S. F. Armitage addressing inaugural meeting of LES Australia.

LICENSING AT ROCLA; A COMPANY CASE HISTORY

by

*S. F. Armitage**

For the benefit of our overseas visitors, I will give some background about Rocla.

Rocla ia an Australian public company — virtually 100% Australian owned — which was formed in 1920 to make precast concrete products. The manufacture of concrete pipes was an early development.

In the late 1940's Rocla developed what is now known as the Roller Suspension process for the production of reinforced concrete pipes, and this process, as far as we are aware, has not yet been bettered anywhere in the world. The extent to which major concrete pipe manufacturers around the world have expressed interest in the Rocla process by taking up licenses to use it, is, we believe, ample evidence to support our claim. A further development by Rocla has been the production of prestressed concrete pipes without a steel membrane — called non-cylinder prestressed concrete pipes.

The development of the Rocla process, which quickly replaced the conventional wet spinning system in Rocla factories throughout Australia, led to our first license agreement in 1948. Since that time we have concluded over 30 license agreements covering more than 20 countries in all continents. Some agreements have been renewed for second terms and we are hopeful that in one case at least we will enter a third term. Our agreements are generally "Know-How" agreements, although they do involve the use of patents and Rocla trademarks.

Three Phases

We have been through three distinct phases in developing our licensing business, and if there had been a Licensing Executives Society in 1948 we might well have saved ourselves many problems. We had to learn the hard way, although I am pleased to say that with one or two exceptions our license agreements have established extremely happy arrangements both for ourselves and our licensees.

The first agreement entered into was the sale of patents to a company in the United States. This was in 1948 and the lump sum fee was US $60,000, and if I tell you that for that year Rocla's net profit was A£30,000 you will realize the affect that license agreement had on our business. Unfortunately, I cannot claim that the same ratio of license income to company net profit still applies. Our net profit last year was A$2.5 million and license income of this order might be too much to expect.

The first series of Rocla license agreements ran from 1948 to 1956 during which time we made a conscious effort to sell our process around the world. After the first sale of patents we entered into purely "know-how" agreements without patents or trademarks involved. Agreements were made in most Western European countries. The agreements were exclusive for a particular country or group of countries and the payments we received were by present standards quite minimal — but so too was the service we provided. Payments at that time depended on the number of Rocla machines (made by the licensees from drawings supplied by Rocla) installed. These agreements set a maximum amount which the licensee was required to pay

First Subsidiary

Towards the end of this first period we established in South Africa our first subsidiary company (our share is now only 14%). This has been a most successful operation which also led to a big improvement in our license agreements. In the 18 years since the South African business was established we have received in license fees over A$1 million. Despite the minority share of our shareholding, the license agreement was renewed four years ago, and our relations with our South African friends are very close.

The initial agreement with this South African company was too much in our favor, and as the licensee grew in size some disagreement and even resentment developed. This was perhaps the first major lesson we learned — that license agreements have essentially to be fair to both parties, if they are to survive the test of time.

A consolidation period followed the first period in our case history. We did not make any effort to sell our know-how and such agreements as we did conclude resulted from people coming to us directly or through existing licensees to buy our know-how. Our rate of pro-

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gress was understandably relatively slow.

Nevertheless in this second period we did improve the general form of our license agreements. We became more interested in a continuing revenue than in a lump-sum payment. We did not go all the way, however, and restructed the fees to annual lump sum payments. Only from South Africa were we receiving royalties based on production. (Actually we do not use the term royalties but we call them Engineering Fees — we feel the term is less objectionable.)

Third Period

We are now in the third period of our licensing experience which started about five years ago with the establishment of our International Division, the prime function of which is to seek more licensees, to sell machinery to licensees and to seek joint venture opportunities. This has been a most interesting period, and from the background of the first two periods we have developed, off our own bat, a standard license form. I was most interested to hear what Mr. Smith had to say this morning about license agreements, and although he suggested a few points which I think we can with advantage incorporate in ours, I am happy to say that I believe we have covered by far the majority of the main points Mr. Smith brought out. As I said earlier, had there been an LES in 1948 we might not have had to learn the hard way.

