

things: (1) Sherm giving his opening address in the Japanese language — a master stroke, well carried off and deeply appreciated by the Japanese; (2) the clock work functioning whereby every item for two and a half days came off to the minute — I doubt we ever had a LES meeting as well run; and (3) the sense of hospitality and politeness (for which I admit the Japanese are world famous) — visitors are made to feel appreciated, even cherished, and LES is important, significant and almost urgent."

Sherman Kemmer is General Manager, Patent and License Division, Standard Oil Company of Ohio in Cleveland.



Mr. Shohei Kurihara, Chief of Industrial Finance Division, MITI, Foreign Funding, substituted for Mr. Eimei Yamashita, Director General, Industrial Policy Bureau, MITI, and discussed the History, Current Status and Future of MITI re: Licensing.



Charles Whelpton

LICENSING TO DEVELOPING COUNTRIES AND ROLE OF UNIDO

Presented at the Japanese LES Meeting by
C. G. Whelpton on behalf of Enrique Aguilar,
Industrial Development Officer, UNIDO.

Mr. Chairman, distinguished delegates and ladies and gentlemen: I am here this morning as a pinch

hitter. These remarks have been prepared by Mr. Enrique Aguilar of UNIDO, and are being summarized by me. You already have a copy of his presentation. It is indeed an honor and a privilege for me to be here on behalf of UNIDO and also LES. I think one of the reasons I was asked to "fill in" was because I had the privilege of attending the joint UNIDO/LES meeting in May of this year in New York.

In his introduction, Mr. Aguilar outlines UNIDO's objectives and its role in assisting the industrial development of developing countries and he notes the past discussions of this subject at LES meetings in Europe, this spring, and at the meeting I mentioned of UNIDO/LES in New York.

He directs his comments to the role of the licensor from a highly industrialized country, such as Japan or the U.S., and a licensee in a lessor developed country. The countries in this latter group have studied Japan's procedure as Japan has been a recipient of foreign technology in license agreements.

Frequently, companies in developing countries find themselves in a weak bargaining position when they are acquiring new technology.

In the second paragraph of page 2, Mr. Aguilar tells us that recently an Expert Group Meeting on licensing practices, which I believe was held in Vienna two weeks ago, and was attended by Mr. Finnegin (presently seated at the speakers table), reached a consensus favoring the creation of some form of regulatory control by the developing countries of foreign technological proposals. In my opinion, it is somewhat unfortunate that any kind of regulation is necessary. I feel this especially to the extent that some of us in the highly developed countries may have exploited our position to the disadvantage of industries in the developing countries thereby leading to regulation becoming desirable. In the program of the Midwest section of LES held last April in Niagara Falls, New York, one of the speakers commented upon the effect of the U.S. anti-trust laws on licensing. In his opinion, and I think I share completely his position, although sometimes at first glance some of the anti-trust laws in the U.S. appear to be restrictive, they merely are a set of guidelines that require us to do what we should do anyhow.

Mr. Aguilar refers in the second paragraph of page three to recently published guidelines for Japanese companies who are licensing abroad. I understand these guidelines are available at the present only in the Japanese language. These guidelines hold that it is undesirable to prevent licensees from using technical information and know-how once the license period ends, after the termination of the license or expiration of the patents. I think this is a good point, with the exception, having been involved in one or two cases, of trade-secret licensing. I think trade secrets should be an exception, that confidentiality should extend beyond the term of the license and if the license is terminated, the trade secret should no longer be used by the licensee.

In the fourth paragraph of page 3, Mr. Aguilar points out the need of the developing countries to have export markets and he suggests it is the obligation of the licensor to foster exports by licensees in develop-

ing countries. He cites Japan and the dramatic growth of Japanese exports as an example of how foreign technology has contributed in a measure to the development of large export markets. He recognizes that the implementation of the principals of placing few restrictions on licensees and the fostering of their exports will not be simple, and will not be easy to achieve. But, it is a desirable concept, and the business relations which will result from this type of approach from the licensor to licensee will build continuing relationships with stronger ties that will lead to greater opportunities for both parties.

