

3. To assist in finding new markets for U.S. products throughout the world, including Russia, Eastern Europe and Red China.

The rapidly accelerating growth in the post war period of multinational business to my mind is the single most significant and contributive development of our time toward a viable world economy and an ultimate world community.

Industry Week's article on multinationals, by Floyd G. Lawrence, states: —

The World has had an international economy since the times of Marco Polo and Christopher Columbus. The Hudson Bay Co. chartered in 1670 or the East India Co. are sometimes cited as forerunners of today's multinational firms.

But the "Age of Ships" was based on national production and the exchange of surpluses. Today's "Jet Age" international economy transcends national borders, cultures, and political structures.

As economist Emile Benoit points out, "What is now being demonstrated is that the long run cost of transferring ideas, skills, and organizational patterns from one place to another is far lower than the cost of continuously transporting merchandise."

The manufacture of a single product may involve the capital of one nation, the land of another, the natural resources of a third, and perhaps even the technical know-how of a fourth. For this new international economy's driving force is the internationalization of production and distribution.

Sales by U.S. companies' foreign affiliates are now more than twice our exports of manufactured commodities and nearly 75% greater than total U.S. exports. Worldwide, it has been estimated that international production has now reached \$450 billion or twice the volume of all world trade and that it will continue to outstrip trade as the main channel of international economic relations in terms of size, rate of growth, and future potential.

International investment on a large scale could be the road to world unity — and world peace.

Now, if the communist bloc countries could get in on the Multinational Investment Act, there could come a time when ownership would be so widely distributed that peace would be essential to protect global investments.

In closing, I would like to quote Carle C. Conway, Chairman of the Board of Continental Can Company, speaking on "Business Must Go Ahead."

"It is time we lifted up our heads! It is time we appreciated our strength and serviceability and power. But our job is only beginning, and a thrilling job it is. We have the opportunity, the responsibility, yes, the sacred duty of proving for all time that under the American system of free enterprise, American businessmen, doing things the American way, can accomplish more than any other system on earth."

Perhaps, more than ever before, the peace and prosperity of the entire world rests heavily in the hands of American businessmen.

**About the Speaker: Born in Seattle, Washington, Gould received his early education in that city. A student of metallurgy and mechanical engineering, he joined Pacific Car & Foundry Co. of Seattle during the second world war, advancing to various sales engineering positions to become general sales manager of Pacific Car's Renton, Washington operations with railroad, military, industrial, logging, tractor equipment and marine propulsion product lines.*

Gould first came to Hawaii in 1964 as vice president, director and general sales manager of Honolulu Iron Works Co. Gould currently is a corporate vice president of Dillingham Corporation with direct responsibility for the Merchandising and Mining Divisions.

A director of Haleakala Storage & Transfer, Inc., Chairman of the Board of Trustees of Hawaii Pacific College, a member of the U.S. National Export Expansion Council and chairman of the Hawaii Export Expansion Council, Gould has also served as chairman of the Trade Committee of the Hawaii Chamber of Commerce and a member of the Executive

Committee of the World Trade Association. He is also a director of the Honolulu Council of the Navy League of the United States and a member of Honolulu Rotary Club, Outrigger Canoe Club, 200 Club of Honolulu and the Wai'aleae Country Club.

FAIRCHILD RENEWING JAPAN LICENSES

by
John Rhea

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Mountain View, Calif. — Fairchild is in the process of renewing its licensing arrangements under which Japanese companies can use Fairchild-patented semiconductor processes.

The new agreements, which the company said still require Japanese government approval, contain two major differences from the ones that expired Sept. 22.

At least 12 Japanese companies will be licensed directly instead of being sub-licensed by master licensee Nippon Electric Co. Also, the new licenses will be world-wide in scope, which means the Japanese companies could even produce circuits in the United States.

Roger Borovoy, director of patents and licensing, explained that in the past NEC had held the only direct license. Other Japanese companies could export circuits to the U.S. as part of electronic products without any further arrangements, but they required an export agreement with Fairchild in order to export the circuits themselves. About five companies requested and were granted such agreements.

The new licenses cover the full range of Fairchild circuits — the planar and isoplanar processes, charge-coupled devices, bipolar and linear circuits.

Mr. Borovoy estimated that total licensing revenues to Fairchild this year would be about the same as in 1972, when the company received \$6,037,000. Of that total, 80 per cent came from abroad and almost all of that was from Japan.

He said he could not provide financial details of the new arrangements pending final approval in Japan, but that these would not differ materially from past agreements.

Arrangements with the Japanese companies involved have been completed, he added, and should all go into effect within 2 months. The final steps were approved by the Japanese Ministry of International Trade & Industry and the Bank of Japan. These approvals normally take 30 days.

The new agreements, like the ones that have expired, will run for 6 years, or into late 1979. Royalty payments will be made retroactively for the period not covered by license once the new agreements take effect.

Another minor point of difference, Mr. Borovoy noted, is that most of the new licenses are actually crosslicenses that permit Fairchild to use Japanese technology, something that was not possible under the old agreements except the one with NEC.