Of course we are still approached by potential licensees even though we are actively promoting the sale of our know-how. Perhaps the story told by the President of the company which holds our license for Mexico might be of interest.

At the time when we were looking at Mexico as a potential country of interest, our Mexican friend was traveling through Europe to find, as he puts it, "the latest concrete pipemaking techniques". He tells the story of how he went from Germany to France, to Switzerland, to Italy and kept hearing the name Rocla. In several places he asked if he could see the Rocla process, but always this request was politely refused. Our licensees told the Mexican he would have to get permission from Rocla. This, he says, intrigued him so much that he had decided he wanted to be Rocla's Mexican licensee before he had even seen a Rocla pipe.

We encourage our licensees to use the Rocla name and trademark and, for example, you can find Nippon Rocla, Superocla in South Africa, CGN-Rocla in Mexico, Fabrica Argentina Caños Rocla, and so on.

Over the years we have encountered a number of pitfalls. In our early agreements, which incidentally were of the short, two-page, type to which Mr. Smith referred this morning, we made no effort to define clearly certain important terms. This led to a problem in one case where a licensee's definition of a reinforced concrete pipe differed from our own. As a result, a whole page of our license agreement is now devoted to defining important items.

We did not clearly stipulate the life of early agreements and you can well imagine this led to some difficulty. We have naturally corrected this fault and new agreements are usually for 10 or 15 years, depending on the country and our negotiating skill. Where patents are included, the life of the patent is the minimum period.

One of the few license agreements we made which was not a success was taken up by the licensee to prevent the process from being used by a competitor and without the intention (so time proved) by the licensee to use it himself. Our agreement at that time did not protect us against this trick. We now require an initial signing fee and have inserted a clause which says that, if the process is not used within two years, the agreement will be cancelled.

Another early mistake was a failure to make it clear that the licensee should be responsible for obtaining the licensee government's approval to remit fees to Australia. As a result, we have a bank balance in an Asian country which is not, unfortunately, the best place in the world for a holiday.

Naturally there is an inclination to enter into a license agreement with the first concern to come along and ask for your know-how for that particular country. We warn against this and believe that it is better to take time to visit the country and to ensure that the prospective licensee is really capable of working with you. Some of our negotiations have taken literally years to conclude — particularly the one successful arrangement we have in Eastern Europe.

A point which I don't think Mr. Smith mentioned this morning is that you should write into the agreement the date on which fees become due for payment. During the recent currency fluctuation we have saved some not insubstantial amounts by including a clause to this effect.

Arbitration

Also arbitration was, I think, not mentioned by Mr. Smith. We have not yet had to resort to arbitration, but we have a clause in our agreements which covers this and which refers to a Court of Arbitration set up in accordance with the provision of the International Chamber of Commerce Order on Courts of Arbitration. I hope we never have to find out how this system works.

I have referred to our one license agreement in Eastern Europe. So far we have had no problems at all. All fees have been paid promptly and other conditions, including secrecy, are I believe faithfully followed. They are even using the Rocla name, and if you visit Budapest you will see Rocla pipes, with the Rocla name painted on them, being transported through the city.

Professor Bolotin referred, this morning, to research. Rocla undertakes an extensive research program the results of which are made available to our licensees. Two or three times a year we publish a newsletter which gives brief details of our current program and results recently achieved. From this newsletter we get an exchange of views with our different licensees. Some licensees do some research work themselves but through our newsletter serious duplication is avoided. Our licensees keep us informed of developments they from time to time introduce.

We arrange and conduct Licensees Conferences — we are holding one in Great Britain at the end of April and had one in Melbourne in 1971. At these conferences delegates discuss individual or mutual problems and experiences. Papers are presented by Rocla staff and also by members of the technical staff of licensees. The exchange of information has been shown to be as valuable to us as it is to our licensees.

