

Changing Aspects of Licensing in Canada

In matters of industrial property, exclusiveness will virtually disappear

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In this highly technical age, acquiring rights in industrial property is an extremely significant aspect of the planning process in commercializing innovation.

In Canada, which some statistical evidence indicates may be more closely compared to the emerging or developing nations of the Third World than to highly industrialized countries, acquiring technology is clearly an important and continuing process. After all, some 95 per cent of Canadian patents are granted to foreign inventors, a fact causing many economists to question the value of the system to the people of Canada.

Many of our industries are components of complex international industrial organizations — “multinational corporations” or, more accurately, enterprises. Much of the know-how flowing into Canada is from parent corporations which basically have their origins in the United States, Britain, France, or Germany. As the president of our company, Dr. Robert J. Richardson, recently put it, “Canadian firms (both subsidiaries and independent) today have access to a vast reservoir of global technology, growing rapidly in volume, which is available through licensing arrangements”.

This is not to say that our scientists and engineers in Canada are so intellectually disadvantaged that they do not invent anything. Far from it. You may recognize inventions such as the telephone, the snowmobile, insulin, the hydrofoil, tetrafluoroethylene, the variable-pitch propeller, and even the “Glad Bag”, all of which, it can be argued, were conceived in that country to the north. The thought invariably causes people in more sensible climates to shiver, if only because one of our most visible exports appears to be hockey players.

Foremost Concern

So we in Canada are very concerned about the transfer of technology and I personally believe that it is a subject that will be of foremost interest to all of us in the world who have any responsibility at all in this field.

If I were to hazard a guess, I would say that the future will contain an era when the exclusive right on the part of

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a person — taking that term in its widest sense — to enjoy the right to his own inventions will disappear.

There is already pressure that is exerted in respect of industry; witness the broad cross-licensing that occurs in certain areas. It is simply too difficult and too costly to imitate in an innovative way, for instance, in the fields of electronics, automotive, computer, aeronautics and space. It is far more rational to license and be licensed in a way that will assure competitiveness than to expend millions in research and litigation.

And this trend does not negate innovation or, for that matter, difference. A certain large electronics company will always be remembered for adding one more speed to everyone's phonograph in the hotly competitive attempt to win a market almost 30 years ago when the “microgroove” recording made its debut in home entertainment. All the rest of the technology applicable to the making and playing of 45 r.p.m. recordings was and is substantially the same as for the 33-1/3 r.p.m. recordings. An example of a situation where common technology produced different, if inconvenient, results for the consumer.

The licensing of technology in Canada is basically the same as in the rest of the world. I shall give a brief outline of the essential aspects of the law surrounding the process and shall then touch on some of the parts of our system that may differ from the basic common law which gave rise to it.

THE LICENSE

As in most jurisdictions, the patent or trademark license is governed in Canada by the laws of contract. A patent is in common law terms a chose in action. In civil law terms (applicable in the Province of Quebec), it is an intangible incorporeal right. In both jurisdictions the net effect is the same.

The patentee in Canada, however, does not enjoy absolute freedom to contract, as people used to be thought of having in an earlier and less complex era in our legal development. Constraints exist which flow from our Combines Investigation Act (eventually to be amended by the Competition Bill currently before our parliament), and from our Patent Act itself which contains provisions governing compulsory licensing, for instance.

THE NATURE OF A LICENSE

A license in the field of industrial property is essentially a contract whereby the licensee is permitted to use something owned or possessed by the licensor. One of the best observations concerning the true nature of a license comes to us from England more than 300 years ago when a jurist

there said:

A dispensation or license properly passeth no interest, nor alters or transfer property in anything, but only makes an action lawful which without it had been unlawful.

It is evident that a license is personal and that it transfers no right of property — no right *in rem*. By its nature, unless the contract establishing the license so specifies, it is not assignable, it cannot be sublicensed and it cannot be subdivided.

A license may arise essentially three ways. The first is by way of an oral agreement, and obviously one of the great difficulties lies in establishing the terms of any such contract. It has often struck me that whenever a "gentlemen's agreement" runs into difficulty it is astonishing as to the paucity of gentlemen remaining on the scene. The second is by way of a written agreement and we shall expand on some of the problems inherent in those agreements later. The third way gives rise to the tacit license which arises simply by the licensor behaving, or better, *failing* to behave in a way which would cause the other party to conclude that a license had not been granted. The benefit to the licensor in such an arrangement is the notion in law that any bare license given for something other than "valuable consideration" can be revoked at any time.

