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THE ROLE OF INDUSTRIAL PROPERTY IN THE TRANSFER OF TECHNOLOGY ON A CONTRACTUAL BASIS[1/]

by

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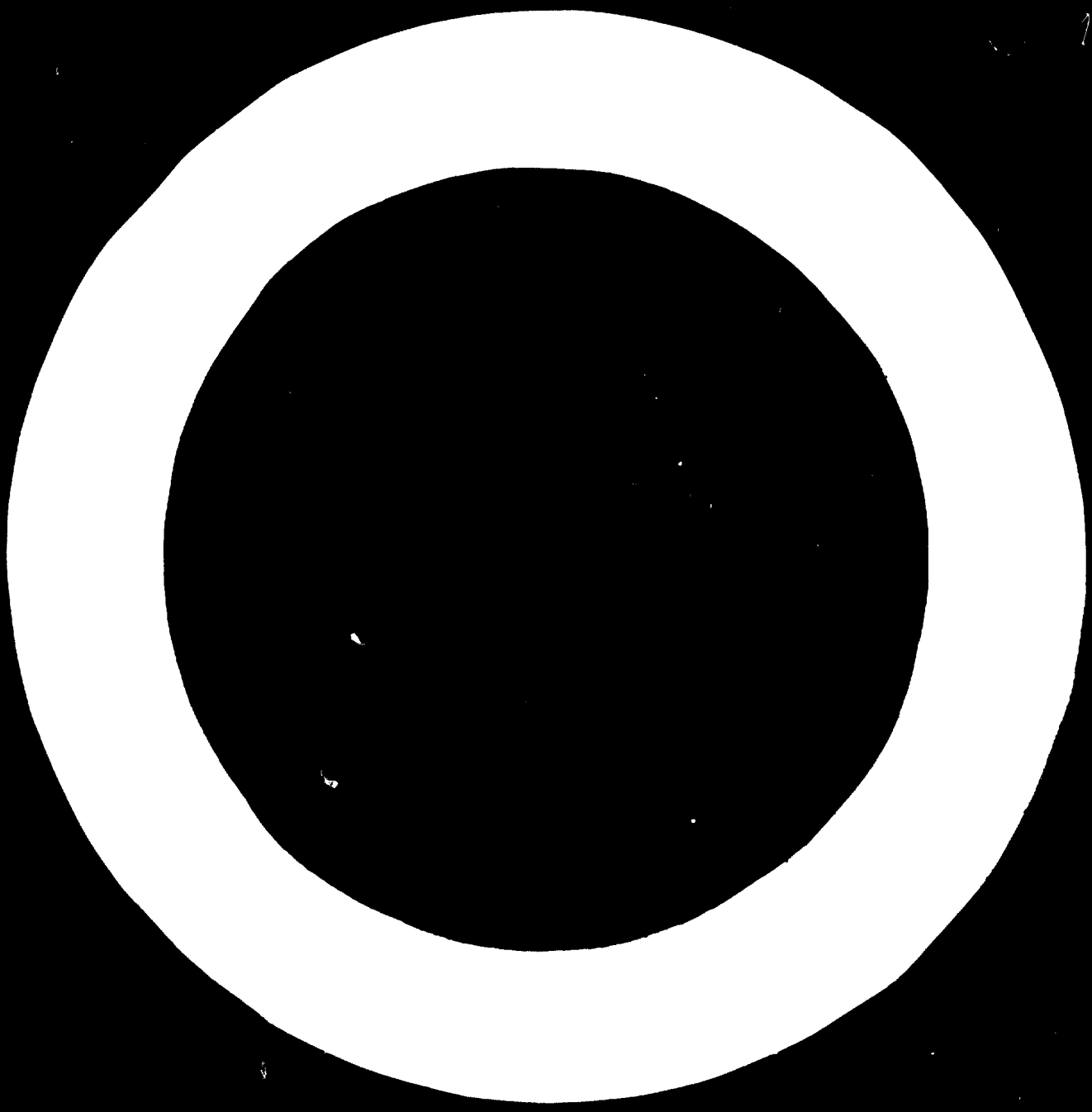
1/ The views and opinions expressed in this paper are those of the author and do not necessarily reflect the views of the Secretariat of UNIDO. Unofficial translation.



Although for some years now developed countries have considered that an industrialised society as a form of society is not without its faults, in world opinion it remains the only form of society that can lead to development and growth. There is no doubt, however, that if such growth and development is not controlled, this type of society can also produce negative fallout such as unemployment, pollution, and so on ... But it is very understandable that to developing countries, the negative aspects of an industrial society such as those the more advanced countries are beginning to experience, are of little importance. What, after all, is a 3 or 4 % unemployment figure, with the unemployed benefiting from social aid, compared with a 20 %, 30 % or greater figure in non-industrialised societies, consisting of men waiting for their first job ? It can be believed, anyway, that developing countries will find it relatively easy to avoid from the start the faults of the present industrial societies which the developed countries will endeavour to overcome in the coming years.

