

requirements in their own country.

So you can see that there are many factors which need to be considered before structuring the best possible business arrangement under the existing circumstances and with the best crystal ball on the future. Business, like politics, is the art of the possible. There are many complexities but this adds spice to the problems.

In conclusion, it seems to me that the biggest limiting factor of all for a multinational company is the ability of its business planners. Their ability to absorb and correlate the many diverse factors involved and to distill out the essence of a viable long-range approach is a significant factor in the ultimate success of their company.

**About the Speaker: George W. Petersen, B.C., L.L.B. Mr. Petersen joined Kodak in 1948 as a patent attorney and progressed through a series of patent/technical positions, culminating in his appointment as Assistant Vice President in 1969. Much of his experience at Kodak has been with the chemical and photo materials operations.*



Murray R. Maynard

A BUSINESSMAN'S BEWILDERMENT IN THE FIELD OF LICENSING

*by
Murray R. Maynard**

Mr. Chairman, Gentlemen:

Thank you for the invitation to speak here this morning. The opportunity of addressing a few remarks to such a distinguished group of licensing executives is a unique and even moving experience for me. It is the first time in my life that I have spoken with a group of lawyers at no expense!

I speak as the president of a small manufacturing company, heavily technically oriented, which competes in world markets and which exports from 40 to 60 percent of its production. Because of the amount of design and engineering associated with our products we are forced into the nether-nether land of licensing and patents. If you find my subsequent remarks mildly critical of your profession I am certain that you'll bear with me, for I have always found your members to be broadminded and only sensitive when discussing fees.

Gentlemen, as businessmen, as manufacturers, and even as engineers, we find the subject of patents and patent laws almost completely incomprehensible. We don't appear to be speaking the same language. If patents and patent law were written in the Tibetan language we might have a chance to understand them because we could buy a Tibetan-English dictionary and translate. But how do you translate English into English?

We are very dubious of the protection given by patents and have found that there is rarely any worthwhile protection when we apply an old principle to an entirely new field.

As a personal example, I used to work as a surveyor underground in the mines. Surveying underground you sight with a transit on the strings of plumb bobs hung from the roof. Since it is completely dark it is necessary for an assistant to move from plumb bob to plumb bob, holding a light behind the bobs so the surveyor can see them. This is time consuming, so I developed a special plumb bob with a light in it, an innovation which cut our surveying time in half. It was enthusiastically received by the mining industry. However, it was not patentable because at one time a plumber had placed a light in the weight used to clear blocked drain pipes. To me and to the mining industry this was invention, but to the patent law, it was imitation.

This example is inconsequential but it illustrates our predicament. We lack confidence in patent protection and patent law and our growing belief is that we would be better off with either no patents or a patent system not haunted by ghosts of the past. We would prefer to develop our own innovations and market them aggressively, taking the ideas of others as they have taken ours, and moving on to new innovations as others have imitated our present ones. At least then we would understand the rules of the game, something that is not the case today.

In the field of licensing we are prepared to license foreign companies but, from prior experience, rather prefer not to be a licensee. Our main objection to being licensed is that it locks us in to a particular design and prevents from using new and perhaps better alternative designs.

However, I would like to discuss an aspect of licensing or activity which we are most familiar with, particularly so today, and that is the matter of government in licensing agreements and proprietary products.

In our society, the size of the private sector or that reserved for private enterprise is decreasing every year, and the size of that sector appropriated by the public or government sector is rapidly growing.

You will note that I have used the term private enterprise instead of free enterprise, which is a term frequently used by many people but which has been redundant since earlier than 1900.

The simple fact of the matter is that free enterprise does not exist and has not existed for many years. Perhaps if those businessmen who use the words so freely on The Chamber of Commerce banquet circuit examined what it meant, they would not use the term themselves. Free means free — no import duties, no anti-dumping laws, no minimum wage laws, no tariffs. The right word in front of enterprise today must be "private".

I have mentioned the growing position of governments in our economy because it was suggested that I might illustrate my remarks by some case histories. Ours today are mainly in the field of government because, as I have previously indicated, we are not very interested in licensing or being licensed in the commercial field. In this latter field we prefer the aggressive promotion of our own products, using whatever protection we may derive from your profession, and in the case of competitive products, generate better ones.

In a year, we deal with up to half a dozen different national governments and a host of other government bodies at various levels; provincial, state and municipal. As a North American company, the main part of our government business is with the U.S. and Canadian governments. After some 12 years of doing business with them we are inclined to regard Attila the Hun as a rather kindly old gentleman in comparison.

We view most of our products as proprietary in nature. We have developed them from scratch and at the time we developed them they were new in North America (and usually the world). Some are protected by patents and many are not. Yet even with those that *are* protected by patents are given protection that is of dubious value when dealing with national governments. Up until now we have had design ideas and inventions appropriated without compensation by the United States, Canadian, Belgian and South African Governments.

When dealing with private companies national governments have two big clubs: — (a) They are sovereign bodies with great strength and a variety of resources not available to private organizations and (b) they can threaten to refuse to place orders with companies which do not release proprietary rights to them. It's like David and Goliath with Goliath holding all the stones.

One favourite ploy is to say "we will buy your product but we want an option to purchase all proprietary rights to it, if we like it." On the option their favourite formula is to offer a company one half of the research and development costs incurred in creating the product, plus royalty payments over a period of years equivalent to the other half of the costs.

The problem with this formula is that you lose control of your product and are reimbursed only for the costs incurred in developing it. There is no provision made for loss of possible future profits and it does not take into account the intangible knowledge built up over a period of years which guided you to

develop the product. There is also no reward for the inspiration, genius or fool luck which made a technological breakthrough possible.