Three Forms

As far as the licensee is concerned, the license may take three forms in terms of its degree of exclusiveness. It may be nonexclusive, in which case the licensee may expect competition from other licensees. It may be sole, in which case he or she may expect competition, if any, only from the owner of the licensed property. Finally, it may be exclusive, in which case the licensee may expect competition from no one in respect of whatever is licensed. It is readily evident that the phrase "sole and exclusive" which occasionally appears in otherwise well-drafted agreements is a contradiction in terms in a patent license.

As to when a license has arisen, it is probably fair to say that the "concluded bargain" concept has application. Attempts have been made to show the existence of a license by reason of the exchange of a series of letters and conversations on the subject. While such exchanges may well establish sufficient proof to support the allegation that a license does exist, more often a court is moved to find such evidence supportive only of a state of negotiation between the parties and not of a concluded bargain where all the operative terms and conditions are determined or determinable and the concurrence of both parties therewith is evident.

Generally, if it is understood that a written agreement is to be nothing other than the embodiment in concrete form of a bargain already made, then a license exists even though the reduction to writing has not been done. If, on the other hand, the bargainers understand that there will be nothing in effect until a written agreement is signed, then no license will exist until the formal execution of the contract by the parties.

In provinces governed by the common law, such as Ontario, the Statute of Frauds provides that no action lies based on a contract unless there is a memorandum thereof in writing signed by the person sought to be bound. Such a

provision provides a defense only where such a document does not exist. The statute would have no effect in a case where the contract itself is raised as a defense.

JURISDICTION

While industrial property legislation is within the exclusive legislative competence of the federal parliament in Canada, licenses are matters of contract and, as such, embody rights which are provincial. Rights flowing from a license are quite separate from those existing under a patent. The issue is not so simple in practice, however, since a license may be raised as a defense in an action for patent infringement brought before a federal court, in which event the court is bound to apply the appropriate provincial law in construing the contract.

In questions concerning who can institute an action in infringement, it is established that a licensee, even a non-exclusive licensee, falls within the legal definition of one "claiming under" a patent, although the licensee is bound to join the patentee, either as a plaintiff or a defendant as the case may be.

Patents may be impeached in the courts and it may be appropriate to institute an action in impeachment against a registered exclusive licensee who then has the option either to remain a party to the action or to withdraw, since a licensee has no property interest in the patent under attack.

THE LICENSE V. THE PATENT

As noted, the license is distinct from the patent in terms of the rights to which each may give rise. As a practical matter, it is important to note that the license may be wider or narrower than the patent, measured according to the claims in it.

Examples of limitations in a license which may create rights narrower in scope than the rights under the patent include the thing licensed, which may be of a particular kind or specific form; the geographic area licensed, which may be a part only of the country, and the term, which may be less than 17 years. The license may also be limited to one only of manufacture, use or sale and may allow only specific persons to do such things. Further conditions that can be imposed go to the sale price of an article, the persons to whom the sale of an article can be made, and the kind of use to which an article might be put. The legality of any such provision must depend upon its compatibility with the provisions of the legislation governing competition.

Given a license of such narrower width, it is clear that a licensee will infringe if he operates within the scope of the patent but outside the scope of the license.

Similarly, the license may be wider than the patent and, in fact, may continue to exist in the total absence of any patent right. In terms of breadth, the definition of what is licensed may go to a particular kind of machine, for example, or to a concept of the invention which is not as limited as the claim which provides the legal definition of the invention for purposes of interpretation in any action based on the patent. It is thus conceivable that a licensee would pay royalties to the licensor in respect of the sale of a device which did not infringe any claim at all of the licen-

sor's patent. Again, it is also conceivable that a licensor could collect royalties from a licensee for the term of a patent which is held invalid by the court. This implies, of course, the lack of a terminal provision in the contract which permits the licensee to terminate the contract when the patent is no longer in effect.

Yet another anomaly would arise because of the distinction between the rights under the license and the rights under the patent in the case of the license embracing a group of patents where the licensee is functioning only under some of the patents simply because the others had expired. Or, to carry it even further, the licensee may be using none of the technologies of the remaining unexpired patents and yet remain subject to the payment of royalty because of the term of the license which was collateral to that of the last to expire of the licensed group of patents.

Perhaps we should constantly keep before us the words of a jurist: "I desire to reiterate what the older judges have so often said, that parties must be held strictly to their contracts; it is their own fault if they have not adequately protected themselves by suitable language."