To developing countries, it thus seems that, despite the great differences of all kinds that exist between them, industrialisation is a common essential, and among these to many, a live and pressing ambition.

In developed countries, modern economic theory holds that technical progress is the basic factor of growth. Such progress depends on two conditions of fundamental importance being fulfilled : the existence of a means of stimulating inventive activity and facilitating the exchange of technical knowledge. The patent is such a means. The temporary monopoly which it confirms, offers the inventor the hope of amortising the often considerable investment which is required in transforming an invention into a product or process which can be manufactured and commercialised. The legislation concerning patents provides specific legal guarantees in transactions involving patents, these guarantees being all the more important since the contracting parties assume obligations toward one another covering a long period of time.

I have deliberately not mentioned the role of patents in the flow of scientific and technical information. This role, to-day, in contrast to that which it was perhaps in the 19th century, is only an indirect one. Even if many great inventions, which marked the dawn of the industrial era in the Western economy, were brought to the notice of the public, or could have been brought to its notice, in the form of a patent, for example the Solvay process for making soda, the Leclanché process for making electric batteries, etc..., to-day technology has become too complex and sophisticated for the patent on its own to remain a means of information transfer as well as a legal deed of protection. There are two alternatives : either the invention which is the subject of a patent is modest although undeniably contributing towards technological progress, is lost in a mass of information in which it is difficult to detect because of the form and style patents have to assume to conform to the legal requirements to give them protection, which is the purpose for which patents were basically designed, or else the invention is important, making technology take a leap forward (the invention of the transistor) but its description, while satisfying legal requirements, does not make it possible for third parties to exploit it successfully economically, because of lack of know-how. Thus, speaking for myself, I have no hesitation in stating that I consider any project which aims at increasing the technological knowledge of developing countries by systematically making available to them sets of patents filed in the principal industrial countries, to be unrealistic. Even if teams of competent documentalists were made available to the developing countries concerned, patent literature to-day, some exceptions apart, is quite unsuited as a source of general scientific and technical information. On the other hand, there exists very comprehensive, perhaps even too comprehensive published information on general technology, which could usefully be made more accessible to developing countries. However the role of patents as an information carrier remains essential for the very reason that it makes information on inventions accessible which in many cases would otherwise remain secret. It seemed essential to us, however, to state specifically that to-day the information role of patents is an indirect one.

It is generally agreed that to become industrialised, the

developing countries will have to make massive use of foreign technology. The spectacular progress made by many Western national economies since the last war, Europe ruined by the war compared with the United States, Japan compared with Europe and the United States, are explained to a large extent, as everyone knows or feels, by an unprecedented growth in the transfer of technology. The temptation is great to believe that by promoting the transfer of technology by all possible means to developing countries, the same results will be achieved. But this temptation must be resisted, as not only am I convinced that the effectiveness of the transfer of technology is linked closely to the existence of a comprehensive local schooling and professional training policy in the recipient country, but that also, as it seems to me, more and more Western technologies are centered on automated manufacturing methods producing very sophisticated and consequently expensive products. Such technologies are not suitable as first priorities for developing countries for, even if they have been able to organise professional training on a large scale, they should show at least as much interest in acquiring less advanced technology that requires the employment of much labour and involves the production of less sophisticated and therefore more inexpensive products than those resulting from the utilization of advanced technology.

Let us take lighting as an example. Many developing countries, at least in sparsely populated areas, do not have any electricity and have to devote their resources to tasks of higher priority than that of importing cables and electric insulators or creating local cable and insulator industries. Are they aware that in the Western countries they could find probably very inexpensive assistance which would enable them to build calcium carbide plants which, in the developed countries, have become useless.

It seems to me therefore, and others will certainly have already thought of it, that a first and relatively simple but very useful task for developing countries, even if it does not seem prestigious, could consist of drawing up an inventory of the principal technologies that were formally used in developed countries. Technology of this kind should meet three requirements. These are :

- that it requires the employment of a large amount of labour,
- that it aims at satisfying the basic requirements of man
- that it has become public property and therefore can be

transferred, exempt from all industrial property rights and requiring only moderate technical assistance and investments.investments.

I hope I will be excused from not dwelling further on this first type of transfer of technology and devote more time on the exploitation of industrial property rights, which falls more in my own field. But I want to make it quite clear that I have not stated, or wish to imply that the advanced technologies of the Western world are too expensive or too sophisticated or too difficult to implement for developing countries. In my opinion, it is not only legitimate but also essential that the countries seek to satisfy their most essential needs by the most modern methods every thime this is possible, and that if they have the necessary labour available, that they themselves manufacture advanced, high added value products for export.

