

Strong Case for New Mexico Law

New law on inventions and marks is hardly radical; it puts industrial property rights into modern form

BY JORGE PEREZ VARGAS*

The thought of Mexico sometimes evokes only the much-publicized sleepy and carefree attitude of a "mañana" way of life; the excitement of a holiday trip to Acapulco; the joyful sound of a "mariachi" band; but Mexico is much more than that. It is a fast-growing nation composed of 31 Federal States and a Federal District with widely different, although perhaps related social and economic problems; with very different economies and generally common aspirations. All of these states are united by a common bond of Spanish heritage and language and a common religion, as well as a very strong Indian influence which contributes toward a diverse racial composition.

Our population of approximately 60 million people ranks third among the nations of the Western Hemisphere, and our population growth, of approximately 4% annually, rates in all probability among the highest in the world. Out of a working force of approximately 16 million, Mexico has three million jobless and four million underemployed. They range from uneducated, barefoot, poorly nourished, to highly educated, well satisfied, and even sophisticated by U.S. or European standards.

The life of the middle to upper-middle class bears a close resemblance to the same categories in America. A male Mexican shaves every morning with a TRACK II GILLETTE razor after applying an OLD SPICE shaving foam, or he connects his SUNBEAM or REMINGTON electric razor. He takes a bath with a DIAL, PALMOLIVE or COLGATE soap after washing his hair with BRECK shampoo. He combs his hair after applying ALBERTO VO5 hair conditioner or an ARAMIS hair spray. His clothes include ARROW shirts, COUNTESS MARA ties, FLORSHEIM shoes, HICKOK cufflinks and HART SCHAFFNER suits. His food is stored in a GENERAL ELECTRIC or WESTINGHOUSE refrigerator. His breakfast is likely to include SANKA or MAXWELL HOUSE coffee, QUAKER OATMEAL, or KELLOGG'S RICE KRISPIES or CORN FLAKES, or even pancakes prepared with AUNT JEMIMA pancake flour some of which may be prepared in an OSTER brand of cooking apparatus. He washes his teeth with CREST or BINACA toothpaste and with a DR. WEST'S or TEK toothbrush; he drives to his work in a FORD, DODGE or

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CHEVROLET automobile; uses in his work a PARKER or SHEAFFER pen on bond paper from KIMBERLY-CLARK. He smokes WINSTON or MARLBOROUGH cigarettes and lights them with a CRICKET lighter. His photocopies are made from a KODAK or XEROX reproducer. His secretary uses an IBM typewriter. If he is overweight, he diets at noon with either PFIZER'S LIMITS or MEAD JOHNSON'S METRECAL. If he has a heavy dinner he will take a couple of ALKA-SELTZER antacid analgesic tablets and thereafter, before retiring upon his SIMMONS mattress, he might watch IRON-SIDE or POLICE WOMAN on an ADMIRAL TV set or hear his favorite music on RCA VICTOR stereophonic equipment. On weekends, if he is active in sports, he will use a WILSON tennis racket or PING or LYNX golf clubs. On his feet will be TRETORN sneakers or FOOT JOY shoes. If he is a movie fan, he will see an MGM or a 20th CENTURY FOX motion picture, and if he likes outdoors, he will go on a picnic with his family and eat KENTUCKY FRIED CHICKEN with a 7-UP or a COCA-COLA to wash it all down. A similar litany of foreign trademarks could be recited as part of the life and routine of the Mexican woman who comes from the middle class of Mexico.

It is self evident that the above-mentioned trademarks represent in their field enormous quality and prestige. However, the continued and increasing use of them by Mexicans constitutes a considerable expense upon the economy of the country.

Our former Law of Industrial Property was enacted in 1943, approximately at the same time that the Industrial Revolution started in Mexico. Tremendous undertakings comprised of capital, management, technology, and patents and trademarks were initiated from abroad and established in Mexico, thirty years after, an analysis by our government established that:

No doubt, foreign investment has played a role in the economic growth of our country, but along with this growth have come greater concentration of income and production, increased underemployment and unemployment and distorted consumption patterns. Foreign capital that favored our growth has come to represent an obstacle in certain areas of our economy, a process evident by the balance of payments of our country; by the increased earnings by foreign capital and the payment for interest, and the payment of royalties for patents and trademarks.

It is obvious that the nature of foreign investment in the present world has changed. Foreign investment not only implies the transfer of capital but also the transfer of technology, that obliges recipients to acquire the right to use technical methods, services and knowledge; and imposes restrictions on markets, administrative and marketing methods. All these practices represent a transfer

of resources to highly industrialized nations.

The transfer of resources to developed nations is only an aspect of technological dependence, but by no means the only cost of technology. The weak bargaining position of developing countries makes in some occasions excessively costly the acquisition of technology.

