FOREIGN PRACTICE NOTES

by
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CHINA

Currently Mainland China has reciprocal agreements in industrial property matters with Denmark, East Germany, Finland, Great Britain, Hungary, Sweden, Switzerland and Czechoslovakia.

YUGOSLAVIA

Yugoslavia has reissued its rules covering international license agreements in a Decree of January 31, 1972. The new rules require that any international license agreement covering Yugoslavia is effective only after registration with the Yugoslavian Ministry of Economics.

To obtain this registration, one must submit to the Ministry:

A) The draft license agreement.
B) The economic and technical advantages of the license agreement for the licensee.
C) That the proposed production will be economical and will satisfy modern technical requirements.
D) That the licensee will have the technical equipment and the necessary technical personnel needed for the proposed production.
E) That the Yugoslav Committee of Standards agrees that the products to be made will comply with Yugoslavian recognized standard specifications.
F) A statement of the Yugoslav Patent Office showing that the licensed product is protected and explaining in what way it is protected.
G) Proof from the central office for technical and scientific documentation that all information about the new production process have been submitted to it and that the proposed licensee has reviewed all information submitted.

FRANCE

Beginning January 1, 1974, the transition period in French patent examination practice will be over, and each application for a French patent or certificate of addition filed thereafter will be subject to an examiner's report.

Examination fees may be paid at the time of filing or within 2 years following the filing.

U.S. GOVERNMENT INVENTIONS

Inventions belonging to the U.S. Government are now for the first time under certain conditions obtainable under exclusive license from the U.S. Government. Information concerning these inventions can be obtained from National Technical Information Service, U.S. Department of Commerce, Springfield, Virginia 22151.

BRAZIL

The Brazilian "REVISTA DA PROPRIEDADE INDUSTRIAL" publishes each week a summary of all license or similar agreements involving technology which have been approved or rejected by the Brazilian Authorities, stating particularly the value of the contract which the Government approves.

INDIA

The Indian Ministry of Industrial Development and Internal Affairs has added additional controls of Indian registered user agreements required in the licensing of trademarks from non-Indians to Indians in order to protect the trademarks.

Where a non-resident company proposes to grant a registered user to a company in India in which more than 40% of the shareholding is held by the non-resident company, then in addition to the approval required by the Ministry of Industrial Development and Internal Affairs, the proposed user must now be approved by the Reserve Bank of India. Section 28 of the Foreign Exchange Regulations Act 1973 reads now as follows:

"28. Restrictions on the appointment of certain persons and companies as agents or technical or management advisers in India.

(1) Without prejudice to the provisions of section 47 and notwithstanding anything contained in any other provision of this Act or the Companies Act 1956, a person resident outside India (whether citizen of India or not) or a person who is not a citizen of India but is resident in India or a company (other than a banking company) which is not incorporated under any law in force in India or in which the non-resident interest is more than forty per cent, or any branch of such company shall not, except with the general or special permission of the Reserve Bank:

(a) act, or accept appointment, as agent in India of any person or company, in the trading or commercial transactions of such person or company; or

(b) act, or accept appointment, as technical or management adviser in India of any person or company; or

(c) permit any trade mark, which he or it is entitled to use, to be used by any such person or company for any direct or indirect consideration.

(2) Where any such person or company (including its branch) as is referred to in sub-section (1) acts or accepts appointment as such agent or technical or management adviser, or permits the use of any such trade mark without the permission of the Reserve Bank, such acting, appointment or permission, as the case may be, shall be void.

(3) Where any such person or company (including its branch) as is referred to in sub-section (1) acts as, or holds the appointment of, any such agent or technical or management adviser as is referred to in that sub-section at the commencement of this Act, or where a permission for the use of any such trade mark granted by such person or company (including its branch) continues to be valid at such commencement such person or company (including its branch) shall within a period of six months from such commencement or such further period as the Reserve Bank may allow in this behalf, make an application to the Reserve Bank in such form and containing such particulars as may be specified by the Reserve Bank for permission to continue to act, or to hold the appointment, as such or, as the case may be, to continue to permit the use of any such trade mark.

(4) On receipt of an application under sub-section (3), the Reserve Bank may, after making such inquiry as it deems fit, either allow the application subject to such conditions, if any, as the Reserve Bank may think fit to impose, or reject the application:

Provided that no application shall be rejected under this sub-section unless the parties who may be affected by such rejection have been given a reasonable opportunity for making a representation in the matter.

(5) Where any application has been rejected under sub-section (4), the acting, appointment or permission, as the case may be, shall be void on the expiry of a period of ninety days, or such other later date as may be specified by the Reserve Bank, from the date of receipt by the person or company (including its branch) concerned of the communication conveying such rejection.

