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[illegible] JOINT CONTRACTUAL LICENSING OF PATENTED TECHNOLOGY 1/

by

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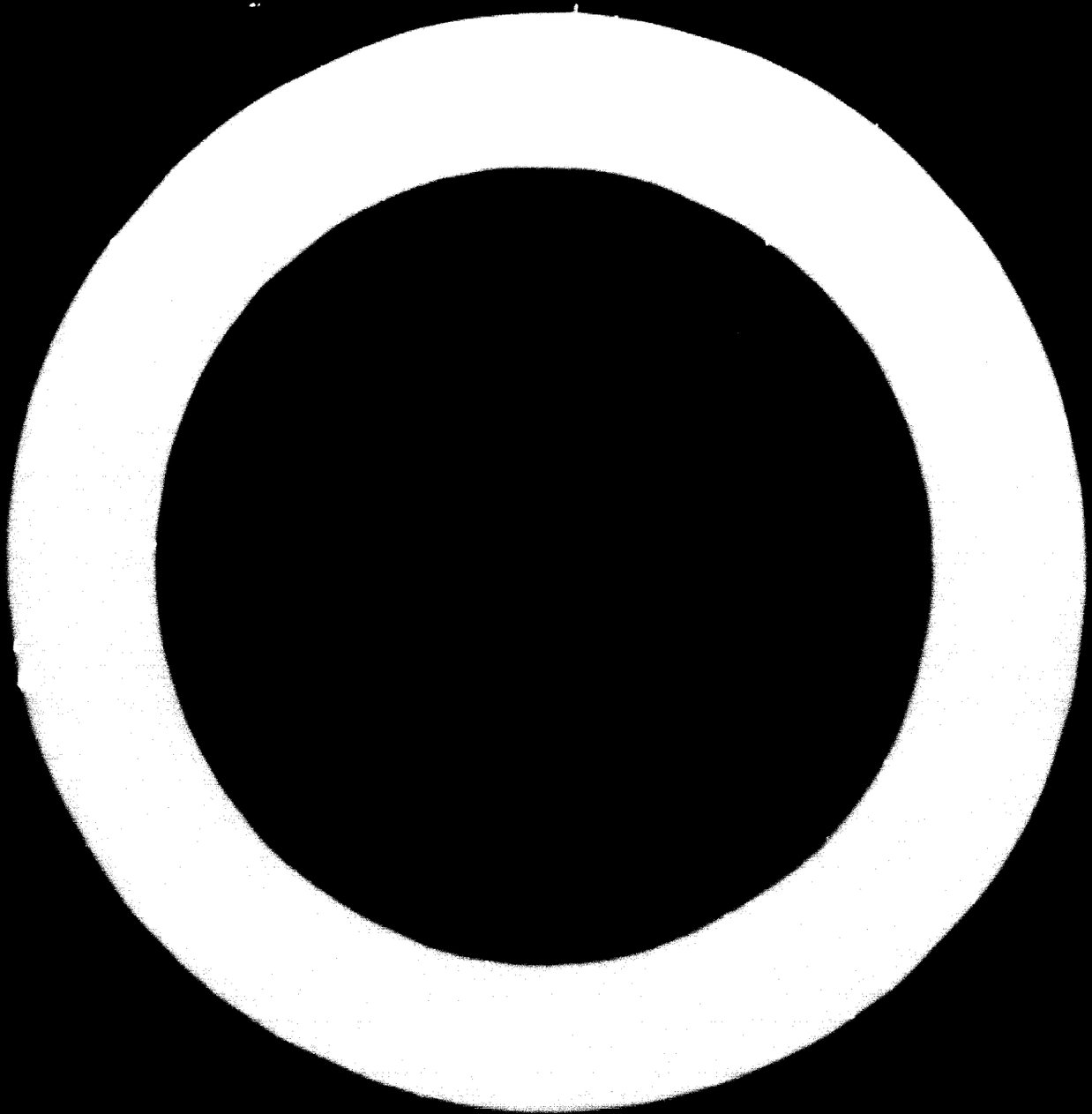


Preface

The protective laws concerning technology have two sides, one relates to the patents and meant to protect the patent owner himself, the other relates to the licensing of the patented technology and aimed mainly at protecting the licensee.