Domestic Agreements

Fairchild also announced two new domestic crosslicensing agreements — with Electronic Arrays and Harris Semiconductor — bringing to 45 the number of its licenses. (The realignment of the Japanese licenses should raise that number by about another seven, or the difference between the 12 new licenses and the five export licenses that will not have to be renewed.)

EA was licensed for MOS processes only (including the

new isoplanar MOS) while Harris was licensed for the full range of Fairchild processes.

Both licenses are world-wide except for Japan, and Mr. Borovoy explained that this was because they were negotiated before the new arrangements were agreed upon with the Japanese companies. In the wake of those arrangements, he said Fairchild planned to negotiate new licenses with its domestic partners that would permit them to operate in Japan.

In addition, the Harris agreement excludes circuits sold to U.S. government agencies.

Fairchild also reported last week that it was discussing new stock offering with one of its debenture holders. The holder, which the company would not name, holds \$10 million in 5-3/4 per cent convertible subordinated notes due in 1989.

These notes are convertible into Fairchild common stock the rate of one share for each \$78.87 of the principal amount of the notes. Fairchild's plan is to file a registration statement covering the public sale by the holder of some 124,000 shares into which the notes are convertible. This would not happen until the first quarter of 1974, the company said.



Tom Arnold

SHADOWS DO NOT FIGHT

by
Tom Arnold*

(A commentary reconciling trade secret and patent law. cf *Kewanee* and *Goldstein*)

INTRODUCTION

"We must be especially wary against the dangers of premature synthesis, of sterile generalizations, un nourished by the realities of law in action."

Mr. Justice Frankfurter

Harshaw Chemical division of plaintiff Kewanee Oil, alone among all its competitors, knew the process techniques by which to grow 17 inch scintillation crystals. Twenty of the techniques, in use for over a year and not patented, were within the patentable class of subject matter under 35 USC S 101 and were also protectable as trade secrets under Ohio State law. Six former Harshaw employees, all bound by employment

contracts, formed and went to work for *Bicron*.

Said the court, when Kewanee sued Bicron: "There can be no question on this record but what these individual defendants appropriated to the benefit of Bicron Harshaw's secrets, processes, procedures and manufacturing techniques." — And in violation of their contracts.

However: Patent law "policies" preempt such contracts as to all secrets in use for one year. Note that all the really valuable trade secrets are used for much more than one year. Typically they are used less in the first year when both technical and market development may be at their peak, than in several subsequent years, when the market is at its peak. So *Kewanee* preemption is generic to the major dollar value of all technology whose uses have been determined sufficiently for it to be valuable, and whose value is sufficiently proven for it to be the subject of a contract.

The *Kewanee* case is now before the Supreme Court for review. What has the Supreme Court said on the topic? Earlier this year, in *Goldstein v. California*, the Supreme Court in dictum wrote that the patent law preempts all law protective of "mechanical configuration." That phrase "mechanical configuration" was used in a context where it more likely meant "all applied technology," chemical and electrical as well as mechanical. And the Supreme Court's expression had no one year limitation.

What kinds of contracts are affected by these cases? *First: The contract for R. & D.* Companies commonly contract, perhaps at the hundred-million-a-year rate in the aggregate, for outside R & D work by independent laboratories or universities. A typical contract, might read: "Company shall pay \$500,000 for R & D by Lab. Lab shall disclose and assign the results of R & D to Company. Neither Lab nor its employees shall disclose to competitors of Company or use competitively for ten years, the results of R & D paid for by Company." Since contracts for obligations of confidence are preempted by the rule of *Kewanee* and *Goldstein* that last clause is a nullity. By the *Kewanee* rule the R & D Lab's employees are free one year after a commercially important idea is placed in use, to use the information in a commercial frolic of their own. By the *Goldstein* rule, they need not wait a year. Further, note that the patent law is said to preempt *all* trade secret obligation of confidence relating to applied technology appropriate for patent law consideration. Thus, not only lab employees, but the Lab itself is free to disclose the results to competitors — perhaps for a little cash. Or the Lab can set up a subsidiary to compete with the customer for whom it did the work.

Consider next: *Supply contracts*: Supply for manufacture by a supply contractor, with proprietary know-how of the customer, are entered into regularly in our society, perhaps at the rate of tens-of-millions a year. Example: Company in its own R & D work develops a process for making carbon black which uses a unique new autoclave reactor with toroidal flowing gases. The reactor developed in the R & D is proven-out by a year's commercial operation. Company now wants to equip all its plants throughout the world with the new autoclave reactor, wants to contract for their manufacture by an autoclave manufacturer. The contract typically takes the form: "Company discloses detailed process-specification for new secret reactor to supply contractor. Supply contractor agrees to keep the specifications secret and not use any of the disclosed specifications for their own or another's account." But the supply contractor's employees cannot, be bound by the last sentence of the contract. Nor can the supply contractor. Once supply contractor knows the specs, it is invited by the rule of preemption of "mechanical configuration" to seek in to sell the new reactor to all carbon black manufacturers. That, in the phrase of the Supreme Court in *Goldstein*, is the "carefully balanced" public policy of the patent law.

The subcontract: The subcontract by which General Contractor A subcontracts to Subcontractor B is the making of various items pursuant to confidential know-how developed by General Contractor A. is a contract commonly used in our so-