

LES MIDWESTERN REGIONAL MEETING

**April 23-24, 1972
Sheraton-Brock Hotel
Niagra Falls, Canada**

The theme of the Midwestern Regional Meeting of LES was "The Multinational Environment for the Transfer of Technology." Vice President, LES, Richard P. Sabin of Owens-Illinois, welcomed the attendees, including the guests and speakers. He then introduced the President of LES, Sherman J. Kemmer of Standard Oil Company, who spoke of some of the far-reaching aims and goals of LES. The meeting was then turned over to the program chairman, David E. Dougherty, Carborundum Company, whose introductory remarks included a warning to the men in attendance who did not bring their wives with them that a "Homeymoon Certificate" was being mailed to their home addresses from Niagra Falls, Canada.



George W. Petersen

**"DEVELOPING PROBLEMS FOR A
MULTINATIONAL COMPANY"**

*by
George W. Petersen**

It indeed is a pleasure to meet with a group such as this whose main concern is the transfer of technology. For about twenty years, business arrangements of various kinds concerning or relating to the transfer of technology have been one of my main concerns. But this field changes so rapidly and continuously that this does not qualify me as an expert and I am not far enough from home to qualify. About all you can say about this whole fascinating field is that after awhile some of the animals that run past

bear a vague resemblance to some you've seen run past before. But as a friend of mine used to say, "What we don't understand, we explain to each other."

Eastman Kodak Company is a multinational company and has been for more than 70 years. With manufacturing units in 9 countries and marketing and distribution facilities in practically every country in the Free World, about 42,000 of our 110,000 employees work outside the United States. And, of that 42,000, less than 100 are Americans. Incidentally, when a colleague of mine saw the title for this talk, he commented that he had never realized before that my job was to create problems rather than solve them.

With a multinational company, the transfer of technology is an ever present problem, whether developed in-house or outside. This is the matter of transfer within company units of your own technology and the question of whether to install new manufacturing facilities in developing areas or to license others. And, of course, it no longer is simply a question of setting up a 100%-owned subsidiary as we will discuss this morning. The same applies, of course, to transfer of technology developed by others. Purchases of technology, company acquisitions, partial acquisitions, joint ventures and a whole host of other possibilities need to be considered. The theoretical possibilities are limited only by the ingenuity and imagination of those trying to visualize that best possible business arrangement which satisfies the basic business objectives, the objectives of the parties and all other considerations which need to be satisfied. Economics alone is not the only criterion — although it must always be a primary consideration if a company is not an eleemosynary institution.

And, alas, the answers are not simple. For example, the Burke-Hartke bill has as its worthy objective the protection of American jobs by ensuring against exporting jobs. This is a fine objective — until you consider a pattern emerging in many developing countries. Many of these countries also want to ensure jobs locally. So they enact legislation which either curtails or prohibits the import of goods if there is a local manufacturer for those same goods. Prior to Burke-Hartke, you could sell into a country such as Mexico. If you wished, you could then license others for Mexican manufacture — recognizing that your exports to Mexico might be cut off when your licensee began to produce. But you always had the option of also beginning manufacture there, if the size of the market warranted it. If Burke-Hartke is enacted, you could not manufacture there economically, you could not license others there and you probably would just wait until a European or Japanese company started operations there and then lose your entire market.

But regardless of the ultimate fate of Burke-Hartke, this emerging pattern of protecting local industry, either nationally or by bloc as in the Common Market or LAFTA, or the Andean bloc of LAFTA or similar economic units, complicates the question of just what the best possible business arrangement might be.

Another factor which is ever present in developing countries is the very thorny balance of payments problem. It occurs to me as I say that the United

States qualifies as a developing country under that test. Putting the U.S. question aside, the lack of hard currency in developing countries leads to strange situations. Of course, very high tariffs and stringent import quotas are one manifestation to be expected. But a country such as India will have barter deals or requirements for soft currency deals which greatly affect the competitive situation. Also you may find yourself in a situation where repatriation of funds, particularly in hard currency, is a problem. Or the local government may withhold the necessary licenses unless a majority of the equity in a subsidiary is sold to nationals of the country.

In South Korea there is authority for the government to regulate imports to balance exports. These regulations can be applied broadly in defining the class of goods or could be applied strictly.