This peper deals with the second side which is now becoming increasingly important especially in the developing countries. In Part I we shall deal first with legislations that have an international nature. In Part II we are dealing with regional laws (in the Arab Countries). Part III will be about the prevailing protective laws in Egypt as a guiding developing Arab Country, and at last Part IV will give our comments and proposals.

Part I

International legislations

Paris Convention

The industrial property protection began to be organized at the international level in the second half of the nineteenth century. The basic instrument adopted for this purpose is the International Convention for the Protection of Industrial Property signed in Paris on March 20, 1883. It was subsequently revised on several occasions, by Diplomatic Conferences held at Brussels in 1900, at Washington in 1911, at the Hague in 1925, at London in 1934, at Lisbon in 1958 and at Stockholm in 1967. It dealt mainly with protecting the right of invention and other industrial rights. The fundamental rule of this Convention is that nationals of the Paris Union States, as well as persons who are domiciled or who have industrial or commercial establishments in such states enjoy at least the protection in each of the other states of the Union as those states grant to their own nationals.

The other essential institution is the right of priority. This right was instituted to save the inventor, the owner of a mark, or the creator of an industrial design, from being obliged to file applications simultaneously in all the states in which he wishes to obtain protection.

The Paris Convention also contains various general rules on administrative and judicial procedure. For example it provides for the seizure on importation of goods unlawfully bearing a trademark or trade name or false indications of the source of these goods or the identity of the producer. It assures nationals of all Paris Union States and persons assimilated to them of appropriate legal remedies to repress effectively the unlawful use of marks and trade names, false indications of the source of goods, and unfair competition.

Each of the Paris Union States must establish a special industrial property service, responsible for the communication to the public of the patents, utility models, marks and industrial designs registered.

The states to which the Paris Convention applies constitute an international Union for the protection of industrial property. This Union has bodies of its own: an assembly of all member states, an Executive Committee and a Secretariat.

From the above we can assume that the Paris Convention gives important guarantee to the nationals of member states and to persons assimilated to them who are inventors, owners of marks, creators of industrial designs or other subjects of industrial property.

But it gives no attention to licensing and the guarantee thereof. The sole mention of licensing occurs in Article 5A (2) to (5) which authorizes the member state of the Union to take legislative measures providing for the forfeiture of the patent and the grant of compulsory licenses to prevent the abuses which might result from the exercise of exclusive rights conferred by the patent: It sets in this concern certain limits upon this faculty: if failure to work or insufficient working is to be penalized, the license may not be applied for until a certain period has elapsed following the filing of the patent

application or the grant of the patent and it must be refused if the patentee justifies his inaction by legitimate reasons. Member states of the Union may provide for the forfeiture of patents for other reasons of public interest, for instance if the patents affect the vital interests of the country in the field of public health or national defense.

Necessity of Licensing Protection

The need to organize licensing of patented and unpatented technology at the international level became apparent in the last ten years. It was noted that the developing countries endeavour to develop their national economics and raise their standards of living and hence need the co-operation of the developed countries in extending their technology through licensing of their patents, knowhow and knowledge. International trade statistics point out that the structure and scope of international trade are at present different from what they used to be a few years ago. The export of technology constitutes quite an improtant element. Developing countries do not have sufficient technology of their own to cover the requirements of industrial development and will remain so for many years to come, especially the countries adopting ambitious programmes and plans for economic and social development.

UN Efforts

Aiming at facilitating the transfer of technology to developing countries and in order to assist them in the development of their technical and industrial growth, many attempts have been made to explore the difficulties and problems encountered and to provide the ways and means for solving them. The UN Secretary General in 1964 submitted a Report in this connection to the UN Conference on Trade and Development (UNCTAD) held in March 1964 which issued the following recommendations:

(1) Developed countries should encourage the holders of patented and unpatented technology to facilitate the transfer of licenses, knowhow, technical documentation

and new technology to developing countries, including the financing of the procurement of licenses and related technology on favourable terms.

(2) Developing countries should undertake appropriate legislative and administrative measures in the field of industrial technology.

(3) Competent international bodies, including UN bodies and the Bureau of International Union for the Protection of Industrial Property, should explore possibilities for adaptation of legislations concerning the transfer of industrial technology to developing countries including the possibility of concluding appropriate international agreements in this field.

(4) Additional facilities for information on, and for the transfer of technical documentation and knowhow should be organized within the framework of the UN in consultation with the appropriate international organisations.