May I be allowed only tow general comments :

- The first relates to a definition of what are the most essential needs. Such a definition obviously depends on a political choice. This, of course, is not particular only to developing countries. A country like France must also make choices within the framework of limited annual resources and opt for more highways, or more schools, or more hospitals, but not for all at the same time. It seems fundamental therefore that the definition of what, at a given moment, and a given country, is essential or not, and what the priorities are, be decided by the country concerned itself and only that country. This also applies to the determination of the cost of acquiring technologies, which the country concerned itself considers essential. If this is done by foreign experts, they should not simply refer to the technologies involved as they exist in the Western world, but relate them as much as possible to technologies suited to the needs and means of the country that wishes to acquire them. Here again, I do not believe in the efficacy of concentrating offers of licenses from developing countries in ad hoc agencies. It seems to me that the risk of creating ponderous bureaucracies little qualified to judge whether the offers they receive relate to technology which has in fact been utilized and tested in developed countries is too great. This also applies to knowing whether such technologies have gone beyond the more or less theoretical stage, or not. In addition, agencies of the type would not be in a position to judge whther technolo-

gies of developed countries which had in fact been exploited successfully would be transferrable to developing countries that might acquire them.

On the contrary, I believe that the transfer of technologies to developing countries should preferably be organized the other way around, - that of calling for offers, internationally, so as to create as widespread and lively a competition as possible between the possessors of the technologies formulated precisely by the developing countries as their requirements to meet their specific needs. I am convinced that no serious difficulties exist, once these countries have selected their option and established their political priorities, in the way of aiding them to draw up calls for offers with detailed specifications and making the few industrial groups in the developed countries who have the experience and knowledge in the relevant field compete with one another. This is a task, I know, that ONUDI devotes itself to and it seems to me that this is one of the most valuable activities that can be imagined for the developing countries.

My second general comment relates to the concept of the market in developing countries. Restricting myself in the following to the transfer of costly technologies on a contractual basis, I believe that attention should be drawn to the market situation in the country of the buyer. The market itself is based on two parameters - population and the average pro capita income. The smaller the latter, the greater must the former be to enable the cost of acquiring a technology to be adequately amortised. In this respect, vast countries like India, Brazil, and Indonesia, independently of their own national resources and the pro capita income they have or have not yet attained, can practice a policy of systematically acquiring technologies from developed countries on a massive scale on terms infinitely better than Uruguay, Cambodgia or Ivory Coast. The reason for this is that developing countries of the latter type cannot act jointly with their neighbours to create common markets with them for exploiting the technologies they have acquired abroad.

Having made these two comments, I hope I will be excused if, because of lack of time, I limit myself to these, and examine what can be the role of industrial property in the transfer of technologies to the developing countries. By Industrial Property

is understood the rights which are protected by "patents, marks, Drawings and Designs" and those not enjoying such protection but having considerable economic value, that is, those relating to "Know-How" and "Show-How".

I) Whether protected or not, industrial property rights which are the base of transfer of technologies, make a two-fold contribution to encouraging owners of such rights to transfer them in that they act both as a psychological factor and a material factor of encouragement.

A) It would not be realistic to lose sight of the fact that the transfer of technologies is a commercial transaction, whether the recipient is a member of a developed country or a developing country. Such a transaction implies that both parties hope for profit and both have mutual guarantees.

The financial terms of transfers of technologies, which often take the form of royalties based on a license, are frequently suspected by the developing countries as being unfair. Some of these countries seem to be inclined to fix arbitrarily a maximum figure for remuneration by category.

It can be understood that the potential buyer normally finds the price of the intangible goods that are being offered him to be too high and is tempted to fear abuse. But a fundamental point should be remembered, and this is - research and development. Bringing an invention to a stage at which it can be manufactured and commercialised requires considerable investment from those who take the risk to provide the necessary finance. The costs of this are so high that a high profit is not only legitimate but also indispensable to amortise the cost of research which is either crowned with success or has had to be abandoned. Refusing to pay for research that has failed would be tantamount in the long run to condemn innovation and technical progress as a whole. There is no recipy, in fact, for selecting from the daily mass of new inventions those that will for certain find a place on the market. Moreover, if the research and development effort were to be amortised completely in the country where it was made and from which the resultant technology was transferred, the price of the products made on this basis in that country would be such as to prevent

their being sold on world markets.

B) The transfer of technologies, for the very reason that they relate to intangible goods, postulate the existence of a climate of trust. The basic and irreplaceable role of industrial property is to reinforce this climate of trust which is particularly difficult to create when the transfer of know-how without patents is involved.