A small but pertinent example of the feedback we get from our licensees is the "Belfast Sleeker". This instrument was developed by our licensee in Northern Ireland (not our own subsidiary in Great Britain) and it is now in use in nearly all Rocla factories throughout the world.

Research is an important part of licensing and more and more so in developing countries. We are currently negotiating in a country where the government has stipulated that the following clause should be included in the agreement:

> "Within the period of this agreement the licensor will assist the licensee to establish its own research facility so that continued dependence on the foreign collaborator beyond this period will not be necessary".

The government concerned may be overestimating the ability of their own people or underestimating the problems of concrete pipe making, but the emphasis on research is clear.

I referred briefly earlier to machinery sales. This has been to us an increasing benefit from our license arrangements. We do not insist that the licensee has to buy plant from us, and in cases where currency problems exist we provide information to enable the local manufacture of plant and equipment. Generally speaking, however, our locally made plant is competitive and over the last two or three years we have sold nearly 2 million dollars worth of Rocla pipe making plant.

You must also protect your name. We have clauses in our agreements which give us the right to send representatives into licensees' factories to ensure that production is of a standard to which we are prepared to give our name. We can stop production or the use of our name if we are not satisfied.

With regard to royalties, many countries leave very little room for negotiation — at least not in our industry. We find 5% of selling price is about the maximum. An African country in which we are interested has recently promulgated a policy which forbids the payment of any royalty if the licensor has any investment in the licensee company. This trend is spreading, I find, to South America also and is, I think, a swing of the pendulum from the days when parent companies established subsidiaries from whom they extracted royalties possibly as a tax evasion, or reduction arrangement.

We understand to provide our licensees with a comprehensive technical service, but obviously with over 20 licensees we have to be careful how we word these clauses. Our resources would be overstretched if all our friends demanded attention at the same time.

To sum up, as far as Rocla is concerned licensing has been found to be financially and technically rewarding — particularly so when expressed as a percentage return on capital invested in our international operations. We are happy with what we have done. We are keen to continue. I think the development of this society will help us to reap more benefit from licensing in the future.

NOTES ON FOREIGN INVESTMENT IN AUSTRALIA

by
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On June 12, 1974, the Australian Federal Government announced new restrictions on foreign investments in Australia which are likely to encourage foreign companies wishing to enter Australia to favor licensing arrangements over direct investment.

The Government presently has power under the Companies (Foreign Takeovers) Act of 1972 as amended to examine the acquisition of shares in Australian companies by foreign companies if any such acquisition results in a foreign company acquiring 15% or more of the shares in an Australian company, or two foreign companies acquiring 40% or more of the shares in an Australian company. If the proposed acquisition will result in effective control of the Australian company passing into foreign hands without "net economic benefits" to Australia, then it may be "frozen".

Despite the fact that a comprehensive ambit for the foreign takeovers legislation was foreshadowed when it was introduced in 1972, the Act itself does not extend to asset acquisitions, nor to share acquisitions in which control of an Australian company passes from one foreign company to another foreign company.

Notwithstanding the absence of specific legislative provisions, however, the Labor Government has been screening all foreign investment through its powers under the Banking (Foreign Exchange) Regulations. Certain foreign investments (asset acquisitions, and investments in real estate) requiring Reserve Bank approval have routinely been referred by the Reserve Bank to the Foreign Takeovers Committee, where they have been subjected to the same scrutiny afforded foreign interests seeking to acquire shares in Australian companies. The Government has viewed this only as a stop-gap measure. It has repeatedly announced its intention of introducing more legislative controls over foreign investment.

During the campaign preceeding the elections on May 18, 1974, Prime Minister Whitlam specifically undertook to introduce new legislation to remedy the defects in the existing Foreign Takeovers Act, and in addition to subject all new investments in Australia by foreign businesses to scrutiny. He said:

> "The screening process will ensure that any proposed foreign investment which is allowed, conforms with Australia's national interest. The matters which will receive particular attention are export franchises, research and development expenditure, licensing of technology, purchasing policies and tax avoidance. Over a period of time guidelines in these areas will

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