The Report has also been submitted to the Economic and Social Council of the UN (ECOSOC) which issued recommendations one of which is that the council:

"Requests the Secretary General to explore possibilities for adaptation of legislation concerning the transfer of industrial technology to developing countries generally and in co-operation with the competent international bodies, including United Nations Bodies and the Bureau of the International Union for the protection of Industrial Property, and to provide additional facilities for information on, and for the transfer of technical documentation and knowhow to the developing countries".

The Report had further been submitted to the United Nations General Assembly where it was approved and the General Assembly issued its

Resolution No. 2091 on 20 December 1965 comprising a number of recommendations amongst which is the one requesting the Secretary General to proceed with studying the following:

> "The adequacy of existing national and international practices for the transfer of patented and unpatented technology to developing countries and possible development of improved practices, including model clauses.
>
> The problems encountered especially by developing countries obtaining knowhow".

The Charter of Algeria issued also on 24 October 1967 the following recommendation:

> "The developed countries should facilitate the transfer of their knowledge and techniques to the developing countries authorizing them to employ their industrial patents under the most favourable conditions in much a manner that the articles manufactured in the developing countries are enabled to meet competition in the world markets".

WIPO Efforts

On the other hand the United International Bureau for the Protection of Intellectual Property (BIRPI) had prepared, during 1964, a Model Law for developing countries on inventions in which a special chapter is devoted to contractional licenses. Article 28 establishes the possibility of granting licenses by contract and provides certain conditions as to form (Registration in the Patent Office). Article 29 gives the licensor the right to grant further licenses except in case of an exclusive license. Article 30 provides that unless otherwise stipulated in the license contract, the licensee shall be entitled to exploit the invention during the whole duration of the patent, in the entire territory of the country, through any application of the invention and in respect of all acts referred to in Article 21. Article 32 has been inserted to enable the Government to exercise a

certain control over license contracts involving royalty payments abroad. It authorizes the competent Minister to provide that, on pain of invalidity, license contracts which involve the payment of royalties abroad, the approval of a certain body should be obtained. Article 33 deals with invalid clauses in license contracts, with the aim of preventing the licensor from imposing upon the licensee restrictions in the industrial or commercial field not deriving from the rights conferred by the patent. It enumerates the principal restrictions which are lawful: (a) limitations concerning the degree, extent, quantity, territory or duration of exploitation of the subject of the patent, (b) limitations justified by the interest of the licensor in the technically flawless exploitation of the subject of the patent, (c) the obligation imposed upon the licensee to abstain from all acts liable to impede or prevent the grant of the patent or prejudice its validity.

The World Intellectual Property Organization (WIPO) has inherited, by the Convention signed at Stockholm on 14 July 1967 the administrative functions of BIRPI. As one of its principal tasks is the promotion of the protection of intellectual property, its efforts lead to the conclusion of the Patent Co-operation Treaty (PCT) in Washington on 19 June 1970. This treaty has two principal aims, one in the field of procedures for obtaining legal protection for inventions, the other in the field of dissemination of technical information and the organization of technical assistance particularly for developing countries.

In the field of procedures, the treaty allows the applicant to file one international application having the effect of a national application in each and all of the contracting states in which he desires to obtain protection. It also increases the likelihood of granting strong patents, particularly in countries not having all the facilities necessary for a thorough search and examination.

In the field of the dissemination of technical information, the treaty provides for the publication of international applications and search reports. It provides also that the International Bureau may furnish services by providing technical and any other pertinent

information available to it on the basis of published documents, primarily patents and published applications. Among the types of information contemplated are: identification of documents relating to a certain technical field or problem, identification of documents issued in different countries but relating to the same invention, identification of documents showing the name person as inventor or applicant, identification of patents in force or no longer in force at a given date in any given country.

The information services will be operated in a way particularly facilitating the acquisition by contracting states which are developing countries, of technical knowledge and technology, including available published knowhow. Governments of developing countries should receive such information services below cost if the difference can be covered from profits or grant-in-aid.

The treaty provides for the organization and supervision of technical assistance to developing countries in developing their patent systems individually or on a regional basis. For example, an existing industrial property office in a developing country could be assisted in becoming a channel for technical information to local industry selecting for and forwarding to such industry all patent documents coming from abroad which are of possible interest to that industry in keeping abreast with technological developments throughout the world. Moreover, a national or regional industrial property office could be assisted in procuring the materials and training the manpower necessary for effecting a meaningful examination of the technical aspects of inventions. The treaty itself provides that technical assistance comprises the training of specialists, the loaning of experts, and the supplying of equipment both for demonstrated and for operational purposes.