(6) Where no application has been made under sub-section (3) by any such person or company (including its

branch) as is referred to in sub-section (1), the Reserve Bank may, by order, direct such person or company (including its branch) to desist from such acting, appointment or, as the case may be, from permitting the use of any such trade mark on the expiry of such period as may be specified in the direction:

Provided that no direction shall be made under this sub-section unless the parties who may be affected by such direction have been given a reasonable opportunity for making a representation in the matter.

(7) Where any direction made under sub-section (6) has not been complied with by any person or company (including its branch), then, without prejudice to any action that may be taken under this Act, the acting, appointment or permission, as the case may be, shall be void with effect from the expiry of the period specified in the direction —

Explanation — For the purposes of this section —

(a) 'agent' includes any person or company (including its branch) who or which buys goods with a view to sell such goods before any processing thereof;

(b) 'company' means any body corporate and includes a firm or other association of individuals;

(c) 'processing' means any art or process for producing, preparing or making an article by subjecting any materials to a manual, mechanical, chemical, electrical or any other like operation but does not include any process incidental or ancillary to the completion of a manufactured product such as dividing, pressing, compressing, packing, re-packing, labelling, re-labelling branding or the adoption of any such treatment as is necessary to render such product marketable to the consumer.

(5) 'technical or management adviser' includes any person or company (including its branch) required to tender any technical or management advice, even though the tendering of such advice is incidental to any other services required to be rendered by such person or company."

BRITISH

In the case of Cerosa Limited versus Poseidon Industrie A.B. ([1973] R.P.C. [No. 28], pg. 882), Judge Whitford of the British High Court of Justice enjoined a patentee from threatening an alleged infringer holding that he had to enjoin the patentee because of the limited likelihood of the patentee's succeeding in an infringement suit against the alleged infringer.

AUSTRIA

In the case of Arcana KG versus Imperial Chemical Industries Limited, the Supreme Patent and Trademark Chamber of the Austrian Patent Office refused a compulsory license because of the absence of an economic liability which would make it unjustifiable to force working of the patent. The Court was of the opinion that because of the increase in integration of areas of the economy and the progressive growth of economic interrelationships and interdependence, the approach to be taken by the courts should be based on large scale economic considerations rather than on narrowly limited factors considering the very high research and development costs in the chemical branch of industry even if such costs have been incurred outside of Austria.

GERMANY

In the case dealing with oil pipes, the German Antitrust Authority approved an export monopoly of the leading European and Japanese manufactures of these pipes in view of the fact that the Japanese people involved were not likely to affect with their exports the situation in Germany regardless of whether the monopoly existed or not.

TRANSMISSION OF TECHNOLOGY

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DEFINITIONS

1. In works on law and economics, definitions are very rarely given, because often, not always, the correct words are used, words that convey the meaning and intention desired. But in essays as this one, it is very important to define concepts and not only to define them, but also to distinguish, for example, between science and technqiue, between patent and know-how, between transfer and transmission of technology, between import and incorporate and adapt science, technique or know-how.

In industrial property, as it is well known, the science is related to the patents and the technique to the knowledge applied to the know-how; thus the patent is developed through the technical means and the secret knowledge of the know-how, to such extent that for some technical authors patents without the complement of technology and know-how are almost useless.

Thus, someone invents or discovers in his scientific investigations of laboratory that he may carry to the screen audio auditive images (television), and the technique, the ways to set up and make real this notorious discovery, making it available to the public in portable sets, of better or worse quality, and cheap or expensive, according to the specific knowledge and the secrets used, but that have nothing to do with the patent itself.

Another example of science and technique, is the case the whole world admired, when the United States of America carried man to the Moon for the first time. In this case, science having discovered the nuclear force to send the tripulated space-ship to the space, alloies of small weight and great flexibility, noncorrosive steel and aluminium alloies, titanium alloies noncorrosive, lubricators changeless in vacuum and radiation, medical protectors electromagnetic highly sensitive, etc. all of them used today in factories and hospitals, and the technique planned the construction of the space-ship and the way of carrying it to the moon and bring it back with absolute accuracy.

This does not mean that science is patentable; physics, chemistry and the like because they are goods common to humanity that do not admit appropriation. What may be patented are the discoveries derived from science in continuous renovation, and that scientific man continuously finds in his investigating work.

When talking about science and technique, we must say, it is more convenient to the developing countries with few economic and material resources, at hand, to dedicate to investigation, to follow the advice of professionals in the subject, instead of obtaining a half scientist, to train hundreds of national persons in all aspects of economy and industry of the country, with the purpose of obtaining technicians.

2. *Technology* may be defined as the instrument to put in action the scientific discoveries to reach the production of goods and services. This definition although not complete contains the main elements of judgment of what technique is and which are its uses.

Know-how is the special and secret knowledge used in planning and carrying out the scientific discoveries, to reach the aim of all discoveries: the production of goods that may satisfy the needs of all the citizens.

The aims of technology and know-how, are the same and they differ in that the first is patentable, patent used in the intermediate goods, as equipments, plant machinery or