Thus the potential licensor fears that if he reveals too much of his Know-How before the contract has been signed, the potential licensee will consider that he has sufficient information not to necessitate his signing a contract.

On the other hand, the potential licensee no less legitimately hesitates in contracting to make a large payment without knowing exactly what it is that he is buying. General law certainly gives both parties sufficient guarantees but the specific laws relating to industrial property are easier to understand and apply, because they are more limited and at the same time more suited to such transactions.

In addition, if a country has laws concerning patents, marks and unfair competition and belongs or does not belong to international conventions in this connection, its desire to become involved becomes apparent and creates a climate of trust.

But Know-How, although constituting the most important economic portion of technical knowledge, is the least protected. There is a contradiction here which calls for the establishment either of an international system for protecting Know-How by means of exclusive ownership rights, similar to those conferred by a patent, or else, simply the suppression of the protection afforded by patents.

In fact, however, the contradiction is only apparent. Know-How, by reason of its nature cannot be the subject of exclusive ownership rights. For, its economic value does not reside solely in its novel or secret character. It resides also in the assembly, the selection and the utilization of information which is partly known by the licensor . Moreover, Know- How alone is not suffi-

itself, showing how it is used ("Show-How") is also necessary.

It is obvious therefore that patents and Know-How must not be confused. Nevertheless, they are not in contradiction. On the contrary, they complement one another. Know-How adds to the patent something that the latter cannot include and yet is required for its proper exploitation.

I believe that it is neither possible, nor desirable in the interest of the patent institution to establish an exclusive ownership right for Know-How. This, however, does not mean that it does not matter whether or not Know-How is protected. Any country and in particular any developing country, desirous of developing its economy by the acquisition of technology at reasonable cost, has an interest in providing for sanctions against infringements and improper divulgations. Provisions covering unfair competition in this connection are necessary but not sufficient. The law in every country should, in addition, provide specific legal provisions prohibiting :

(Quoting the proposals of the A.I.P.P.I. Group which we endorse)

" a) the improper appropriation of knowledge and experience not only for the practical application of a technology but also for the industrial, commercial, administrative and financial exploitation of an enterprise.

b) the improper divulgation of such knowledge and experience maintained secret by those that possess those".

Considering now industrial property rights which enjoy specific protection, that is, essentially patents and marks. Let us start with patents. These are relatively small in number in the developing countries compared with that in the developed countries. Quoting some figures taken from statistics for the year 1970 (Propriété Industrielle, Décembre 1971) we find :

1 - BRAZIL

Patents in force at the end of 1970	46 000 (5365 000 in France)
Patents granted to foreigners	2 200
Patents granted to nationals	300

This shows that most of the patents granted are patents which have a foreign priority, originating in developed countries. The distribution is as follows :

Patents of foreign origin granted in Brazil	Origine		
Total	U.S.A.	Europe	Japan
2 200	1 050	820	50

It is seen therefore that in a country like Brazil, the United States obtained on the average only 1 000 patents in one year, whereas at home they obtained 47 000, and 10 000 in each of the large European countries.

2 - INDIA

Patents in force at the end of 1970	28 000
Patents granted to foreigners	2 900
Patents granted to nationals	500

The distribution of the patents granted to foreigners, according to origin is as follows :

Patents of foreign origin granted in India	Origin		
Total	U.S.A.	Europe	Japan
2 900	870	780	140

The above figures show clearly the relatively modest role which patents play in developing countries of large size. In others, their role to-day is practically nil as the following figures show :

CUBA

Patents in force at the end of 1970	5 100
Patents granted to foreigners	16
Patents granted to nationals	7

ZAMBIA

Patents in force at the end of 1970	1 500

Patents granted to foreigners	150
Patents granted to nationals	1

It may therefore seem surprising, anyway at first sight, to find that patents are exposed to such sharp criticism in some developing countries.

II) What are the main complaints against patents ?

A) Their doubtful validity :

In most cases, developing countries do not have sufficient staff to exercise detailed control over matters relating to patents. They are therefore obliged to rely on the results of examinations made in the country of origin of the applicant, in so far as the country concerned uses an examination system. This situation is not particular to developing countries. It existed also in France up to 1968 where the patent system did not comprise any examination, although 30 000 patents were on the average granted per year to foreigners.

This certainly has disadvantages but these can be eliminated in practice, simply by applying the system used in France in the Sixties. This simple and inexpensive system consisted, when there was any doubt as to the validity of a patent with which the potential licensor had protected his inventions, of arranging for a patent agent to draw up a list of countries with an examination system in which the potential licensor had protected his invention. The object of such an investigation was to determine for each of these countries if the corresponding patent application had been granted, was pending, or had been rejected. By comparing the files relating to this search, the potential buyer could arrive at an opinion on the validity of the patent concerned.