The Swedish Proposal

On 24 August 1970 the Swedish Government made a serious attempt by submitting to WIPO a proposal for an International Licensing Convention. This proposal aims at enabling developing countries to

take advantage of the patent system in a round way through the establishment of co-operation between developed and developing countries.

The main features of the proposed convention are the following:

(1) Industrialized countries undertake to supply to developing countries technical information, in particular patent applications and patents.

(2) Industrialized and developing countries establish license offices which assist in locating available technology and in negotiating licensing contracts.

(3) Developing countries may grant patents for inventions patented abroad. The owner of such a patent is expected to grant a license and to transfer the related knowhow to an enterprise in the developing country.

The Swedish Government requested WIPO to study the best possible means for establishing such co-operation and to adopt suitable measures in this respect. This request is at present under study by WIPO in the light of the comments which WIPO has received from the various countries concerned.

Part II

Regional Legislations

The Arab Countries consist of 18 Nations, all members of the Arab League and considered as developing countries. They can be taken as an example for this study.

Algeria, Egypt, Lebanon, Morocco, Syria and Tunisia are the only countries which are members of the Paris Union. Each of them had promulgated a special law for the patent rights inspired by the Paris Convention, except Algeria which had recently in 1966 joined this Union and drew its law from the aforementioned Model Law prepared by BIRPI.

Lybia, Kuweit, Iraq and the Sudan are not members of Paris Union and had promulgated special laws for patent rights. The Sudan Law, issued in October 1971, reproduced the BIRPI Model Law almost literally.

The existing Arab Patent Laws, therefore, deal mainly with the protection of the patent and other industrial rights protection. Only the Algerian and Sudanese Laws have included special articles concerning the license agreements as outlined in the aforementioned Model Law.

IDCAS Efforts

The Industrial Development Centre for Arab States (IDCAS) persuant to this Model Law is preparing now a model law for the Arab Countries.

Prior to that it had published, during 1971, a guideline concerning the terms and conditions necessary for the drafting of license-agreements. This guideline includes two sections, the first consists of a preamble and some information, the second gives the terms and conditions of the contract including the duration of the contract, its subject matter, the obligations of the licensor, the obligations of the licensee and final rules.

The advantage of this guideline lies in attracting the attention to some special problems concerning this kind of contract and lays down the basis for their solution taking into account the interests of the licensee, and avoiding arbitrary conditions which the licensors used to insert in their proposals and/or contracts. Also it helps in the preparation of an accurate and complete phrasing of the contract.

For example it declares that the licensor has no right to ask for extra payments or to recuperate the documents including the knowhow after the termination of the contract. The licensor has no right to compete with the licensee by selling in the same territory directly or indirectly. An arbitory clause is to oblige the licensee - in case of non-exclusive right of sale - to pay an extra royalty (a counter value) for selling outside the territory.

The Organizational Bodies Concerned with Licensing Agreements

There is no special governmental body in any of the Arab Countries responsible for licensing agreements. In Egypt there exists the General Organization for Industrialization (as shall be noted in detail in Part III) in Lybia the General Lybian Corporation for Industrialization founded recently on 8 March 1970, in Algeria "La Société Nationale des Etudes et Realisation Industriels", but all these bodies are concerned with all public enterprises to the extent provided for in the decrees issued for their establishment.

Part III

The Egyptian Legislations

Egypt, being a leading country among the Arab developing countries, is a good example of the experience in the field of licensing of patented and unpatented technology.

Patent Law

Egypt promulgated a special patent law (No. 132 of 1949) dealing mainly as the Paris Convention with the protection of the right of invention and industrial designs. No stipulations were included regarding licensing agreements. The only provisions in this concern are for the compulsory licenses. If, according to those provisions, the invention is not exploited in Egypt, within three years from the date of granting the patent, or if its owner has not exploited it in a manner appropriate to the requirements of the country, any person whom the owner has refused to grant a license, may apply to the Patents Administration for a compulsory license. The latter is to forward a copy of such demand to the owner and accord him a delay to reply in writing. In case no reply is received the Patent Administration has the right to grant the compulsory license, and the owner is entitled to appropriate compensation. The resolution of the Patent Administration is subject to appeal to the State Council (Article 30 of the Law).