IMPLIED TERMS IN LICENSES

It is of course a matter of law as to whether or not there is to be an implied term in a license. The courts may import such a term to add to or vary any expressed term but it must not be in conflict with any such expressed term. The courts will only do such inferring slowly and they will not create a contract in so doing. Rather, they will do so only where it becomes essential to give a contract the commercial reality that all parties thereto must have intended.

Certain things are not implied, however, such as the validity of the licensed patents in favor of the licensee, or that the licensor will sue others who infringe the licensed patents, or that the licensee will use the license, or, indeed, that the licensee will be free, in practising the licensed invention, from infringing the patents of others. There is also authority for the view that a license to construct a device does not imply a license to use it. In any oral agreement a reasonable royalty may be an implied term. Nothing is implied concerning termination and thus care should be taken to allow for termination if, for instance, the patents are invalid or if the licensor fails to sue an infringer.

ESTOPPEL

It flows from the law that the licensee is estopped from denying the validity of a licensed patent during the term of the license. This does not prevent the licensee from denying infringement of the patent but any evidence introduced by a licensee in an action which is intended to cast doubt on the validity of the licensed patent is inadmissible. Estoppel depends upon the existence of a license and, therefore, it cannot arise until the license comes into existence — if there is only an agreement to agree, there can be no estoppel — and it ceases to exist when the license terminates. An interesting question goes to whether or not estoppel arises if the licensee does not make use of the license.

It must be noted that if the license includes a warranty to the effect that the licensed patent is valid, then the licensee is not estopped from attacking the validity of the

patent since the warranty of validity goes to the substance of the contract.

REMEDIES

Under normal circumstances the owner of a patent will seek to recover the royalties to which he is entitled. However a patent license is a contract and the usual remedies in respect of breach of contract are open to the parties. For instance, damages based on the ordinary consequences of a breach can be recovered. Where damages are not an adequate remedy a party can seek specific performance. Should a party act in breach of a negative warranty the appropriate relief for the other will lie in an injunction and, finally, the whole contract may be set aside in the event of fraud, misrepresentation or mistake, the latter being mutual in nature and going to the substance of the agreement.

TERMINATION

It has been held that it is a presumption in law that a contract is intended to be permanent and irrevocable unless the contract is of such a nature that it is intended to be determinable.

The relationship of master and servant is of that sort. There is some authority to support the view in Canada that where the agreement is silent concerning termination, a licensee may terminate a patent license at any time on reasonable notice which, in one case, was held to be 12 months. It is of course preferable to structure the license so that termination is contemplated as a recourse to one or the other of the parties should certain contingencies, such as invalidity of the licensed patent, arise.

REGISTRATION

Under provisions of the Patent Act, it is required that not only assignments but exclusive licenses be registered. Notwithstanding this legal duty, the law creating it has provided no sanction if an exclusive license is not registered. It appears, however, that the fact of registration will enable a licensee to prevail over someone possessing an alleged license which is not registered, the whole subject to the good faith or lack of fraud of the various parties. A nonexclusive license may also be registered, but the value of such registration is questionable.

Should someone purchase a legal interest in a patent, there is one view that holds that such a purchaser takes the interest subject to any license then in existence and the question of notice of the existence of the license is irrelevant. Thus, in the case of an exclusive license, the purchaser merely takes the place of the assignor and his right is limited to the recovery of royalties.

It is not clear that there is any benefit flowing to anyone as a result of the registration system encompassing exclusive licenses. The registration of assignments does provide information to the public as to the current state of ownership of the patent.

TYING CLAUSES

As previously observed, one is ordinarily free to exer-

cise one's rights. The law inhibits a use which is abusive of other's rights.

The exclusive rights inherent in the patent grant or the trademark registration are equally susceptible of abuse. In Canada the law attempts to restrain such abuse and does not permit a patentee to include in his monopoly more than the invention claimed in his patent.

The idea of "tying" is one way of doing such a thing and generally involves the sale or lease of one product or the licensing of a process on the condition that the buyer, lessee, or licensee take an unpatented product as well.

The Patent Act, in ss. 67 through 73 attempts to counter such abuse. One of the abuses spelled out in s. 67 as para. (f) of subsection (2) is embraced in the following language:

If it is shown that the existence of the patent, being a patent for an invention relating to a process involving the use of materials not protected by the patent or for an invention relating to a substance produced by such a process, has been utilized by the patentee so as unfairly to prejudice in Canada the manufacture, use or sale of any such materials.