This method would seem to be within the scope of developing countries, its only disadvantage being that it is slow.

It must be added, however, that this method has lost some of its value in recent years, the reason for this being that several countries "with examination", have adopted a system which provides for a delay of 7 years before examination. This means that any search, if recent patent applications are concerned, would more often than not lead to files that were still not opened

to the public. In France, however, this draw-back has been temporised by the introduction in 1968 of a documentary notice procedure which gives information at least on the novelty if not on the validity of an application.

Many applications are filed in association with such documentary notice because the owners are applying for a patent in France.

In conclusion, in a few years the European patent will come into force, based on a supra-national examination made by a body of multi-national Examiners at the latest two years after an application has been filed, and this will constitute for developing countries an impartial and reliable presumption of validity.

It should be added, however, that already to-day, enterprises of developed countries do not, as a general rule, file applications in developing countries unless the invention could be used in these countries and their patentability is based on sound premices. This is the only way for such enterprises to limit costs.

B) Their territorial scope :

Developing countries are seeking more and more to acquire liconses for technologies which will provide their people with work and bring in foreign currencies by exporting a part or even all of the resultant production. If the technology concerned is advanced technology, such production cannot directly meet the needs of these countries. But such products can be made more cheaply and exported. This would enable hard currencies to be acquired and as a result enable goods related more directly to the needs of the country to be acquired.

Such technologies, because of their advanced nature, are the subject of only a small number of patent applications in the developing countries. Licenses in those cases are often mixed licenses in that they include both patents and Know-How and also, if necessary, technical assistance. The potential licensor, because the license also includes patents, has the right to limit the territorial scope. This right is often felt by developing countries to be an unacceptable interference with their liberty. Some of these

countries would even make the conclusion of a technical agreement dependent on the inclusion of a clause permitting exports without restriction, and even on the licensor undertaking not to file a patent anywhere else in the field which is the subject of the license.

I do not believe that arbitrary and unilateral measures of the type quoted above can resolve these difficulties. If such practice were to spread, it is to be feared that it would lead to a result opposite to that which was desired. It would, in fact dissuade developed countries from concluding agreements with developing countries.

On the contrary, I am convinced that the territorial scope of the rights that are to be granted is one of the essential factors in every negotiation, which must be negotiated to arrive at a fair and appropriate arrangement.

It would doubtless be useful to refer briefly to the subject of exclusive licenses. These are not numerous. Licensors often have a rule of not granting exclusive licenses for a multiplicity of reasons among which are the wish to conform to anti-trust laws to which they are subject, cross-licensing arrangements which necessarily imply an absence of exclusivity, etc...

On the other hand, licensees often wish to enter into an agreement on an exclusive basis. However, it is possible that the same technology also interests other developing countries which have unlimited export rights. In that case, a conflict of interests may arise between the developing countries concerned.

The last point demonstrates that the territorial extent of an agreement requires to be negotiated in every case.

C) The duration of patents :

The duration of patents varies in the developed countries. It varies between 15 years from the filing date (Italy) and 20 years from the date of grant (Spain). This disparity is a hindrance. One of the advantages of the European patent will be that the duration of patents will be the same in a large number of countries. The duration of the European patent, which has every chance of being ratified, is 20 years from the application date.

This duration of 20 years appears to be considered excessive by some developing countries, at least for certain categories of inventions. Some developing countries (Peru) have uniformly limited the duration of patents in that country to 10 years from the date of grant, others to 8 years with an opportunity of renewal once for a period of 4 years (Colombia), while still others have limited the duration to 16 years from the filing date (India) for all patents, excepting those relating to food, and pharmaceutical products, and chemical products intended for use in agriculture, which are limited to 5 years from the date of grant, subject to the qualification that they expire at the latest 7 years from the application date.

It is not my intention to discuss whether these countries are right or wrong in limiting the duration of patents in this way. In passing, however, I would like to say that I deplore the heterogenity of these measures which militate against rapid expansion of international trade. On the other hand, I would like to make it quite clear that such measures, so far as the most limitative of these are concerned, amount to the suppression of patents in the countries concerned.

Because of international competition, enterprises find it necessary to file patent applications to protect the results of their research as soon as possible without waiting them to be developed and, stil less, applied in industry. There is no need to recall that 15 years passed after the first patents on transistors had been filed, before transistors appeared on the European market, and that 15 years passed after the first patents on colour television had been filed before the first colour television chains became operational in Europe.

Thus, if the technology which is to be transferred to developing countries is a technology of this nature, a legal maximum period of 10 years hardly corresponds to the period required to develop an invention to a point at which it can be commercialised.

D) Improvements and duration of contracts

Most contracts contain a clause according to the terms of which a licensee has the right, generally without additional payment of royalties, during the whole of the duration of the contract, to any improvements made by the licensor in regard to the invention which is the subject of the license.