In case the owner shows that his failure was due to causes beyond his control, the Patent Administration may allow him a delay of two years to exploit his invention fully (Article 31 of the Law).

Where the exploitation of a patential invention is of very great importance for the national industry of Egypt necessitating the exploitation of another invention which has already been patented, the Patent Administration may grant the owner of the new patent a compulsory license to exploit such other invention, if he shows that he is in a position to exploit it seriously, the owner of the other patent having refused to grant a license on reasonable terms. The reverse is also possible. The owner of the licensed patent is entitled to appropriate compensation from the licensee (Article 32 of the Law).

The Minister of Industry may by Ministerial Resolution expropriate all or some of the rights attaching to a patent application, in the public interest or in the interest of National Defence, in return for an equitable compensation. The compensation is to be estimated by a committee appointed by the Minister of Industry. The decision of the committee is subject to appeal to the State-Council within thirty days of its notification (Article 33 of the Law).

It is noteworthy that the tendency in Egypt was to regard patent rights as a form of incorporal movable property. This view was supported by the fact that, by the express provisions of Article 28 and 29 of the Patent Law, patent rights devolve by way of inheritance, can be disposed of by gift, sale or pledge, and are subject to attachment and execution in the same manner as movable property. On this view, restraints on the use of patent rights conceded by license would be valid if they served to protect a legitimate interest of the licensor. Recently however, a view has been put forward which qualifies patents as concessions from the State for social purposes to which, in case of conflict, the private interest of the patent owner must be subordinated. In fact, the provisions of the existing Patent Law accommodate both these views and, since the legislator has laid down the area in which the public interest must be given priority, the right of exploitation granted to the patent owner must not be deemed to be

otherwise limited, and a licensee would be bound by a license agreement to the same extent as any other contract and could not seek to set aside terms to which he has assented and which constitute an exploitation of the [illegible].

Promotion of Industry Law

No special legislation is devoted to the licensing of patented technology. But in view of the fact that licensing agreements include industrial projects of certain importance, they are governed by the main legislation which governs the promotion of Industry, law No. 21 of 1958 and its amendments. Under this Law and the Ministerial Resolutions issued thereunder, industrial establishments in a very wide range of industries (the main categories are: food and tobacco, spinning and weaving, mining and petroleum, chemicals including oils, medicines, ceramics and insulators, basic metal industries, machinery and vehicular transport, metal products and electrical equipment) the total value of the fixed assets of which exceeds five thousand Egyptian Pounds, may not undertake the manufacture of any new product (foundation, enlargement or change of purpose of industrial enterprises) unless authorized to do so by the Ministry of Industry. Applications are considered by the "Industrial Organization Committee" in the light of "the Country's economic needs and the local consumption and exportation possibilities within the framework of the State's economic and social development".

The Government Agency responsible for industrial enterprises and hence for licensing agreements is the General Organization for Industrialization. It was instituted by the Presidential Decree No. 1097 of 1958 under the name of the General Organization for Executing the Five-Year Industrial Plan. It was authorized to carry out the Five-Year Industrial Projects either directly or through the intermediary of other bodies, individuals or Government Departments. The Presidential Decree No. 1476 of 1964 modified its name to the present one and transferred to it some of the functions for which the Ministry of Industry was formerly responsible concerning the application of the

afore-mentioned Law No. 21 of 1958, and accordingly the Industrial Organisation Committee which considers the grant or abolition of license belongs to this Organization. The functions of this Organization were again modified by the Presidential Decree No. 1055 of 1967 concerning the attribution of this Organization according to which it became no longer responsible for the drafting or revision of industrial contracts. But the Minister of Industry, despite the clarity of this Presidential Decree, empowered the Organization with such function and issued to this effect the resolution No. 35 of 1971 organizing the procedures for contracting over the equipment needed for the investment projects and the technical services connected with it. Therefore the license agreements must be referred to this Organization in order to obtain the license for any new project or the extension of an existing one.

As for the procedures necessary for obtaining a license the Presidential Decree No. 991 of 1967 stipulates that - regarding the private sector (individuals) - the application for a license has to be submitted to the Local Councils - with the relevant documents - and then forwarded to the Ministry of Industry (General Organization for Industrialization) to consider the application and give approval. The said Local Councils are empowered to issue the license. As regards the Public Sector - which comprises the Government, the general Organisations, the Public Corporations and its affiliated companies - applications are to be submitted to another Committee presided over by the Under-Secretary of the Ministry of Industry. Such Committee is empowered to issue the license.