It is my own experience in licensing on behalf of Champion that this is true. We have several arrangements with companies which were licensees, which grew out of a license, or which came about as a result of our friendship and the cooperation which resulted from a license agreement. In many cases, the cooperation is informal, there are no contracts, it really is a two-way street, we both feel we receive much more than we give.

In the first paragraph of page 4, Mr. Aguilar mentions typical safeguards the governments of developing nations may require to ensure that the industrial development in their countries meshes with their individual economic and social objective. This seems to me to be a reasonable approach.

In the second paragraph of page five, it is pointed out that there also exists an obligation on the part of companies in developing countries to remember that licensing is a business proposition. They must consider the goals and limitations of the licensing company, or the licensor, and they must remember to keep in mind some of the limitations that may be imposed on a licensor by the government of the country in which the licensor is located. Again I refer you to the effect of our U.S. anti-trust laws on foreign licenses granted by U.S. companies.

In the conclusion of Mr. Aguilar's remarks, he states that UNIDO welcomes close rapport and cooperation with industrial enterprises and that it can play a very useful role in creating a bridge and acting as a go-between for the promotion and completion of international licensing agreements. An example is the ever increasing cooperation between UNIDO and LES. The efforts of these two organizations in my opinion will certainly lead to better understanding between owners of technology and potential licensees in developing countries. Mr. Aguilar is a distinguished internationalist and I know that he is grateful to the newly formed chapter of LES in Japan for the opportunity to have his thoughts presented to this distinguished forum. Reading between the lines, he extends, I'm sure, his congratulations to LES in Japan. He wishes you good fortune.

Now, as a pinch hitter, I have followed the signals of the manager. I will now shake off the signal and try to make a few swings on my own.

To me, the UNIDO-LES symposium in New York in May was a very exciting event. Several of the delegates here attended that meeting and I am sure they share my views. At that meeting, there was discussion in great length of the possibility of expanding op-

portunities not only for licensees in developing countries but also the opportunities for licensors from the developed countries.

You have already heard mention of the forthcoming UNIDO Product Adaptation Consultation meeting in New York October 2-13. This is jointly sponsored by the World Trade Institute and the U.S. Agency for International Development and will be held at the New World Trade Center on Manhattan. I have in my possession a three-page list of the countries who will send representatives to this consultation meeting and the products in which they are interested. I might point out that UNIDO is acting as a catalyst or go-between and the representatives from the developing nations come at their own expense, representing their company not their country. The major fields of interest include household furnishings, wearing apparel, clothing, leather goods, handicrafts, and to me somewhat surprisingly, T.V. and transistor radio components.

If any of the delegates here would like more information about the UNIDO consultation meeting, if you will see me at lunch and gave me your card, I will leave the material I have with Mr. Okano and it will be made available to you. There may not be time for any of you to make arrangements to attend if you have not already considered it because of the short time available before this meeting begins. On the other hand, I do submit this for your consideration. If you are interested, it is necessary that you see me at lunch because it would be impossible for me, unfortunately to attend the evening session (the reception and banquet) and program tomorrow. I would like to make a few additional comments on the philosophical approach to licensing, particularly from developing countries. The world is facing major problems today. Coincidentally, at the same time that this meeting is being held, there is a meeting of the World Bank/International Monetary Fund in New York. I think perhaps each in its own way, these meetings are trying to reach a solution to similar problems. These deal, in my opinion, with attempts to raise the standard of living of the world population and the effect this will have on the developed countries in helping developing countries to achieve a higher standard of living.

We are faced with severe threats to our environmental conditions. Licensing may play a part in this. In the U.S. for example, consideration is being given to compulsory licensing and one of the fields in which compulsory licensing might be desirable, in the minds of some, is the field of inventions dealing with environmental improvements. I think we all recognize there are certain physical limitations to the spaceship Earth. This points out, to me, the need for cooperation of all people.

