

with respect to such issues as presented by the trend toward compulsory licensing, the Burke-Hartke Bill, the Hart Patent Bill, and the Patent Modernization Bill, and such judicial decisions as in the Kewanee Oil vs. Bicron Corporation case, to determine what action, if any, LES should take in the interests of the licensing profession. More about these matters later in the meeting.

TED WHITE, Chairman of the International Committee, with his regional chairmen, JIM O'BRIEN, TOM CROSS, BOB GOLDSCHIEDER and IVAN ZAHARIEV, who with the coordinating trustee, LEN MACKEY, have been promoting international activities of LES in collaboration with other international organizations and with our overseas chapters. BOB GOLDSCHIEDER is also the Program Chairman of our next Annual Meeting, which is in Bermuda.

BILL PINSACK, who with the help of his wife Pat, undertook and successfully completed the monumental and very informative membership survey last year, and who is to be the Vice-President of the Central Region this coming year.

HARRY KECK, Chairman of our Research Committee, which has been responsible for the LES Bibliography.

BERT BRADLEY, our Membership Chairman for two years in 1971-2 and a member of the Board of Trustees next year.

ART GARRETT, Meeting Chairman for next year's Annual Meeting in Bermuda, who is already well along with his plans.

DON GUTHRIE, who, with BILL McGUIGAN, BERT BRADLEY, ROGER DITZEL, BILL PINSACK, DAN STICE, ED HAMBY, JIM JOHNSON, KEN BROWN, F. M. MURDOCK, GEORGE MULHOLLAND, ED BASSLER, and others, has contributed much to TOM ARNOLD's Long-Range Planning Committee. Don will take over the chairmanship of this committee next year.

BILL RILEY, whose hard work and perseverance as chairman of the American participation in the London Licensing Conference produced such fine results.

CHARLIE WHELPTON, Chairman of the Awards Committee for the past three years, and compiler of our Meeting Manual.

TOM COPELAND and ART SLOAN who, with their committees, did such a fine job on our Annual Meeting in San Antonio and the extension meeting in Mexico City.

DALLETT HOOPEES, Chairman of the By-Laws Committee, who with DICK MOSER and BOB FULWIDER has been very helpful in proposing and drafting needed amendments to our By-Laws.

BUD COHEN and JOE CIARIMBOLI, co-chairmen of the Western Regional Meeting in Santa Barbara.

TOM DOWD, the organizer and arranger of our three Eastern Regional luncheons.

MARC BESSO, who contributed to the London Licensing conference, and who is actively trying to organize a new chapter in Switzerland.

GABE KATONA, who has helped promote our relations with the World Trade Institute and the National Science Foundation, and who has advanced many worthwhile suggestions.

ED HAMBY, Chairman of the Patron and Sustaining Membership Committee, who has laid the ground work for a successful follow-through in the next few months.

GERY WEISER, Chairman of the EEC Developments Committee, and the moderator of a workshop on this subject tomorrow afternoon.

LEO COSTELLO, Site Chairman for our 1976 Annual Meeting, and the moderator of Workshop I tomorrow.

I hope this recitation gives all of you a better idea of the many activities of your society and the large number of members involved. If you are not one of them, but would like to be, see MARC FINNEGAN your next president. I am sure he will welcome your interest.

And now I would like to say a few words about our busi-

ness meeting tomorrow afternoon. As I said earlier, there are a number of special matters to be considered, and only a very limited time in which to do it. However, we don't want to be at all perfunctory in dealing with these important actions or to rush them in any way. For this reason, in order that we can make the best use of the time, it will be appreciated if any of you that may have questions or comments with regard to these matters, will kindly speak to me, MARC FINNEGAN, or any of the officers and let us try to provide the information you want sometime before tomorrow noon, rather than to take the time in the business meeting itself.

Finally, on behalf of the Society, I want to express our special appreciation to your Meeting Chairman, BILL POMS, his lovely wife, LELA, to your Program Chairman, MILT KIRKPATRICK, and the other members of the Committee, ED SOKOLSKI, MILT SCHLEMMER, BILL McGUIGAN, LEO COSTELLO, BILL NYE, and GENE LANG, and their respective wives, and last but not least, to our indispensable SME representative, STELLA MACHAVICH, for this fine meeting; for all their efforts, their long weeks of planning, their inspirations and frustrations, and above all, for the exceptionally cheerful and optimistic spirit in which they have undertaken and accomplished this task!

**About the Speaker: Dr. Charles H. Chappell (Chuck) is President for 1972-1973. He is a charter member of LES.*

He is Director of Patents and Licenses for the Carbon Products Division of Union Carbide Corporation, and is also Administrative Assistant to the Vice President-Technology.

He is a member of the American Chemical Society, Electrochemical Society, American Institute of Mining and Metallurgical Engineers, American Ceramic Society, and Alpha Chi Sigma.