This is exactly what is meant by a tying clause — the attempt to rely upon the exclusiveness of the patent right as it may apply to a process, for example, to control in some way an unpatented component used in the process.

Under the Patent Act, this sort of behavior does not become abusive until after three years have elapsed. Once abusive, either the Attorney General or any interested person may make application to the Commissioner of Patents seeking relief.

Three Choices

If a tying clause caused the abuse, the Commissioner has three choices:

1. He may order the grant of licenses to the applicant and such of his customers, and containing such terms as the Commissioner may think expedient. (Note that expediency is the determinant for the terms of the license and that some only of the applicant's customers may be beneficiaries).

2. If the Commissioner is satisfied that the objects of the Patent Act — which include not only encouraging invention, but securing that new inventions shall so far as possible be worked on a commercial scale in Canada without undue delay — cannot be attained by ordering the grant of a license, he may revoke the patent; or

3. The Commissioner may (and the Act so states) do nothing about the problem, i.e., he may make an order refusing the application.

A tougher piece of legislation is our Combines Investigation Act which also provides sanctions against the abuse of a patent or a trademark right.

Section 30 of the Act (a piece of criminal legislation) defines the proscribed behavior in this respect as making use of the exclusive rights and privileges conferred by one or more patents or one or more trademarks so as

- (a) unduly to limit the facilities for transporting, producing, manufacturing, supplying, storing or dealing in any article or commodity which may be a subject of trade or commerce; or
- (b) unduly to restrain or injure trade or commerce in relation to any such article or commodity; or
- (c) unduly to prevent, limit or lessen the manufac-

ture or production of any such article or commodity or unreasonably to enhance the price thereof; or

- (d) unduly to prevent or lessen competition in the production, manufacture, purchase, barter, sale, transportation or supply of any such article or commodity.

Although criminal, the sanctions are not penal but remedial, and the Federal Court may:

- (a) declare void any offensive license;
- (b) restrain any person from carrying out any or all of the provisions of such a license;
- (c) direct the grant of a compulsory license under any patent or if that action is insufficient, revoke the patent;
- (d) amend or expunge a trademark registration; or
- (e) do anything else necessary to prevent such abuse.

And so the Patent Act and the Combines Investigation Act overlap, although the former contemplates a three-year delay and the abuse of rights under process patents. The latter deals with the problem of injury to the normal functioning of the marketplace. There is no delay and no limitation to processes.

Lack of Action

It is interesting to note that the section of the Combines Act referred to has been a part of our legislation for almost 30 years and has only rarely been relied upon, a fact many of us have found to be curious. It is my view that the lack of action is due to the lack of distinctness of the paragraphs setting out the prohibited areas. For instance, each paragraph begins with the word "unduly", which seems to mean that some lessening of competition may be all right but that prosecution will follow should that lessening become "undue". Fair enough, but what amounts to undueness? Our Courts, in construing the word in other sections of our legislation dealing with competition, have actually gone so far as to establish that the word "unduly", particularly as it is used in the phrase "unduly to lessen competition", has no legal meaning whatever, in that as the law stands the offense is to lessen competition and that nothing else had to be proven.

By contrast, U.S. tribunals have gone the other way by importing something called the "standard of reason", a notion akin to "unduly". The Sherman Act is very specific in declaring illegal

"Every contract, combination in the form of trust or otherwise, or conspiracy, in restraint of trade or commerce among the several states or with foreign nations."

No question of undueness here and yet the U.S. Supreme Court has held that a "rule of reason" should apply and that only those combinations which unreasonably restrain trade are illegal.

Suffice it to say that there is some sort of prohibition in both countries against the use of the tying clause in license agreements. British law is similar to both Canadian and U.S. law and may be summed up by quoting one of the law lords who said its language "would seem to suggest that the object of the Legislature was to prevent persons who had obtained a monopoly in respect of an article or a process by means of a patent so using that monopoly as to obtain for themselves a virtual monopoly in respect of other articles and processes for which they had not obtained any patent."