It is noteworthy that the license agreements have to be revised beforehand from the technical and legal point of view. Such revision takes place in the specialized Technical Department and the Department of Legal Affairs.

In case the license agreement has to be concluded by the Ministry of Industry or one of its bodies, the departments would be those belonging to this General Organization for Industrialization.

In case it has to be concluded by another Ministry such as the Ministry of Irrigation (for projects concerning its functions) or the Ministry of Public Health the competent departments would be those belonging to this Ministry or one of its bodies.

General Laws concerning the Technical, Financial and Legal Control

1. The Egyptian Civil Code as well as other Arab Laws adopt the principle of autonomy of volition "autonomie de la volonté" according to which any parties have the right to conclude any contracts with the terms and conditions they wish to insert. The parties therefore are obliged to respect their obligations derived from the contracts as long as these contracts are not in contradiction with the "Public Order".

The Civil Code, however had laid a restriction on this matter by providing that the volition of the parties be not marred by mistake, misrepresentation, duress or exploitation.

2. According to prevailing regulations, prior to signing any industrial agreement, the project concerned is subject to the approval of the Superior Committee of Planning as one of the Development Plan Projects. All these projects are considered in the light of analysis, estimates reports and statistics made by special committees and sub-committees in order to ensure their feasibility and necessity for the development of the country.

These economic studies have to deal with the condition of the project, estimation of capital, estimation of annual expenses profitability, employment, marketing (local and foreign marketing possibilities, the influence on the balance of trade), foreign currencies earned from the increase in exports, and saved as a result of the decrease in imports, timing, probability of expansion, selection of site and form of project (private or public).

Before contracting, a thorough economic study has to be done in order to determine, in fixed figures, the needed capacity of the concerned plant, and the firms capable of its execution.

3. Egypt is among the countries that adopt Governmental control over hard-currency and for that reason a licensing agreement must obtain the approval of the Ministry of Economy (Exchange Control Department) in order to be sure that the project covered by the license agreement has its quote of hard-currency according to the plan.

4. According to Law No. 55 of 1959 of the State-Council (higher juridical and consultative body for Government and Administration Affairs) all contracts, exceeding five thousand Egyptian Pounds in value to be concluded by the Government, its Organizations or Corporations, must be revised by the competent department in the State-Council before contracting. This obligatory rule applies naturally to the license agreements. The aim is to warrant the legality, the security and the good phrasing of the contract.

5. Tariffication: A considerable and heterogeneous range of goods is subject to price control by Law. This may take the form either of fixing the retail price or a fixing maximum profit margins on the cost price at various stages of commerce. Particularly mention may be made of the system applicable to medicines, chemicals used in the medicinal field and medical appliances (pharmaceutical products). Under Law No. 113 of 1962, in the case of these products the retail price and profit margins are fixed by a committee composed of representatives of the Ministries of Health, Industry and Supply. The decisions of this committee are promulgated by Ministerial Resolution under the aforesaid statute. In the case of locally manufactured products, the initiative in fixing the price lies with the commercially interested parties. This price is reviewed by the above-mentioned committee, taking into account the prices of similar locally manufactured or imported products.

Part IV

Comments and Proposals

On the International Level

The Patent Co-operation Treaty (PCT) can be considered as a big step in the field of licensing. The system provided for under this treaty protects developing countries against granting patents to foreign applicants who do not deserve them and who could thus have imposed "unjustified monopoly restrictions" on their national economy, also it ensures that their own inventors and industrialists receive patents on which they can rely.

Developing countries will derive a special benefit from theTreaty as far as technical documentation is concerned. Provisions in the Treaty on technical services will particularly benefit such countries. Also the patent information services will be particularly useful to them as the Treaty expressly provides that they must be operated in a way particularly facilitating the acquisition by developing countries of technical knowledge and technology, including published knowhow.

But we should mention that in case such Treaty comes into force and the execution of these provisions is accurate, the Treaty would be still a step forward which must be followed by other steps as had been suggested by the Swedish Proposal A new Treaty has to be prepared to deal with the relationship between developed and developing countries in the field of licensing, Such Treaty can serve as a basis for each developing country to issue a new law on this matter.