BUSINESS ASPECTS OF LICENSING IN RUSSIA

by
George J. Phocas*

I am honored at having been asked to address this distinguished society. When I was told that I was to speak on Business Aspects of Licensing in Russia, I told the chairman that my qualifications, insofar as the technicalities of licensing are concerned, were probably less than anyone who would be listening to me speak. However, with other executives of Occidental, I have been involved in negotiations with the Soviet Union during the past year, and it may be that some of the conclusions which I have reached could prove interesting to you.

Some of us in the Western world have been tortured by a seeming paradox — especially these last few weeks — how can we as businessmen in the Free World engage in a close business relationship in a country which discourages internal dissent and engages in other practices contrary to our social philosophy.

This dilemma reminds me of a story: A Texas cowboy pulled up his horse outside a saloon and went in for a drink. When he came out, he saw that someone had painted the rear end of his horse yellow. Furious, he stormed back into the saloon, went up to the first man he saw at the bar and asked him threateningly if he had done the evil deed. The man denied it.

The cowboy then went down the bar asking each man the same question, becoming even more angry at getting the same reply. Finally, his fury mounting and his face suffused with rage, he came to the last man, a Texan about 7 feet tall, and asked him the same question. The Texan looked down at him and said, "Yes, I done it."

The cowboy measured the Texan with his eye, his rage subsided instantly, and he said, "well — I just wanted to tell you the first coat is dry."

Now I do not mean to suggest that either we or the Russians are the cowboy or the Texan in this story. If you insist on an analogy, then we are both the cowboy and the Texan is a possible nuclear confrontation. But I meant this story merely as an illustration that solutions can often be found for the most inflexible positions when the pressures or the rewards for change become great enough.

I do not mean this by way of a suggestion that the ideals of people should be effected by pressure or rewards. But in a pragmatic context, this is what the detente between the United States and The Soviet Union is basically concerned with, the need, the absolute necessity, to avoid a nuclear confrontation between the two greatest nations of the world.



The desire for detente has lead naturally into the most normal type of relationship between different people — trade. Negotiations between strangers in ideology whose only relationship is that of buyer and seller, or those who need a product or a commodity, and those who can supply it, are not only possible, but historically are indeed the way human beings have always behaved, even in the midst of conflict.

Our hope, certainly, is that in the course of our dealings together, the need to find common approaches — a similar meeting ground in the market place — will over a period of time, provide a dividend in the social context.

The difficult fact, however, is that the Western businessman and his Soviet counterpart, and I use the word counterpart loosely, do not generally know each other. We proceed from different assumptions. We in the West are directed to make a profit for our stockholders by the use of their capital. For the Russian, the profit motive and even the word itself are foreign to his way of describing his purposes as an executive of his particular ministry or organization.

Translating these facts into the manner of approaching a business discussion in Russia, suggests certain guidelines for licensing negotiations which I would generalize as follows:

1) You should be absolutely prepared when you arrive in Russia, knowing exactly what you are planning to sell and what you need to have for it.

If you are selling know-how you should have a brochure describing it in terms of its application and ultimate end uses. You will find that the Russians, with whom you are dealing, are very well aware of the details of price and cost of equipment in the world, but they may not be as certain of the applicability of your technology — if you are planning to license technology — to their requirements. You will have

had to make an informed guess as to how they may utilize it.

2) You will have to be both very patient and persistent to an extent not known in the West. The Soviets are very tough bargainers, and decisions may have to be made in several organizations and ministries — some of which may even oppose each other. This takes time.

3) In Licensing Technology you will probably have to forego any idea of royalty payments based on production. Patent Licensing, to my knowledge, so far has paid only a miniscule part in the trade picture between the Soviet Union and the United States. The idea of the need for payment for know-how and royalties is only now beginning to become acceptable to Soviet negotiators. They prefer to pay for technology in a lump sum.

4) Imagination and innovation in the manner in which you would accept payment, could help you close a deal more quickly. Payment in kind by goods or raw materials should be considered.

5) Your final contract should be absolutely explicit as to what each party is to do, their obligations and penalties for non-performance. The Soviet Union to my knowledge has never defaulted in a business agreement, but they are insistent in following it to the letter.

It was Benjamin Franklin who once said "no nation was ever ruined by trade." This may have been the thinking of President Nixon when he agreed that extended trade between the United States and the Soviet Union would be one of the major pillars upon which detente and understanding would be based.

Luckily for Occidental, its chairman, Dr. Hammer, had had early and extensive experience in doing business in the Soviet Union. Although he had not been back there in 30 years, he had been sent there in 1961 by President Kennedy, and was invited back in July 1972. This visit resulted in a trade agreement between the Soviet Government and Occidental, probably the first time ever a broad agreement, almost a protocol between the Soviet Government and a private company, had been entered into. The agreement covered 5 areas, metal finishing, fertilizers, oil and gas, an International Trade Center, and solid waste disposal systems.