If I may quote from the American patriot, Patrick Henry, almost 200 years ago speaking in a somewhat different, of course, that we must all join together — he used the words "hang together" — or most assuredly we would hang separately (in our attempt to release ourselves from the imperialistic colonial power of Great Britain). (I apologize to our British colleagues.)

That reminds me of a story. An American, a Yankee, speaking to a British friend while showing him the

sights of Washington, D.C., "This is the Washington Monument, and this is the White House." "Why do you call it the White House?" "Well, we call it the White House ever since it was necessary to paint it white to cover the flame and fire damage which took place when you British burned Washington during the War of 1812." "Oh, I'm sorry," said the Britisher. "Of course, I knew we burned Joan of Arc, but I thought Washington died a natural death."

I think this covers everything I wanted to say. However, I may be forgetful. Sunday night, I ate too much miyoga at Futaba Sushi — near the Kabukiza Theatre. For those of you who may not know of the effects of miyoga, it makes you forgetful.

The story is that a guest at a Japanese inn left a considerable amount of money with his host for safe keeping. The host, with some ulterior motive in mind, served the guest much miyoga in hopes he'd forget the money. It developed the guest did forget, but not to retrieve the money, he forgot to pay the bill.

I have two favorite Japanese proverb sayings which I like to use in Japan. I think they apply somewhat to the principles involved in licensing from developed countries to developing countries or to a licensor to licensee in any circumstances. "Do not make yourself too important," and "The able eagle hides his talons." With that, if I may indulge in a bit of Kansai dialect, "Okini." (Thank you)



Shigeo Okano

A REPORT OF EXAMPLES OF LICENSEES

By
Shigeo Okano, Managing Director,
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Enterprises are greatly affected by the history of the world. Many of enterprises in Japan introduced a

great number of technologies from developed countries. This is because Japan accepted modern scientific civilization about 100 years later than developed countries.

I would like to recall the matters in Japan before 100 years ago. Some of the people who visited Japan in those days from western world left interesting literary works regarding Japan. Many of them were diplomats¹ but there also were some scientists, medical doctors³ and military people². I had read some of these works before in Japanese language. I recalled these works when I started the job of summarizing examples of licensees of the company I am working with.

I found that the reason for our eagerness toward introduction of technology has something to do with the minds of our ancestors about one hundred years ago. It was such a day when the power of the Shogunate government fell into decay and the powers of feudal lords of Satsuma, Choshu, Tosa and Higo clans who were attempting to overturn the Shogunate government were rapidly gaining strength. In order to strengthen the power of each feudal lord it was necessary to introduce technology of western countries. Such technology was not limited to military field, but emphasis was also placed on the technology regarding industries to strengthen economic power.

The social condition for eagerly introducing foreign technology is that the society is unstabilized. Of course instability of the society alone is insufficient, and the ability of those who introduce technology is essential. In short, the major object of introduction of technology was to win in a competition within Japan.

The name of the company I work with is Kobe Steel, Ltd. Unlike other steel companies in Japan, the company has machinery division, welding electrode division and nonferrous division besides steel division; and I myself belong to machinery division. Since execution of technical tieup with Allis-Chalmers Corp. in 1951 for mining machinery and cement manufacturing machinery our company has executed about 70 cases of technical tieups of 1 year or longer term up to the present time. Approximately 60 cases are effective today, out of which 50 cases belong to machinery division. Construction machinery which are manufactured under technical tieup with Harnishfeger Corp. occupy major share among them and accordingly the trade mark of "P & H" is very popular in Japan today.

These technical tieups had in the early days such a severe provision that a permit should be obtained from the licensor if the design is to be changed by the licensee. Such a provision was an obstacle in many different ways. The largest obstacle was that under such a condition excellent designers do not grow. The second obstacle was that the standard of the company is diversified, and the third obstacle was that due to the difference in customer needs between the licensor's country and Japan the goods manufactured based on the drawings imported do not sell in Japan. These difficulties lasted for about 10 years, and thereafter the situation was changed as the licensors understood our difficulties. Export destination was also very severe, but in the recent years the number of such cases where licensors are not necessarily particular about