Action has to be taken by UNIDO itself as it is empowered as an autonomous body within UN to promote and accelerate the industrialization of the developing countries. WIPO mainly is concerned with treaties and conventions on industrial property protection and such function necessarily reflects on its work. It also concerns itself with the member states the majority of which are developed countries. Many developing countries are still outside this international body and need the assistance of UNIDO.

Or the National Level

The obtention of technology is not easy for Arab Countries as they have certain difficulties in this concern arising either from their own conditions, or raised by the licensor. Due to these difficulties a special law has to be drafted and a specific governmental agency has to be established.

Difficulties Owing to Conditions

1. Arab Countries suffer from the lack of technological experience to the extent that when they have access to the patent or knowhow documents they cannot proceed in production alone. They need, over and above, other explanatory documents, experts, consultations on selection of equipment, plant construction and relevant technical assistance, in order to make use of the patented and/or unpatented technology.

2. For that reason there is no difference in this concern between the patented and unpatented technology. Both are needed and the Arab Countries need the protection in both cases. Therefore the provisions regarding compulsory licenses provided for in the Paris Convention, the Model Law prepared by WIPO, or in their national laws are of no great importance as far as the need is for the knowhow itself and not the patent.

3. Arab countries are not well informed on the conditions of patents covered by their contracts. For that reason they insist, in the license agreements, on including a clause providing for the protection against any claim or action, for infringement of letter patent in respect of any product manufactured under the license agreement.

4. No co-ordination exists between the various government bodies so as to ensure the useful exchange of experience and information. This leads to adoption of various policies towards the license agreements and hence the payment of extra costs.

Difficulties Raised by the Licensor

1. Claiming extraordinarily high royalties or insisting that the royalty be paid for a relatively long period. Some licensors demand that the royalty be paid throughout the entire period of manufacturing.

2. Some licensors insist on receiving payment of the royalty or the greater part thereof in full upon delivery of the documentation and before starting manufacture.

3. The exaggeration in the allowances, rates and conditions of employment demanded for the licensor experts.

4. Demanding the confinement of the application of the material under license to a given project and that a new agreement be concluded should the need arise for extending such application to another project.

5. Refusal of exchange with licensee free of charge the developments and improvements introduced by both sides.

6. In some cases the licensor must maintain the ownership of documentation covered by the contract and recover such documentation when the validity period of the contract has expired.

7. Some licensors refuse to permit the exportation of the products manufactured under license without their approval and upon payment of an additional royalty.

8. Some licensors include a provision that the licensee should import from the licensor products at exaggerated prices, all the parts and raw material that may be needed in the early stages of production.

9. Requesting that the law of the licensor's country or of a third country be the applicable law to the license contract, despite the fact that the law of the licensee's country is the applicable law as the main effects of the contract are realized in his own country.

10. Attempting to reduce the obligations of the licensor to a minimum and to phrase them in such a way as to make them liable to misinterpretation, as well as to restrict these obligations by so many conditions especially those relating to the licensor's guarantee.

Such attempts enable the licensor to escape responsibility in case the object of license contract is not properly attained.

It is noteworthy that whenever a licensor cedes some of these terms, it is always in return for something else.

The Proposed Special Law

A thorough study must be made in each developing country in order to assess the actual difficulties likely to be encountered in this field. In the light of such study a special law must be promulgated to face them.

This law can be inspired by the proposed Treaty and it would be preferable that such law be independant of the patent law especially in the countries which are not members of any international union.

UNIDO can give a hand in this respect by proposing a Model Law apart from the patent law. Such law can deal with the elements necessary for a license agreement, the illegal clauses, the basis for selling the components and intermediates from the licensors who insist upon selling them or when technically needed, the basis for royalty computation, and any other provisions which the country may deem it necessary.

The Proposed Specific Governmental Agency

Such agency should be a central one specialized in all license agreements to be concluded by any governmental or private body. It would be appropriate to create it as a special agency belonging to the Ministry dealing with foreign currency (Ministry of Economy or Treasury), or it could be a public autonomous body (general organisation) with a certain authority. The option in this concern depends upon each country's situation and/or the extent of activity to be achieved.

