on whom he has imposed exorbitant financial conditions for this assignment.

In order to grant the compulsory licence, its applicant must be in a position to exploit the invention seriously. The patentee shall be entitled to a suitable compensation.

The Patent Office shall notify the patentee with a copy of the said application and he shall have to send, within the time specified in the executive regulations, an answer in writing to this application. Should

the answer fail to arrive within the fixed time, the Patent Office shall issue a decision accepting or rejecting the request, and shall be empowered to make acceptance subject to such conditions as it may deem necessary. The Patent Office decision shall be liable to contestation before the Administrative Court of the State Council within 30 days from the date of its notification to the person concerned.

31. Should the Patent Office find that even though the prescribed periods in the first paragraph of the preceding article has elapsed, the failure of the exploitation of the invention is due to reasons beyond the control of the patentee, it shall be empowered to grant him a delay not exceeding two years for a better exploitation of the invention.

32. Should the exploitation of the invention be of great importance to national industry, and its exploitation requires the use of another previously patented invention, the Patent Office may grant the owner of post-invention a compulsory licence for the exploitation of the former invention in the event of its owner not agreeing to exploitation at reasonable terms.

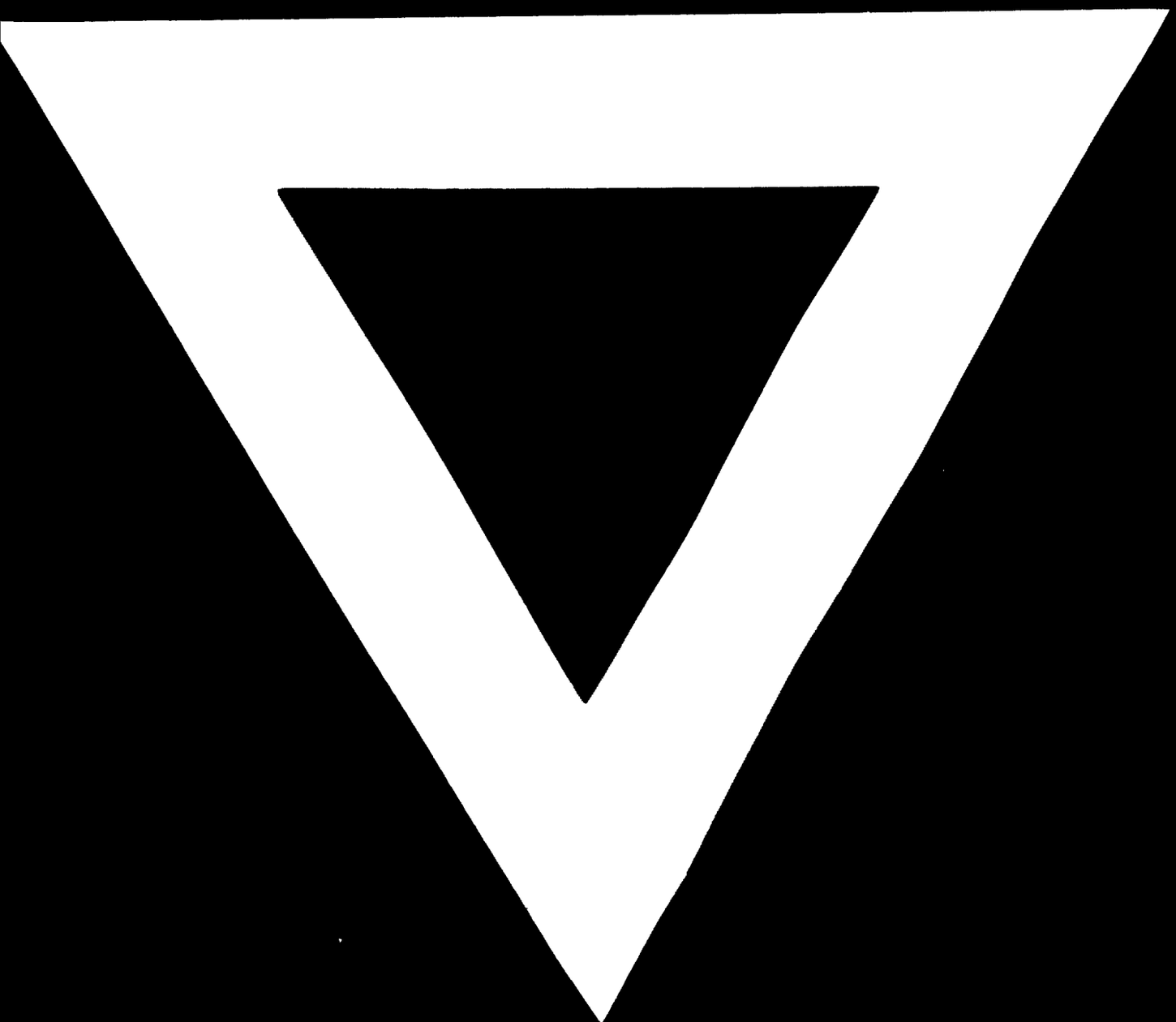
On the contrary, the owner of the former invention may also be granted a compulsory licence for the exploitation of the post-invention, if his invention is of a greater importance.

The grant of the licence and the estimation of the compensation to be paid to one of the two owners must be carried out in accordance with the provisions of Article 30 of this Act.

The Patent Office decision in this connexion shall be liable to contestation before the Administrative Court of the State Council, within 30 days from the date of its notification to the person concerned.

33. In virtue of a decision by the Minister of (Commerce and Industry) inventions may be expropriated for reason relating to public utility or national defence. This may include all the rights which the patent or the application submitted therefore entails or may be confined to the right of exploiting the invention for the State's needs. In such a case the patentee shall be entitled to a just compensation. The compensation shall be estimated by the Committee mentioned in Article 27.

The appeal against the decision of the Committee will have to be lodged before the Administrative Court of the State Council within 30 days from the date of the Committee's decision is notified to the appellant.



12.12.73