

it is suggested that when possible no restrictive clauses, such as these discussed herein be included in the agreements.

2) Patent and trademark license agreements must include the transfer of technology.

3) Royalties should be in accordance with the value of the transfer of the technology and probably not in excess of 3% of the net sales of the product embodying the technology.

4) The terms of the license agreements should not be indefinite, probably a maximum of ten years would be advisable.

5) "Most favored country" clauses should also be considered in the agreements.

Mexico, D.F., September 1972.

*\*About the Speaker: Mariano Soni was born in Mexico, D.F., Mexico, December 28, 1936.*

*In 1952-1953 he obtained a Bachelor in Humanities, Centro Universitario Mexico; 1954-1958 LL.B., School of Law, Universidad Autónoma de Mexico; and was admitted to bar August 21, 1959.*

*His professional thesis was "Extraterritorialidad de los Impuestos", 1959, Mexico, D.F.*

*He has been in law practice — 1956-1963 — Associate in the Law Firm of Baker, Botts & Miranda (now Miranda, Santamarina & Steta); 1963-1965 — Partner in the Law Firm of Woodson, Pattishall, Garner & Pérez Vargas; 1966-1968 — Partner in the Law Firm of Woodson, Pattishall, McAuliffe & Pérez Vargas; 1969 — Partner in the Law Firm of Pattishall, McAuliffe, Pérez Vargas & Soni; 1970 — Partner in the Law Firm of Pérez Vargas & Soni.*

*During 1963-1966 he was Professor of Taxes, School of Business Administration and School of Industrial Relations, Universidad Ibero Americana, Mexico, D.F.*

*He is a member of Ilustre y Nacional Colegio de Abogados de Mexico (Member of the Council 1966-1969) Inter-American Bar Association; Asociación Interamericana de la Propiedad Industrial, ASIPI, (Treasurer pro tempore, 1964), member of the Trademarks Committee. Asociación Mexicana de la Propiedad Industrial (President 1966-1967), former Chairman of the By-Laws Committee, member of the Legislative Committee that prepared a draft of the new Law of Industrial Property (not enacted yet); Asociación Mexicana para la Protección de la Propiedad Industrial, (Mexican Group of the Association Internationale pour la Protection de la Propriété Industrielle); Executive Secretary of the Organizing Committee of the XXVIII Congress; Academia Mexicana de Derecho Internacional.*

Lack of space and the expense is preventing us from publishing Workshop Notes. I have a few available and can Xerox them for you if I have them. Just write me.

Thelma C. Heatwole  
EDITOR: LES NOUVELLES



Bernardo Gomez Vega

**"NEW TENDENCIES IN LATIN AMERICA  
FOR A CONTROL OF PATENT AND  
TRADEMARK LICENSES"**

by  
Bernardo Gomez Vega

Dear Colleagues:

Probably it had been announced to you that the subject of my lecture would be "New Tendencies in Latin American countries for the control of patent and trademark licenses", and I had really intended to speak to you in relation with such matter making the necessary comments on the background of the Treaty or Agreement of Cartagena, passing later to the dictatorial laws issued in Brazil and in Argentina for this control, but it so happens that the Review of the Association of Lawyers of Buenos Aires, recently brought to the public light its issue number 1/2 (Volume Twentyeight), corresponding to January to June of the year of nineteen hundred and seventy two, where two interesting and exhaustive studies on this matter were published, to wit: "Present tendencies of the Industrial Property in Latin America" by Dr. Ernesto D. Aracama Zorraquín and "Comments on the (Argentinian) Law Number 19231 (Nineteen thousand Two Hundred and Thirty One), relative to the Registration of Licenses and Transfer of Technology" by Dr. Ernesto O'Farrell, both authors well recognized as prominent Argentinian practitioners of industrial property law. Therefore, any attempt to try to prepare a short lecture on the subject in question, would be doomed in advance to be considered as a pale reflection of such interesting works which lectures I strongly recommend to you and to all those interested in the matter, be them lawyers, investigators or business men. If you are so kind to permit me to make a commercial ad, I suggest that you make a note in the

sense that copies of the issue 1/2 of the Review of the Association of Lawyers of the City of Buenos Aires can be obtained addressing your request to the Director of such Association in Montevideo St. No. 640 Sixhundred and forty in the City of Buenos Aires. Unfortunately, translations into English of the two works are not yet available, as far as I know, but I hope that in the near future such translations will be published profusely throughout the world in specialized reviews of your country.

In the meantime, from the lectures already released to you by my colleagues Mr. Oscar Becerril, Mr. Antonio Dávalos and Mr. Jaime Delgado and from the lecture that Mr. Mariano Soni will also address to you next to me to conclude this test of patience that the Mexican Association of Industrial Property decided to impose on you, you may obtain sufficient generalities so as to form yourselves an adequate idea about the present trends of the Latin American countries in the area of interest for you.

On the other hand and just with the view of giving satisfaction to my pride by staying a little longer in the limelight, I have decided to continue bothering you until the minimum of time of my compromise with my professional conductors is exhausted. To this end, I am taking the liberty to address you the following release.