On the other hand, the licensee has a right to any improvements that the licensee might make to the technology that he has received. It seems that, in the developing countries, this practice is often criticized [illegible] on the grounds that the license which has no interest in obtaining improvements free, and on the grounds that it is quite unacceptable that the duration of a contract should exceed that of a patent. For this reason, it would seem useful to analyse the machinery which governs the exchange of such improvements.

The licensee of a technology can adopt two different approaches. He can, at a given moment and in a given field of technology, wish to find a partner, on the best terms possible, who would make such technology available to him, and then become independent of such a partner as soon as possible. An approach of this kind should decide the licensee not to ask for rights to improvements. This implies, however, that the licensee has some confidence in his market which will have to be satisfied with a technology without improvement or else have confidence in his own ability to make improvements himself without any help.

But the licensee should also consider that his customers will very soon want also the improvements which the licensor is offering to his customers. The licensee can also take the view that he has little time to devote to making improvements. Lastly, when the transfer of advanced technology is concerned, the licensee may have the desire to enter into a contract with a partner which will give him the best chances of remaining or becoming the world leader in such recent technology, destined, because of its very youth, to rapid development.

In that case, the licensee is buying as much an insurance for his future as an amount of knowledge. But such an insurance is not compatible with a forced limitation of the time during which remuneration can be effected.

It appears, in fact, that this aspect of the matter has not escaped the notice of the developing countries, and that those which have introduced arbitrary measures aimed at limiting the duration of payments to that of the original patents, have done so in order to protect licensees against abusive filing of new patent applications by the licensor, during the contract period, with the object only of prolonging the period of payments.

The solution of this problem which could prevent such abuses while at the same time safeguarding the interests of the licensee could perhaps be to allow the latter a period of time before the expiry of the contract, during which he would have an opportunity of estimating the value of the improvements. He would thus not be automatically obliged to renew his contract.

3) Remuneration

Remuneration poses a difficult problem - that of a fair price. In the developed countries, however, this is not a point which gives rise to problems, simply because of the interplay of competition. In addition, the large number of negotiations that have taken place in those countries provides reference points and makes it easy to arrive at a fair price.

Nothing prevents developing countries creating such a competitive market. It would be necessary simply to extend to the field under discussion the procedures developing countries use at home in connection with the construction of great public works, such as roads, dams, and hospitals.

Two other problems linked to remuneration seem however to be more important. These are credit, taxation and exchange control. The necessity for credit arises from the smallness of the financial resources of the buyer and of the always high price of the knowledge which he wants to acquire. For this reason payments spread over a period of time are almost always essential. The intangible character of the goods transferred require the licensor to have specific guarantees. It must be remembered that if a license relates exclusively to Know-How, the licensor who has transferred his knowledge before payment has been completed, no longer has any practical means of bringing his defaulting partner back to his previous state of lack of knowledge. But the licensor will have such guarantees if the license covers both Know-How and one or a number of patents, if the duration of these latter is not excessively small.

Thus, the patent constitutes a factor of security in transactions which makes it considerably easier for the licensee to obtain credit.

As regards the taxation and exchange control aspect,

I will restrict myself to two comments. If there is no tax convention between the countries to which the licensor and the licensee belong, all taxes deducted by the country of the licensor from the royalties received by the licensee before repatriation, will become liable to further tax in his own country. The gross amount of minimum remuneration he will ask for for transferring his knowledge will inevitably take such double taxation into account. The tax levied by the country of the buyer will be reflected to a large extent by the latter. Id the country of the buyer arbitrarily fixes maxima, the acquisition of knowledge from abroad will be restrained and necessarily restricted to the least costly technologies which may not be the most interesting and profitable from the point of view of enterprises.

My second comment relates to exchange control. Developing countries and even some developed countries have a basic necessity to exercise strict control over the export of foreign currency. The acquisition of knowledge from abroad, a priori, constitutes such export. The temptation is great to oblige potential licensors to invest the money they receive in local money in payment of the knowledge transferred, and/or to require, as has been seen already, complete freedom to export the products manufactured under license, so as to reduce the export of foreign currency and to increase its import. I shall not refer to this second aspect again. As regards the first, it is undeniably a great obstacle in the development of the transfer of technology to developing countries because, once again, the potential licensor seeks by this transfer to amortize partially his research and development efforts and by the receipt of regular remittances in his own country and in his own national currency or convertible foreign currency, reimburse the loan he has made to carry out his research work.

To escape from this dilemma, the justified concern of developing countries is to limit the export of foreign currency and the no lesser concern of the potential licensor is to repatriate royalties, some people have suggested that enterprises of developed countries establish research laboratories abroad, including in developing countries. In the long run, such a course is perhaps envisageable, but it obviously postulates the existence of a considerable university and industrial framework in the country which could benefit from such a decentralised research policy.

