

may not be modified in the legislation, and its owner withholds his right during the period previously fixed by law.

There is a change in the concept of the service this property right has to render to the society, through its positive use in time and real; in the concept that what was useless before must now be profitable, what was still must now be active, because the society depends on the goods or the services that give rise to the patent, and what was before in the print must now be real.

Patents, by their nature, as elements of progress and economic stability of a country, are directly related with social order and the public interest of a State. Thus, they belong with no excuse nor possible reason, during their use, to the sphere of the public right of the Nation. An exclusive privilege in private hands, that is not only important for the country's economy, but also for its industrialization, general development and social peace, must be under the superior institutional regime of public right, so that at the necessary moment it is obliged to fulfill the role assigned to it in the national programme.

The constitution of Colombia foresees these cases in article 32 that states: "The freedom of enterprise and the private initiative are guaranteed, within the limits of common good, but the general direction of the economy is in the hands of the State. The State will interfere, according to the law, in production, distribution, use and consume of the public and private goods and services, to organize efficiently and plan the economy in order to obtain a complete development.

"The State will also interfere, according to the law, to assure the full use of the human and natural resources, within the policy of incomes and wages, according to which the economic growth has as main objective the social peace and the harmonic and integrated improvement of the community and particularly of the working classes." Art. 122 of the mentioned constitution completes this disposition authorizing the President of the Republic, not only to save the country from a foreign armed aggression or a domestic commotion, as it did before and still does nowadays, but also to conspire and control abusive economic deeds or any other act of that nature "that may disturb or threaten to disturb seriously and imminently the economic or social order of the country." Patents have such an important position in the welfare of a country and are so closely related even with its steadiness that during their use, they cannot escape the control of the State, as the political authority in the constitutional sphere that forms part of the public right.

As Art. 30 of the Colombian constitution compels the holder of a patent to use it in order that such a right of the industrial property may fulfill a social function, the two last mentioned regulations of the same constitution establish that this use of the patent must be regular not to attend or alter by insufficiency of excess, the economic and social order of the Republic.

That is to say that the first disposition compels to work and the last ones, an adequate use according to the needs and conveniences of the Nation.

Bogotá, September 19, 1973.

LICENCES IN CHILE

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in LES NOUVELLES*

*by
Norman St. Landau*

1. Chilean Law of Industrial Property does not contain any provisions relating to Licences on Patents, Trademarks or Industrial Models. Specific reference to Licences is

included in the Stamp Tax Law, which establishes the fixed rate to be paid upon the registration of licences in the respective Register, apart from the ad valorem tax on agreements which is covered by the same law.

Consequently, in Chile parties are free to draw up any type of licence agreement provided the clauses are not contrary to public order or to existing Chilean laws. Consequently, licence agreements in Chile are governed by civil and commercial legislation, except for certain economic limitations which are mentioned hereunder.

2. REMITTANCE OF ROYALTIES — Licence agreements which involve the payment of royalties abroad must be subject to prior registration with the Central Bank of Chile.

The application for registration must include an explanatory letter describing the licence, its objective, utility and usefulness and also a draft or copy of the original agreement translated into Spanish. Once the application is accepted in order to formalize registration, the legalized contract must be presented with an official translation thereof.

3. DECISION NO. 24 AND THE COMMITTEE OF FOREIGN INVESTMENT — In accordance with article 13 of Decision No. 24 of the Commission of the Andean Pact, in Chile a Committee of foreign investment has been designated as a competent entity which must revise all contracts or agreements on the import of technology and on patents and trade marks, to evaluate the effective contribution of the imported technology, by means of an estimate of its probable profits, the price of the goods which incorporate the technology or other specific forms of evaluation of the effect of the imported technology.

In accordance with Decision No. 24 licence agreements involving the exploitation of foreign trademarks in the territory of the member countries, cannot contain restrictive clauses such as:

- a) Prohibition or limitation to export or sell in determined countries those products which are manufactured under the respective trademarks or similar products.
- b) Obligation to use raw materials, intermediate products and equipment supplied by the owner of the trademark or its affiliates. In exceptional cases, the country of the licensee may accept such type of clauses but provided that the price of these corresponds to the standard level in the international market.
- c) Price fixing for the sale or resale of the products manufactured under the trademark.
- d) Obligation to pay royalties to licensor on a trademark or trademarks which are not being used.
- e) Obligation to employ personnel selected by the owner of the trademark.
- f) Other clauses of similar effect.

In accordance with the same decision, contracts on the transfer of foreign technology or on patents cannot contain the following clauses:

- a) Those which oblige the country or the licensee to purchase capital goods, intermediate products, raw material and other technologies from a determined source, or to utilize permanently personnel selected by the enterprise supplying the technology. In exceptional cases clauses are admitted which compel the purchase of certain goods from a determined source but provided the price corresponds to standard level of the international market.
- b) In which the licensor preserves the right to stipulate the sale or resale prices of the products manufactured on the basis of the respective technology.
- c) Which contain restrictions in relation to volume and structural production.
- d) Which prohibit the use of competitive technology.