Born in your country with the destructive ideas of Madame Penrose, Professor Fritz Machlup, Mr. Raymond Vernon and the late Senator Keafauber; encouraged in Cambridge by the people of the Harvard University Development Advisory Services and aggressively developed by the Latin American economists Messrs. Miguel S. Wionczek, Constantine V. Vaitos, Helio Jaguaribe, Aldo Ferrer, Theotonio Dos Santos and some others, there exists a well-defined movement trying to abolish industrial property protection and certainly the patent system, or at least to weaken such protection and system on the assumption that these legal mechanisms are crude and harsh instruments used by all the imperialisms without distinction of colors to maintain the Latin American countries in a stage of underdevelopment and with their processes of industrial development well blocked. This movement has a well-defined nationalist character and for good or for evil is conquering the minds of practically all the political leaders of Latin America and of course of those entrusted to orient the economic policy of Latin American governments.

In our country, at least about five years ago, attempts to amend the Industrial Property Law with a clear tendency to weaken the patent protection at least in what concerns to the field of chemicals, medicines and pharmaceutical preparations have been made from time to time, producing as a logical consequence a counter-action claiming for a total revision of the Mexican Industrial Property Law, as it is presently the general consensus, that such a law needs such total revision in order to incorporate such changes and amendments that are necessary to avoid the commitment of abuses by the patentees as well as to make such a Law an adequate instrument to actually permit the enforcement of industrial property

rights. More recently, however, those people devoted to form the opinion of the public, apparently abandoned their petitions for the revision of the Law of Industrial Property switching to claim for the governmental control of the contracts and agreements transferring technology and of the licenses for the exploitation of patents and registered trade marks. In September first of 1971 nineteen seventyone, we noticed that the question of the control of transference of technology and of the licenses, had in Mexican high political circles, priority over the revision of the Industrial Property Law. In fact, on that date, the President of the Republic in his annual report to Congress, recognized that the process for the transfer of technology for our country had just begun to be studied but that anyway the following facts have been already established: a) that for every practical purpose the industrial development of Mexico still depends from the importation of technology, b) that this means a clear dependency from foreign technology, c) that the imported foreign technology comes mainly from the United States and is dispensed without any adaptation to our local conditions, something causing an undesired increase in our production costs and consequently diminishing our possibilities of exportation; d) that very often the importation of technology is effected through the so-called "tied contracts"; e) that the Mexicans are in a weak position to negotiate adequately contracts for the transference of technology, this forcing them to accept harmful conditions, and f) that payments made by Mexico for the imported technology are disguised, since many times the royalties fixed in the contracts have no value in comparison with the indirect payments imposed by the licensors or suppliers of technology through means such as imposing to the licensees or purchasers the acquisition of inputs at excessive prices, such inputs capable of being machinery, raw or partially prepared materials, technicians, administrators, etc. etc.

As a consequence of this situation, the President announced then the prompt establishment of measures tending to 1) create a compulsory registration of all contracts transferring technology, 2) define limitative criteria of general application in what concerns to the acceptance of foreign technology, barring all clauses tying contracts or imposing to Mexico the obligation to acquire physical inputs pursuant the wishes or indications of the owners of the technology and 3) establish in the National Council of Science and Technology an Information Center concerning data about available technology and international prices of such technology, as well as the position of the world technology market, with the purpose that the Mexican importers of technology may have a strong position when negotiating the acquisition of technology.

From the above measures, only the Information Center has materialized and is already working. However, a Presidential Bill of Law establishing a control by the Mexican Federal Government over all transference of technology and on licenses of patents and trade marks, will be presented at any moment to the Mexican Congress and you can expect that when this happens, the bill will have been well studied and

discussed previously.

On the other hand, additional bills of law regulating as completely as possible the conditions in which from now on Mexico will continue receiving investments from abroad, can also be expected in the near future from the President of Mexico.

If in accordance with your professional duties, you have been watching the political development of Mexico in these important areas of great interest for all of us, you must have been informed that a few weeks ago the American Ambassador in Mexico, Mr. McBride, caused great sensation here and in the United States, when in the course of a speech addressed to the meeting of the Mexican-American Bussinesmen Association, he asked if Mexico is changing the "rules of the game" in these areas of transference of technology and foreign investment.

In the opinion of the press observers, considering that both said areas have been practically not regulated up to now, the Ambassador question was a diplomatic trick to provoke, as logical reaction, the issuance of such regulations which existence will assure the necessary juridical security for the great further American investments in Mexico already planned.

Now then, my Dear Colleagues, when the Mexican Congress will issue the new laws demanded in the Presidential bills, we all will know the *rules of the game* and when you discover that they are "fair rules",

you can rest assured that in the shadow of them, our countries will start a new age of intensive trade interchange between our countries, based now on a fair new deal, something that Mexico had been demanding for years and years.

In the meantime, all of us, the licensing executives, must increase our professional capacities in order to be able to properly represent our role in such new age that we can envisage for the coming future.

*\*About the Speaker: Mr. Bernardo Gómez Vega was born in Mexico, D.F.*

*He completed in this city his elementary, secondary, preparatory and professional studies.*

*He obtained his Law Degree at the National University of México on November 26, 1942.*

*From his initial professional activities in the Legal Department of a local Banking Institution, in 1946, he began to practice his profession exclusively in the field of industrial property in the Firm of Uthoff, Gómez Vega & Uthoff.*

*Mr. Bernardo Gómez Vega has been Vice-President of the Inter-American Association of Industrial Property, President of the Mexican Association of Industrial Property and is currently holding the position of Treasurer of the Mexican Group of the International Association for the Protection of Industrial Property.*

**INTERNATIONAL LICENSING CONFERENCE  
LICENSING EXECUTIVES SOCIETY**

**TOKYO, JAPAN — 1972**