The foregoing was a minority view in *Tool Metal Manufacturing Co. Ltd. v. Tungsten Electric Co. Ltd.* 72 R.P.C. 209. The majority held that the law did not nullify a condition prohibiting or restricting the licensee from purchasing articles from any person other than the licensor: it only affects conditions the effect of which will be to prohibit or restrict the licensee from using such articles. Thus buying for resale would not fall within the ambit of the section. It was also observed that it would often be possible to achieve a preference for the licensor by coupling the license with a condition which, though not having the effect of limiting the licensee's freedom of choice, imposed some burden on the licensee if he bought certain articles on the open market. Since the House of Lords was dealing with a highly penal provision which not only makes the condition void but it also makes the existence of the condition a defense to an action for infringement of the patent, and since the law was ambiguous it was held it ought not to be construed in a wider sense than the ordinary meaning its terms require. This again sounds like an application of a rule of reason and I feel that there is sufficient relationship between the U.K. statute and our own to say that what I have called a "split-level" royalty can legitimately be applied in a license. That is a provision that if the licensee buys an unpatented material from the licensor he will pay a royalty which is lower than that in effect should he buy elsewhere, so long as the choice remains that of the licensee.

Caution obviously is essential in dealing with the language of such a clause, although a legal realist would ask why since the enforcement of the section on the part of Canadian authorities has been so rare.

NONWORKING

Another abuse of the patent right arises from a failure to work the invention in Canada. Again, after three years, an application to the Commissioner may be made alleging nonworking or importation or failure to meet demand or the unfair prejudicing of trade. The recourse as in the case of a tying provision, is among other things a compulsory license, the terms of which shall be structured, having regard to the risks taken by the licensee, to secure the maximum royalty to the patentee compatible with the licensee working the invention within Canada on a commercial scale and at a reasonable profit.

THE FUTURE

Canada has periodically examined its industrial property legislation and the latest such escapade occurred some years ago under the aegis of the Economic Council of Canada. I shall not go into detail here concerning the recommendations thereof, but I shall forecast an increase in meddling on the part of the government by way of administrative extrajudicial investigation and control. A concrete example of such legislative impact can be found in our new Foreign Investment Review Act which sets up an agency designed to investigate and control foreign investment in Canada. The 1972 Report on Foreign Direct Investment in Canada under the heading "Licensing Arrangements, Joint Ventures and Other Contractual Arrangements", says the following:

Although it may be in Canada's interest to encourage the use of licensing, joint ventures, man-

agement contracts or similar arrangements in some instances, careful attention must be given to the terms involved. Indeed, a case can be made for reviewing all arm's-length arrangements of this nature including those which were encouraged by the review process itself.

Firstly, the kinds of restraints which would concern the review authorities in examining foreign direct investment, such as export restrictions, tied procurement and exorbitant fees, can be imposed on Canadian business through techniques such as licensing agreements, joint ventures and controlling contractual arrangements.

Secondly, these contractual techniques can be used, in some cases, to exercise effective control of a company and could thus lead to circumvention of the government's objectives with respect to direct investment.

Thirdly, it is worth considering attempting to enhance the bargaining position of the Canadian buyer, or otherwise improving the terms of the contract for Canada, much as in the case of new investment. The foreign partner or licensor is in the position of a single seller facing a number of alternative Canadian buyers. Each prospective Canadian buyer can perhaps offer access to a portion of the market. The review agency might be able to reduce the ability of the seller to play off one potential Canadian buyer against another, by exacting some basic conditions for the arrangement.

Specific reference to patent licensing has brought forth the concern that there might be geographical restrictions on marketing territory imposed and that royalties may not be fairly based on the value of the technology licensed although the inherent control over such things via customs and taxing authority would appear to limit the likelihood of the latter. Notice has been given, however, that legislation to control the transfer of technology may reasonably be expected.

TRADEMARKS

The licensing of trademarks is equally important in the commercial world. Our Act, dating back to 1953 has also been re-examined by the Economic Council and further reported on in a report published last year under the title, "Working Paper on Trade Marks Law Revision".

Prior to 1953, a trademark could be licensed only with the utmost difficulty. With the amendment in the law, it became possible to license others via the registered-user provisions and certification marks became a reality. The report recommends keeping the basic concepts but widening the registered user provisions to include the licensing of an unregistered trademark, to provide control whereby the Government would regulate the nature or character of the goods or services covered by the licensed mark, provide for product testing either by the licensor or an independent agency and, further, provide for remedying the failure by the licensee to meet the prescribed standards and for termination of the license should such remedies not be effected.

Parallel imports would be permitted by redefining the notion of related person so that a registered user in Canada could not prevent importation of goods bearing the licensed trademark. This amounts to an application of

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achieving its principles by carefully trained labor and simple but suitable equipment. The extent to which we will have to work backwards is a question of the degree of development, of the technological ambience and of the socioeconomic conditions at the receiving end.