- e) Which establish a total or partial purchasing option in favour of the supplier of technology.
- f) Which obliges the purchaser of technology to transfer to the supplier the inventions or improvements which are obtained by virtue of the use of that technology.
- g) The obligation to pay royalties to the licensor on non utilized patents.
- h) Which prohibit or limit in any manner the export of products manufactured under the respective technology. In exceptional cases duly qualified by the respective authority of the licencing country it is possible to admit such clauses but never in respect of subregional trade or in respect of the export of similar products to third countries.
- i) Other clauses with equivalent effect.

At the same time, this Decision requires that this type of agreement incorporates at least clauses in relation to the following:

- a) Identification of the modalities required for the transfer of technology.
 - b) Contractual value of each of the elements incorporated in the transfer.
 - c) Term of licence.
4. **ADDITIONAL TAX** — Royalties, profit sharing, or remuneration from the use of trademarks, patents, formulas, technical assistance or the like paid or credited in account to persons without address or residence in this country are taxed by Additional Tax at the rate of 40% (Art. 61, Chilean Income Tax Law).

This tax is applied as a general rule on all sums paid or credited on account, without any deduction whatsoever except in the case of certain royalties or technical assistance which are qualified as useful for the development of the country in relation to new industrial, mining or agricultural processes, in which case the President of the Republic, prior to the report from the Corporation for the Promotion of Industry and from the Executive Committee of the Central Bank of Chile, may authorize the deduction of expenses incurred in the production of the royalty or in the transfer of technology for an amount which cannot exceed in any case 20% of its gross value.

Furthermore, certain royalties or technical assistance may be qualified as unproductive or unnecessary for the economic development of the country in which case, the President of the Republic, in accordance with a report from the aforementioned institutions may raise the rate of this tax to 80%.

5. **HIGHER OR LOWER RATE OF TAXATION** — As per Decree No. 1.422 of the Ministry of Finance, dated 30th of June, 1969 and published in the Official Gazette on the 4th of August, 1969, three priorities were established in relation to the percentage of expenses which could be deducted as royalty or technical assistance and qualified as useful:

Priorities One and Two and Three allow a deduction of gross expenses of 20%, 15% and 10% respectively. It also stipulates that during the month of October of each year the President of the Republic will qualify the usefulness of the royalties and technical assistance and stipulate the priorities which correspond.

The Ministry of Finance Decree No. 1.745 of the 31st of October, 1972 established number "one" priority for the following:

- a) Rights for the editing and reproduction of books and magazines.
- b) Licences and technical assistance for the exploration, exploitation and refining of oil.

Documents are not required to prove the deduction of expenses. The priorities established in this Decree are in force during 1973 and are applied only to royalties and technical assistance generated in this calendar year, even though the payment of the additional tax may take

place in another period.

Furthermore, Finance Decree No. 1.351 of the 15th of June, 1970, published in the Official Gazette of the 29th of August, 1970, ruled on the application of the increased additional tax, establishing that in November of each year the President of the Republic would determine the royalties or technical assistance qualified as unproductive or unnecessary for the economic development of the country and the new taxes applicable for the following year would be then established.

Ministry of Finance Decree No. 1833 of the 2nd of November, 1972 published in the Official Gazette of the 9th of December, 1972 increased the additional tax on royalties or know-how for the following activities which were considered as not useful, as follows:

- a) Manufacture of perfumes, cosmetics, dyes and perfumery products in general 80%
- b) Reproduction of labels and designs 50%
- c) Clothing 50%
- d) Wines, liquors and the like 60%
- e) Furniture manufacture 50%
- f) Reproduction of playing records 80%

These additional tax increases are applicable as from the 1st of January, 1973 and affect the royalties and know-how which are paid or credited or accounted as expense or placed at the disposal of the licensor.

LEGISLATION ON THE TRANSFER OF TECHNOLOGY IN MEXICO

by

Bernardo Gómez Vega, Attorney at Law

*Submitted for Publication
in LES NOUVELLES*

by

Norman St. Landau

Background

Technology, understood to be that body of knowledge relating to a mechanical trade or industrial art and, in general, to any customary occupation which has repercussions in the economy, and that body of knowledge making possible the practical application of scientific knowledge in industry, agriculture, cattle and poultry raising, fishing, and even in hunting, as well as commerce, clearly constitutes a patrimonial value, inasmuch as said technology constitutes a supplier of needs when in the market it is desired and sought after by those who wish to satisfy their needs. Therefore, technology is the object of commercial transactions even in those cases in which it has not been incorporated in a tangible or material form.

This is not a new concept. In earliest recorded times the secrets of artisans in such fields as pottery were passed on from one person to another. In the majority of the cases this was done without any exchange taking place, such as the case of inheritance from father to son. But without a doubt such transfer implied a burdensome cost when the secret was passed outside the family circle in exchange for a specific amount of corn or other product used in barter.

Like any other indispensable supplier of needs, technology has continued to be passed on from one person to another over the years by means of all known transfer systems: principally by barter or sales and, particularly in recent years, through the licensing system.

As has been implied, barter was the principal instrument used for the transfer of technology in ancient times because the use of money was slow to appear in the primitive economic systems and there was no other equitable means of carrying out commercial transactions other than barter.