Some countries apply a high tax on dividends or royalties. In cases where there is a reciprocal tax treaty, these payments can be offset against U.S. tax up to a point — which amounts to a different form of U.S. aid. But the Hartke bill would cut that off. So if India applied a 50% tax on royalties, and the U.S. applies a 48% tax on the remaining 50% without offset, a 4% royalty very quickly nets out about 1%. And if your company spends 6% on research, that amounts to a poor business arrangement indeed.

There, of course, are so many factors in so many different countries that it would be impossible to consider all of them in the next two weeks to say nothing of the next few minutes. But, of course, anti-trust considerations are always present for a U.S. company regardless of where the deal is. I find that my friends abroad find it very difficult to understand why a deal in Timbuctoo is any concern of the U.S. Justice Department. But as some of our friends abroad have found out to their sorrow, they need to consider U.S. Laws. Similarly, a U.S. company needs to be concerned not only with complying with U.S. law but also with the Treaty of Rome provisions in the Common Market or the British Monopolies Act or the requirements of the Canadian Monopolies Commission. Also the U.S. has an FTC but so does Japan. And speaking of Japan, there is the "administrative guidance" by MITI — The Ministry of International Trade and Industry. After spending a great deal of time the last couple of years with MITI on tariff levels, import quotas, capital investment regulations, etc., a U.S. trader finds that things are different in Asia — culturally, philosophically, and logically. This is not to say that the job is impossible — its just difficult. In two years' work, the tariff on color film has been reduced from 40% to 23%, import quotas have been removed, and the photographic industry has been "liberalized" as far as capital investment is concerned.

Much has been said about Japan's Fourth Round capital liberalization where restrictions were removed on all except about seven items which still remain on the negative list. This would sound as if there no longer are any restrictions to capital investment in Japan. But let's take a typical photographic situation involving cameras, film, print paper and processing. As of today, a U.S. company can have 100% ownership of a company to import its U.S. made

goods and wholesale them. If it wanted to establish retail outlets, it could only own 50%. If it wanted to manufacture cameras, it could have 100% ownership of that, but only 50% of a plant to manufacture film or paper. On processing, there could be 100% ownership of a processing operation for professional motion picture film but only 50% for processing other films. Also where only 50% ownership is permitted, there can be one or more Japanese partners but one must have at least a certain percentage of the total and must already be in the same business in order for approval to be automatic.

Then, too, there are such odd matters as standards which may be voluntary in the U.S. but which may become mandatory in some other country. This also applies to metrication. So a multinational company may find that its goods cannot flow freely across borders because of such matters as standards or metric sizing or labeling.

There are tax problems also. What is done in one country may affect the tax treatment there and elsewhere.

This necessarily is a hit or miss recitation of a lot of seemingly unrelated items. But when a company is multinational, it must find some way of reconciling a multitude of dissimilar factors in a variety of countries if it is to avoid stumbling over its own feet. There usually are good and valid reasons which lead to this array of regulations which must be faced. About all I can say is that answers which may be fine for a domestic company may be wholly unsuitable for an international company. Fortunately this leads to a great variety of specialists in a multinational company who can guide the businessman through the maze.

There, of course, are other problems which need to be considered. The security of proprietary information may be a problem. Generally, however, if a branch company abroad considers itself really a part of the family, this has not proved to be an insurmountable problem.

There always is concern about the ability of the people in another country to be able to handle complex technology satisfactorily. Again this generally is not a problem. We trained a group of Mexican engineers in our U.S. plant and were very pleased at the smoothness of start up in Mexico. The day is not far distant when the American advisers can all be withdrawn and this will truly be a Mexican operation.

There can be danger of expropriation. We lost a film plant in East Germany and processing and distribution facilities in Cuba. It was necessary to shut down marketing operations in Syria where U.S.-made goods are not allowed, although some goods from the French plant can be sold. In high-risk situations, the U.S. Department of Commerce has insurance provisions which can be of help.

In the case of technology transfer, there also is the problem of ensuring that goods or technology do not find their way into prohibited areas as proscribed by the U.S. Government. This can apply also to this happening from your licensee or your subsidiary abroad. This is an example of a situation in which your foreign affiliates must be kept up to date on U.S. requirements even though they have no similar

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.