The foregoing is a typical formula when a government decides to be honest. Let's briefly examine two cases in which governments — one Canadian and one American decided to follow their natural inclinations.

Some three years ago our company developed a new method of connecting structural components on high-way overhead sign supports. It reduced our costs substantially and our prices to a provincial government. We used it on one order which we manufactured for the government. When the next public tender came out for sign supports we were unpleasantly surprised to find our designs incorporated in the government drawings without even an acknowledgement. These drawings were sent to all of our competitors. The government's attitude was that we're the Queen and we can do no wrong. They also went to the trouble of paying a consulting engineer to see if they could redesign our product so as not to infringe our design. In this case we went to court and proved that our noble Queen can indeed do wrong.

But our legal fees were horrendous so it became a matter of principle. We as citizens have a right to ask if governments should defend their servants when they act in this unethical manner. We have another similar case now involving the Canadian Government but my legal counsel says that since its in court I can't discuss it, particularly using my description of the federal government.

Knowing that there are a large number of U.S. citizens present, and recognizing the high regard that you hold for your governments, I hesitate to shock you by citing an American example but it is only a small one.

My company makes a unique product for use on ships and, to my knowledge, we are the only company in the world which makes a product of this kind. It is patented in most countries in the world. Over the past seven years the U.S. Gov't. has used it and during the last two years its use by them has expanded. When negotiating orders for this product in the past we have fought a running battle with the gov't. on the matter of proprietary rights. They kept cranking options on rights into orders and we as assiduously wrote them out. They still bought the product but recently their employment of our product has increased substantially and we are in a new game — it's called "STEAL".

As is common with many companies, our company writes proprietary technical specifications describing our product in detail, its mode of operation, its capabilities and its limitations. Recently, the government asked us to justify our "sole source" procurement position on this product and we cited our origination and development of the product and our patents on it. They asked for copies of our patents, which were duly furnished and then they stated that, patents or no patents, they intended to procure future items by public tender. In discussions with them they suggested that to protect our patented position we should take legal action against any company who might be the successful tenderer. The fact that the gov't. itself was

initiating competition procurement on a patented product was not a matter for concern. The procurement procedure was simple. The gov't. took our specifications, changed all references to proprietary items or model numbers, and used them as specifications for a procurement document. This placed us in a rather severe quandry — to bid ourselves on what we regarded as an illegal tender or to take legal action against the gov't. immediately. We would up by bidding and reserving our rights to future legal action against the U.S. Government.

This case, however, is not as important to us as the basic principle. If we have valid patents, or even original ideas, the U.S. Government has no right to steal them. If our patents are not valid the U.S. Patent Office should not have issued them. In either case the government is culpable.

It is easy to say sue, take court action, fight them! But we are a small Canadian company and our adversary is the most powerful foreign government in the world. Could we afford to lose such a case — could we even afford to win? We're aware of the axiom that nice guys don't win ball games and while this is not a ball game we're almost certain that modest people like ourselves are too nice to win.

These are just a few of the cases that I'm personally familiar with — you are undoubtedly aware of others. Taken together they form a frightening picture in which business creativity and entrepreneurship may be stifled by the unfair practices of one of business's increasingly important consumers. And in the end both the private and public sectors will suffer as research and development funds are diverted to other areas.

We are all aware of the importance that our judicial system has historically placed on protecting individuals from authoritarian restrictors. Once again those of you who are most familiar with these laws have an opportunity to see that individuals are protected, not only from the unfair practices of governments, but from the tyranny of incomprehensible laws.

I urge you consider the importance of this work and wish you well in your efforts.

**About the Speaker: Murray R. Maynard, B.S. Before founding Dominion Aluminum Fabricating, Ltd. in 1952, Mr. Maynard taught at the University of Toronto and was an R & D engineer for Union Carbide. His present company specializes in design and manufacture of structural aluminum products.*

NOTICE

Secretaries of all LES Chapters are reminded that a copy of the minutes of each LES Chapter and Director's meetings should be sent in English to all other LES Chapters. This allows all Chapters to coordinate their activities and to be aware of the activities of other Chapters.



Luncheon meeting — Niagara Falls. Peter A. York, Luncheon Speaker at podium.

"THE CANADIAN CLIMATE FOR TECHNOLOGY TRANSFER"

by
P. A. York*

Gentlemen:

It is certainly a pleasure for me to be with you in Niagara Falls today, at what I understand is the first meeting in Canada of the Midwest Region — Licensing Executives Society.

To those members and guests from (across the bridge) I would remind you that this general community has historic significance to our two countries, dating back to the difference of opinion of 1812. This hotel is named after General Sir Isaac Brock, who was the leader of our debating team at the time. I suppose one could state that we have shown some progress in 160 years if we compare the atmosphere in Ottawa recently, in which President Nixon and Prime Minister Trudeau sat down to sign an international agreement to clean up the Great Lakes system.

It is gratifying to note that your society has expanded its influence with chapters organized in Britain, Italy and Scandinavia. Perhaps if your Canadian membership increases appreciably beyond the present thirty-seven, a Canadian Chapter may be worth consideration at some future date.

I have been impressed by the high calibre of the programme arranged by your committee and I am sure the workshop sessions will be most valuable to the participants.

As a provincial government, we are heartily in accord with the aims of your society, and I would like to quote one from your charter.

"To assist its members in improving their skills and techniques in the area of licensing, of educational meetings, the publication of articles and other materials and the exchange of ideas related to domestic & foreign licensing"

When I outline our programmes, I think it will be