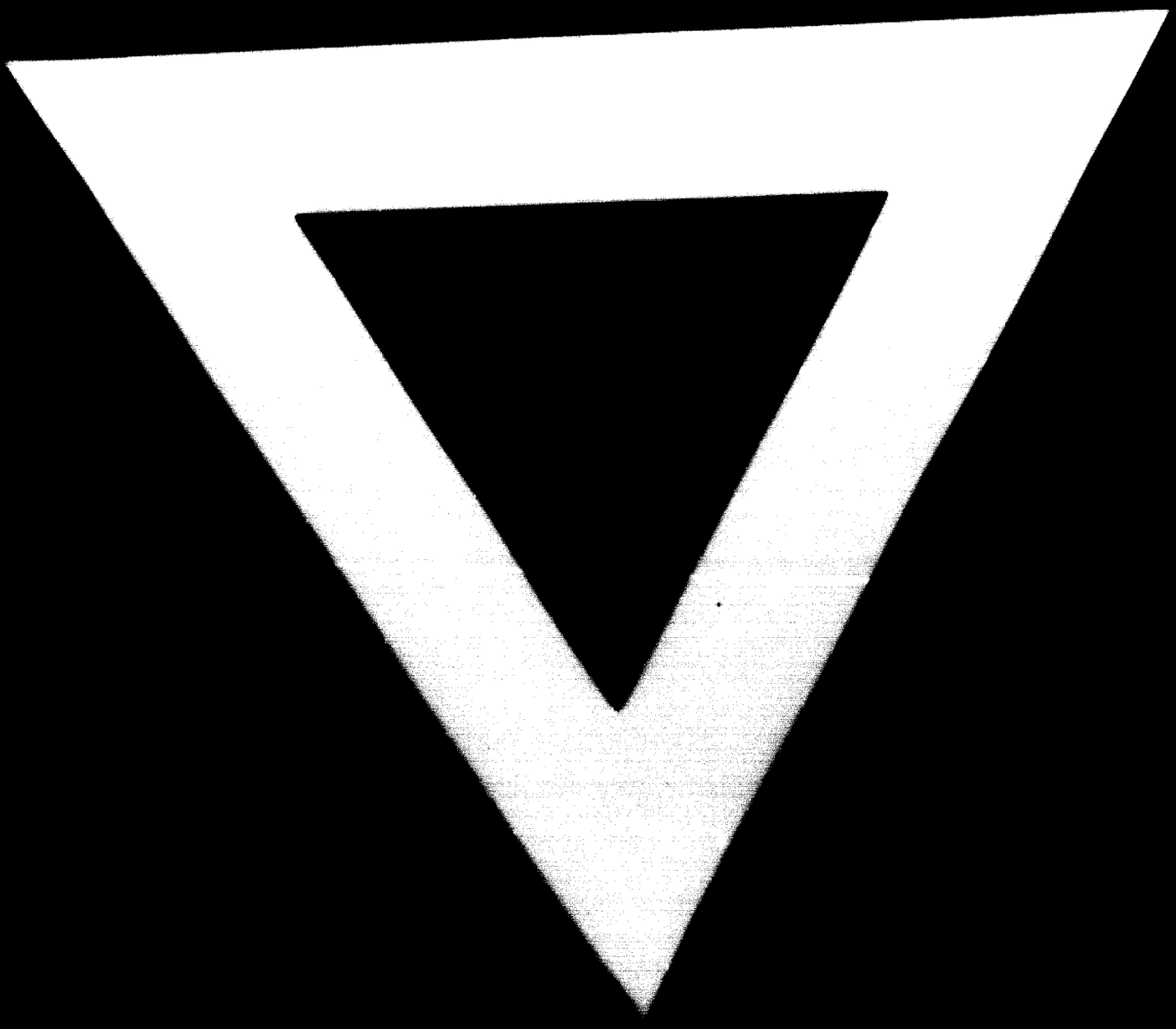
The administrative functions of this agency should be the screening of licensing agreements (evaluation, scrutiny of technical,

economic and legal matters, and approval before the conclusion of the contract).

It would have also a consultative function in this field by rendering the technical assistance it deems necessary to the potential licensee such as advice on basic sources of technology, information about foreign market, proposing the policy on acceptable royalty rates, drafting of model license agreements, assisting on negotiations, issuing guidelines on conformance to which will ensure government approval.

This agency can serve also as a channel between the licensee and WIPO or any international body, a registration office for such agreement, and generally the executive body for the implementation of the proposed national law on licensing agreements.

In this concern the aid required from UNIDO would be limited to the propagation of the idea of establishing such agency among developing countries showing them how the agency is to be established so as to function efficiently and usefully.



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