In developing economies you might frequently meet with more understanding for the need for details in engineering and administration as you go down the hierarchic ladder. This has historical and psychological reasons.

In the traditionally industrial countries, industries developed out of craftsmanship and inventiveness; the technological aspects came first, administration and financing complemented it later. In developing countries, however, industries started to develop primarily out of a desire to put money and people to work, resorting to administration and technology as the means to do so. Furthermore, dedication to detail is not a strong element in the idiosyncrasies of most developing nations. Appreciation of detail can only be developed by encouraging detail effort; people normally are more involved with details the closer they are to the lower end of the ladder.

We really are facing a vicious circle: engineering developments are the result of tedious fights with a great number of details. The better the solution, the simpler and more self-evident it will appear. When selling technology, we present self-evident solutions and when implementing them, we have to move back into problem spheres.

We must be aware of another fallacy — to mistake administrative overburdening for reasonable administrative detail work. This fallacy has killed and is killing daily the well-meant objectives of many mergers and assistance efforts.

In view of the fact that the final success of our technology transfer efforts may depend on bridging many gaps in ambience between the providing and the receiving end, it appears advisable to start preparing for ambience adaption in an early phase of our transfer efforts. We might be able to achieve a lot of good for all parties concerned if we succeed in including in the basic agreement provisions for mutual ambience exposure, a thorough ambience analysis, and ambience-adapted training and education. I feel it would be helpful if the negotiating parties and/or the mediator complement their teams with a liaison engineer capable of understanding and bridging the technological ambience gap between both sides.

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the European concept of "exhaustion of rights" to Canada. The following exceptions were proposed, nevertheless:

1. Where the imported goods have significantly different qualities from the goods sold under the authorization of the Canadian trademark owner in Canada.

2. Where the importer is not setting up the quality or kind of service (for example, in respect of "warranty") that Canadian consumers expect for goods sold in relation to the trademark.

3. Where the importer is taking a "free ride" on the advertising and other marketing expenditures of the Canadian trademark owner or his authorized trademark user.

Other recommendations go to the certification mark, a

mark which is never used by its owner and always licensed to others. The significant recommendations cover the concept of filing information as required by regulations and presumably to assist the consumer; the addition of the license-of-right notion, whereby any person can be licensed who is willing to conform to the standards established under the license and a tribunal would be established to monitor unreasonably discriminatory terms in such licenses and, finally, the quality standards would generally be of an improved nature.

None of this has come to pass as yet and so there must always be a degree of uncertainty about the precise direction of the law for the future. Its general drift is eminently clear, however, and I reiterate the forecast which I stated at the beginning: that in matters of industrial property, the concept of exclusiveness will gradually be reduced to the point where, for all practical purposes in commerce, it will no longer exist at all. Another thing is also certain — our legislators are doing their utmost to ensure the longevity and prosperity of the legal profession in Canada.

Licensing in Arab Countries

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with the world markets and the public or private Arab enterprise.

Rather than license agreements of standard type, complicated contracts are often necessary covering the grant of manufacturing or utilization licenses, as well as a technical and commercial cooperation.

I consider it necessary to underline the importance of the commercial aspect of the relationship between the partners. In order to be profitable, production calls for a command of the markets, which is rarely achieved by new establishments in developing countries. Trained executives are scarce in those countries and it is understandable that managers prefer devoting time and effort to production rather than to marketing. The partner of the industrialized countries, therefore, often will be called upon to direct production toward the goods or qualities most in demand in the international markets. If the establishment concerned works mainly for export on behalf of a Western principal, this goes without saying and it will be readily appreciated that the purchaser insist on a quality, a finish, and a presentation corresponding to the demands of his market.

If, however, the establishments work a license for goods to be delivered to the Arab home market or jointly to the Arab markets and re-exportation of part of the production, the matter will not be so obvious. Unfortunately failures have been recorded when, on account of an inadequate commercial cooperation, the product did not or no longer did meet the requirements resulting from the evolution of the markets.

Arab markets, at present in full development, provide a choice target for the industrialists and merchants of industrialized countries who wish to participate in the current interchange movement.

This offers a very large field for possible cooperation. No one will deny that such cooperation may be beset with risks, but does not this provide one of the characteristics of free enterprise?

In order to reduce such risks, be as fully aware as possible of the conditions existing in the country with which it is considered to cooperate.