We have pursued this broad agreement to contracts, and three have now been signed: metal finishing, chemical fertilizers, and the International Trade Center, and a letter of intent between Occidental and El Paso Natural Gas on the one hand, and the Soviet Government on the other, for the purchase of liquified natural gas, has been entered into.

I mention these, not because they have anything to do, particularly with patent licensing, but because to my mind they have demonstrated at least three of the propositions I previously outlined to you. The first is for the need for persistence in following through your initial discussions. There probably has not been any period during the last 18 months, in which a senior executive of Occidental has not been in Moscow working on some contract, or negotiating some aspect of these deals. Dr. Hammer, himself, has spent at least one week in each month in Moscow. This kind of persistence is absolutely necessary.

The second theme which we have pursued is innovation in the manner of payment. Our first contract was for the exchange of metal finishing equipment for Soviet nickel, and the second involves the shipment of concentrated phosphate from Occidental's Florida mines in return for ammonia and urea, which we will market for the Russians. Both of these arrangements avoided for the Soviets the problem of finding the dollars to pay us with, and will also help the American balance of payments. We are purchasing materials we need at home by sending our own products to Russia.

As each deal has been concluded, and we have found that some of the people we are dealing with have come to know us, there is a noticeable relaxation of suspicion, making ensuing meetings easier and more productive.

I have described these operations of Occidental, as a means of illustrating that negotiations handled with persistence and respect can result not only in the consummation of deals, but in the creation of an atmosphere in which subsequent contracts become easier.

As an aside, and a commentary on the effect successful and extended contacts may have — even on people immersed in different systems — the Soviets who previously found business negotiations outside their own country inconceivable, have relaxed to a point that the last agreement signed by Occidental and the Soviet Union, which was for the construction of the International Trade Center in Moscow, was finally negotiated and signed by a delegation from the Soviet Union which met us in New York.

As a final word, I would ask you to remember that you are dealing with state agencies, essentially, a government — and this may be strange for you, but as they get to know you, you will find that they prefer to deal with people whom they know and with whom they have dealt before. Give your negotiators authority and with patience and persistence it is almost certain that profitable arrangements for the transfer of technology and perhaps even a technological feed back can be made.

We may even, as a result of your endeavors and those of other Western businessmen, reach a level of understanding with each other which could be of major assistance to our political leaders in developing an understanding which would help us both to live peaceably on this planet.

**About the Speaker: George J. Phocas was elected an executive vice president of Occidental Petroleum Corporation, with responsibilities including international negotiations.*

Phocas came to Occidental from the law firm of Casey, Lane & Mittendorf in London, England, where he was senior partner. He served as counsel to a number of substantial industrial and financial firms based in the United States and foreign countries.

Prior to that, he was with the New York City law firm of Sullivan & Cromwell (1953-56); was legal counsel for Creole Petroleum, a subsidiary of Standard Oil Company of New Jersey (1956-1960) and international negotiator for Jersey Standard (1960-63).

TECHNOLOGY, TRADE AND LICENSING

by
W. F. Libby*

*(In the absence of Dr. Libby, this paper was delivered by Donald F. Howard**, a member of his staff.)*

I. Introduction

Licensing is necessary to protect society. It certainly is a restraint of trade but maybe necessary despite this infringement on the freedom of the individual. A license carries the responsibility to follow an agreed code drawn by the licensing authority to protect society. The protection so afforded is considered by the community through its legislative authorities to be worth the restraint of trade so imposed.

How does technology affect the balance between the benefits to society of licensing and the liabilities inherent in restraint of trade? We have the impact that new technology can create new needs for licensing; For example, the operators for atomic power reactors. Can new technology reduce the need for licensing?

II. Impact of Technological Development on Needs for Licensing



Dr. Willard F. Libby

At first glance it seems that since new technologies require new licenses there must necessarily be a net increase and thus an increased restraint of trade. However, this may not be true. Let's examine the question more carefully.

Consider a case in which new technology is allowed without license; fishing on the high seas. Modern fishing techniques threaten to totally eliminate this source of food unless a system of international licensing and control is instituted. The seas are much less fertile than was believed until recently, Dr. E. T. Degens of the Woods Hole Oceanographic Institute estimates that the total photosynthetic fixation at sea is only half that on land despite the 4:1 ratio in areas. The vast central regions of the great oceans apparently are deserts, for lack of inorganic nutrients such as nitrate and phosphate. So we'd better move quickly to avoid eliminating trade for lack of licensing restraint! So we have a good example of how licensing can promote trade rather than just restrain.

Another example is the lumbering industry where controlled cutting and replanting can lead to a stable economy whereas uncontrolled, it leads to disastrous depopulation and ruin. A third example is the coal mining industry which has



Donald F. Howard, Vice President, General Manager of W. F. Libby Laboratories, substitute for Dr. Willard F. Libby

ruined large areas for lack of licensed control and we get appalachia and poverty in the wasteland.

We come to consider, therefore, whether licensing is