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THE IMPORTANCE OF PATENTS FOR TECHNOLOGICAL PROGRESS
IN THE DEVELOPING COUNTRIES

Submitted by the Government of Switzerland

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* Since the Government has submitted a very short paper, it is treated for purposes of reproduction and distribution as a summary paper and will be distributed in English, French, Spanish and Russian.

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We regret that some of the pages in the microfiche copy of this report may not be up to the proper legibility standards, even though the best possible copy was used for preparing the master fiche.

The importance of patents for technological progress
in the developing countries

I. Reasons for protecting inventions

There are two reasons for protecting inventions (protection by patent): to safeguard inventors from unfair competition and to promote technological progress. The protection of patents promotes technological progress for the following reasons:

- The right to exclusive exploitation accorded by the patent encourages research and invention.
- The monopoly of exploitation conferred by the patent induces inventors to disclose their invention instead of keeping it a commercial secret.
- The duration of the monopoly of exploitation offers fair compensation for the cost of developing an invention up to the stage of exploitation.
- The monopoly conferred by the patent attracts capital investment in new areas of production which would not be considered worthwhile if several manufacturers were competing to launch the same article on the market at the same time.

The history of industrial development certainly shows that these arguments that the protection of patents encourages technological progress are correct. All the industrialized countries have had a system of patent protection for many years. The coincidence of the tremendous industrial development in these countries with the improvement of the patents system is striking - and confirms the theory outlined above. This is true of Switzerland in particular.

II. Protection against abuse of patents

(1) Under article 5 A (2) of the Paris Convention for the Protection of Industrial Property, each country of the Union has the right to take legislative measures to prevent the abuses which might result from the exercise of the exclusive rights conferred by the patent.

Under the Convention, the measures which may be taken are:

- the grant of compulsory licences (however, such licences may not be applied for before the expiration of at least four years from the date of the filing of the patent application or three years from the date of the grant of patent);

- revocation of the patent (this may be provided for in national legislation only where the grant of compulsory licences has not sufficed to prevent abuses; furthermore, no proceeding for the revocation of a patent may be instituted before the expiration of at least two years from the date when the first compulsory licence was granted).

(2) Failure to work or inadequate working of the invention is regarded as abuse of the patent. Failure to work a patent may have undesirable consequences, since the patent prevents a third party from exploiting the invention. Almost all States have therefore availed themselves of the right given them by the Paris Convention and have enacted legislation for the granting of compulsory licences in such cases. Switzerland has legislative provisions to this effect. It should be noted, however, that Switzerland has not so far found it necessary to grant compulsory licences.

Switzerland has even abolished the obligation to exploit licences by means of contractual procedure with two top-ranking industrial countries (the United States of America and the Federal Republic of Germany). This means that the exploitation of an invention in one of these countries is equivalent to its exploitation in Switzerland, and vice-versa. Switzerland has not suffered any ill effects; on the contrary, the arrangement has worked to its benefit.

III. The importance to the developing countries of the protection afforded to patents

(1) All developing countries should find an appropriate solution for the problem of protecting inventions. Although the initial position in those countries is not exactly the same as it was about a hundred years ago in the countries which are technically highly developed today, the existence of a patents system in the former would seem to be a requisite for their industrial development.

It is true that at the outset a patents system will not have the same consequences in the developing countries. A patents system can hardly be said to promote research until general education has risen to a certain level. In the early stages no one will be able to derive any practical advantage from the mere disclosure of an invention.

But the protection of patents is a prerequisite if foreign inventions are even to be introduced into such countries. Foreign inventors will refuse to exploit their invention in any country where their rights are not properly protected. Conversely, the protection of patents will result either in inducing foreign undertakings to settle in the country or in enabling local undertakings to exploit foreign inventions under licence. In either case, the result will be to accelerate industrial progress.

(2) To imagine that industrial development would be speedier without a patents system is a delusion. The less technically developed countries do not yet have the technical experience to undertake the manufacture of an article simply from a description of a foreign invention. Such experience - which is absolutely essential - can come only from abroad, but it will come only if the experience and the inventions on which it is based are properly protected.

Know-how and technical advice are vitally important in any manufacture. If they are made available, they will obviate years of painful and costly experiment. Licences, with know-how and technical advice included in the contract as well, mean that manufacture can be started rapidly, that it will not have to go through any "infantile malady" and will be constantly adapted to more modern requirements as a result of collaboration with the licensor.

Even the highly industrialized countries need inventions from other countries. There is a continuous and lively exchange of licences between them.

So far as Switzerland is concerned, it need only be noted that the number of patents granted in Switzerland to persons domiciled abroad has always (except in the war and immediate post-war years) been higher than that of the patents granted to persons domiciled in Switzerland. Thus, in 1966, 70 per cent of all applications for patents came from abroad.

Effective protection of patents combined with a liberal policy for licences seems, therefore, to be the best guarantee for rapid technological development.