F) The restrictive clauses as regards the licensee's freedom to obtain supplies from any source. These clauses require the licensee to undertake to obtain raw materials for the manufacture of the products of the invention either from the licensor or from a supplier related to the licensor and imposed by him.

Such clauses are illegal under American anti-trust laws. They are probably illegal also under general laws in regard to competition.

Yet such clauses should not be condemned completely. It can happen that the licensee is not in a position to manufacture all of the products under the invention. The contract in that case will cover on one hand an agreement on summplies, the licensor furnishing the most complex components, and on the other hand the license for manufacturing the other components and their assembly.

In such circumstances these clauses are legal even in countries with strict anti-trust legislation.

Before saying a few words on the role of trade marks, which in may opinion is as important in the commercial field as that of patents in the industrial field, may I stress, to conclude, three points which concern the latter.

- In the modern industrial process which passes from an invention to its commercialisation via research the development, industrialisation and the creation of a marke , to quote only the principal stages, Know-How is both an indispensable factor and a factor which is almost always costly. Know-How, by its nature, cannot be transferred under constraint, because it is easy to maintain secret because of the increasing complexity of technology which is difficult for third parties to absorb completely and effectively.

- In a modern world where clashes of interests tend to increase, where business relations seek to acquire greater security than that which can be provided by the juxtaposition of national rights and the difficulty of legal proceedings within the framework of legal systems not well known by one of the parties or even by both parties, when they have chosen, for the sake of balance, the contract law of a third country, the institution of patents and the great international principles on which it is based, even if its application varies a little from country to country, remains an irreplacable means of giving security both to the licensor and the

licensee of ensuring an abundance of offers and therefore of choice for the licensee, of creating a competitive situation and of obtaining facilities for payment. Abuses, if any, are not derived from the institution itself which is the basis of the tremendous industrial upsurge witnessed in the Western world for a century and a half, but from an insufficient knowledge of the complex and sophisticated tool which it constitutes in the panoply of machinery related to international exchanges. Its radical suppression by some developing countries or the introduction of measures which in practice removes all substance from industrial property cannot fail in the near future to lead to an impoverishment of the means of exchange and an hindrance to its development.

I am certain that simple and specific measures would enable most of the real and feared cases of abuse to be remedied, on condition, however, that developingcountries, despite their understandable and legitimate haste with which they feel they should acquire a maximum volume of foreign technology on the best terms possible, ensure that they adapt the flow of the transfer of technology to the development of the industrial and intellectual infrastructure which is indispensable to the efficient application of these technologies, and on condition that the national and multi-national authorities in the developed countries agree to specific aid action, in particular as regards expertise, which would enable the very sophisticated stimulant represented by industrial property to produce all its beneficial effects and only these.

In regard to the rights concerning marks, I will limit my comments to famous marks in developed countries and to those which are the same as the coporate name of the firms concerned or derived from these.

There are cases in which the licensee in a developing country does not attach any importance to a mark belonging to the licensor. This will be so in all cases where the public authorities to whom he is responsible are concerned to protect him by assuring him a virtual monopoly by restricting imports of competitive products.

But when it is considered that the productive capacity of the licensee is insufficient and it is necessary to encourage new investments, there is no longer any indifference as to

whether or not a mark could be renewed in the future.