IV. Organization of the patents system in the developing countries

(1) Measures taken by the United International Bureau for the Protection of Intellectual Property (BIRPI)

Basing itself on the idea that the protection of patents is a prerequisite for industrial development, BIRPI has made great efforts to make the developing countries aware of the importance of patents. Seminars have been successfully organized in Africa, Asia and South America.

BIRPI, in collaboration with the developing countries, has prepared a "model law" on patents. It is to serve as a model for their national laws and make it easier to introduce a patents system.

In addition, BIRPI awards fellowships to officials in the appropriate departments in those countries to enable them to undergo training in well-organized departments in other countries and so to increase their technical skills and obtain information with a view to organizing their departments on similar lines.

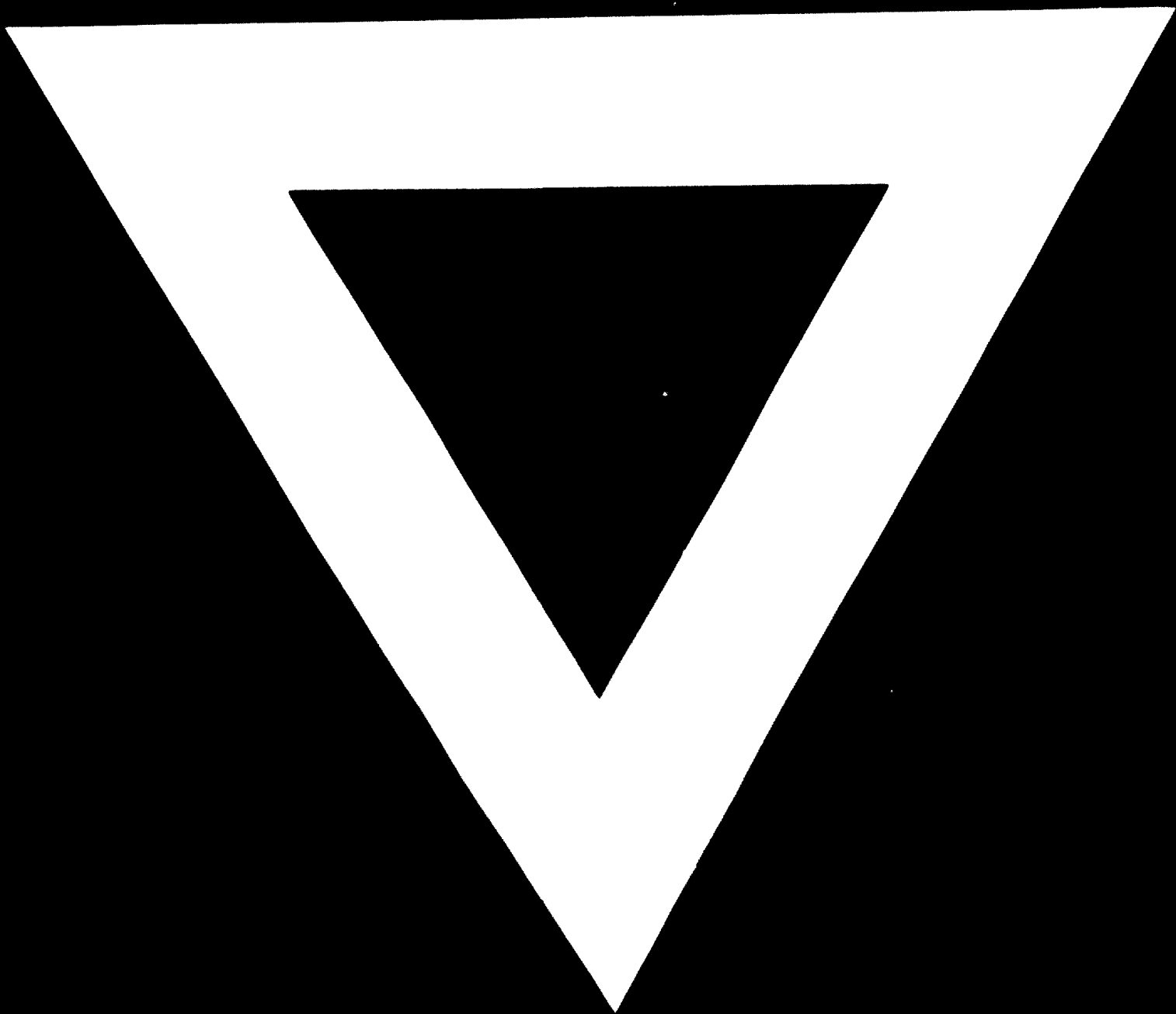
(2) Switzerland's part

Ever since this assistance was first given by BIRPI, Switzerland has stated that it is prepared to accept trainees from the developing countries every year. In accordance with their technical qualifications, the Federal Bureau for Intellectual Property instructs them in its methods of work and organization or helps them to prepare bills or draft regulations concerning patents or trade marks and trade names.

Switzerland is convinced that it is thus providing valuable assistance to the technological progress of the developing countries.

At the International Symposium a study by Professor Pierre Jean Pointet entitled "The Role of Industrial Property in National Economic Development", reprinted from La Propriété Industrielle of March 1967, will be available in English and French.





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