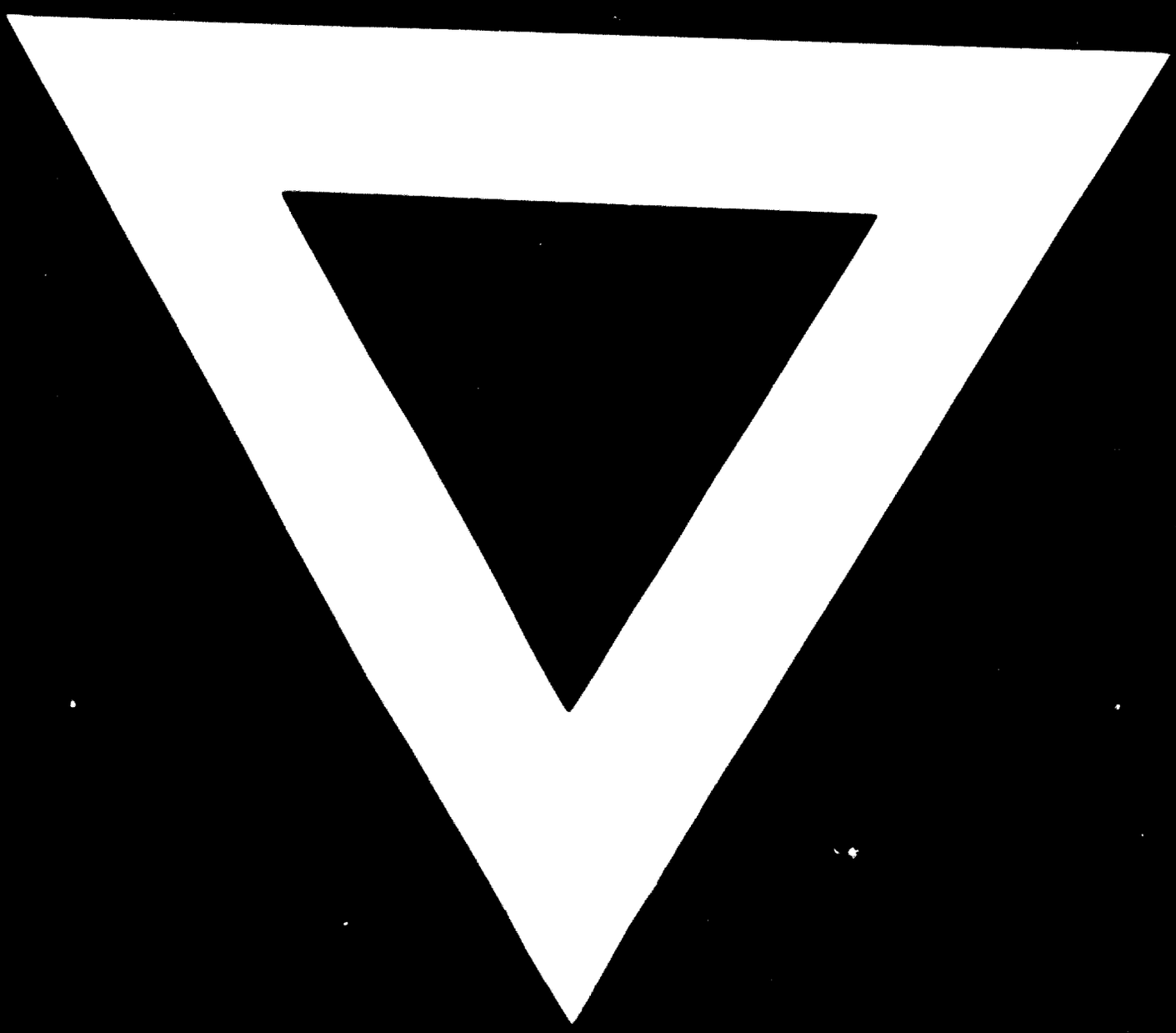
A conflict of interests may thus arise. Thus, developing countries consider that the right which the licensor has to renew a mark indefinitely gives him an opportunity abusively to maintain the licensee in perpetual dependence on him. This explains why certain countries are inclined to take arbitrary measures such as prohibiting the renewal of marks. Licensors, on the other hand, consider that a mark, particularly when it is famous or derived from the corporate name of a firm, must remain the exclusive property of the firm for as long as the firm remains in existence. This contention is based on various considerations, the amount of work, effort and risk the mark represents. Thus, although a license to use the mark can be granted temporarily, it is essential that it should return to the licensor when the contract expires. It is essential also that this mark be used under conditions which do not harm its reputation or renown.

It will be understood therefore that forbidding the renewal of a mark can only dissuade the licensor to grant a license for his mark.

In conclusion, Industrial Property which, in the last century, it must be admitted, was a protectionnist instrument in the hands of the countries that are developed to-day which had entered the industrial era in a random fashion, while not imagining the possibility of a general economic system other than the capitalist system, to-day has practically lost this role, as countries which wish to practice a protectionnist policy have at their disposal an arsenal of measures infinitely more powerful to direct, plan and protect their economy, while others deliberately practice an open door policy to stimulate their economy by international competition.

On the other hand, Industrial Property although it continues to be based on autonomous and separate national systems, has become, particularly since the last world war and the tremendous acceleration of international exchanges which followed it, one of the most powerful factors in the acceleration of technological exchanges. The prodigious upsurge of Japan, based on massive purchases of foreign technology, fully respecting industrial property rights, is a brilliant demonstration of this.

There is no reason for this not applying also to the developing countries and, depending on the degree of development of their economies, that as soon as the latter has attained a certain point, they should not derive the stimulating benefit of industrial property rights in the form in which they are used in the developed countries between themselves and the guarantees they give licensors and the incentives they give licensees ; there is thus no reason also that those developing countries, anxious to achieve autonomy in time, will not succeed in an enterprise which is difficult but which is decisive for their future, an enterprise which is represented by the massive purchase and assimilation of foreign technology, in a climate of trust, leading progressively to technological independence.



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