The high price of direct charges, such as royalties for use of patents and trademarks, technical assistance, and know-how, are only a part of the complete cost of transfer of technology. There are other costs, such as the price of capital goods and equipment, purchase of inputs, intermediary goods and equipment, in addition to profits and the cost derived by the limitations imposed to exportations.¹

Studies made in Mexico and in other relatively underdeveloped countries proved that profits earned from supplying technology, including patents and trademarks, surpassed the profits realized from capital investment. This fact caused the Mexican authorities to conclude that the transfer of technology in Mexico under the new conditions that have come out of the development process of the last 30 years, failed to take into account the decisive role of science and technology.

The United Nations Conference on Trade and Development estimated in 1968, that payments by dependent countries for royalties on trademarks and patents, dividends earned on foreign capital, and higher prices for the purchase of repair parts after sale services, were around 1.5 billion dollars. These transfers increased at an annual rate of 20% and by 1980 will represent nine billion dollars, or 20% of probable exports by the underdeveloped world at the end of the current decade.²

40 In view of the foregoing, and with the double-fold purpose of avoiding excessive payment or unjustified royalties and of eliminating onerous provisions that were frequently included in patent, trademark, and technical assistance agreements, the Mexican government enacted on December 30, 1972, the Law on the Registration of Transfer of Technology and the Use and Exploitation of Patents and Trademarks.

In explaining the purpose of the Law, it was pointed out that technology acquired by our industry was in many cases extremely useful to national development, but in other cases obsolete and inadequate. Moreover, through transfer of technology agreements the supplying companies sometimes obliged the recipients to acquire obsolete goods, overpriced inputs, prohibited or limited exportations. Thus the expansion and the creation of independent technology was impeded.

The Secretary of Industry and Commerce explained, at that time, that Mexico had an obligation to create its own technology and to adapt foreign technology to its own needs, considering that in a country such as ours, capital supply is limited, while labor is abundant and inexpensive. He also stated that, although the Government had come to realize that it was not possible to create Mexican technology in several fields because of the substantial investment required, it was essential to create or develop our own technology in those areas where we had achieved an acceptable level of development. It was said that: "Mexico (in accordance with the statement pronounced by President Echeverria at that time) does not pretend to create an independent science, but to be independent through science."³

The basic legal implication regarding trademarks in the

Law on the Registration of Transfer of Technology and the Use and Exploitation of Patents and Trademarks, turned on the provision that required all trademark license agreements, whether subject to royalties or not, to be registered with the National Registry of Transfer of Technology. Officials of the Secretary of Industry and Commerce of Mexico estimate that "the savings for our country subsequent to the passage of the Law of Transfer of Technology, that is, from February 1973 to January 1976, amounts to more than 350,000,000 dollars, in royalty payments, and the conditions of many agreements have been improved."⁴

Now, four years later, Mexico has enacted the Law on Inventions and Marks, which became effective on February 11, 1976.

Although the new Law purports to be very modern and current, it contains approximately 200 articles out of a total of 237 that are essentially the same as our law of 1942.⁵

Not only this, but 56 articles of the former law are contained in the 66 which comprise the trademark chapter, and the law also includes all articles of the chapters regarding indication of source, commercial names and commercial advertisements. Of course there are important changes and the most significant ones were taken from the experiences of other countries, such as Argentina, India, Pakistan, East Germany, and Decision 85 of the Cartagena Agreement, as well as the draft of Law prepared by WIPO for underdeveloped countries.

Now, referring specifically to the new law and to trademarks in particular, Title 4 is divided into eight sections. I will discuss only those provisions which I consider of major importance and where possible, the official reasoning behind those provisions.

I. SERVICE MARKS

The law includes the concept of "service marks", which was not contemplated in the 1942 law. The first country to recognize service marks in its law, was the United States in 1946. The first service mark in Mexico was granted on June 26, 1952, and thereafter from 1953 to 1966, approximately 65 registrations for service marks were granted. However, these registrations were not specifically provided for under the law, and the Bureau of Industrial Property adopted a policy in 1966 whereby any new registrations were denied. Various petitioners challenged the denials before the Federal Courts of Mexico, and finally the Second Circuit Court, by way of five continuous resolutions, established the jurisprudence necessary to declare service marks to be registrable marks.⁶

The above factual and legal situation has been recognized with appropriate provisions in the new law.

II. TERM OF PROTECTION AND RENEWAL OF TRADEMARKS

The term of protection of trademark registrations is reduced in the new law from ten to five years counted as of the legal date which is the filing date of the trademark application. This term may be renewed indefinitely for five-year periods.⁷

The special renewal for nonuse which was provided for

in our 1942 law, and which had the effect of excusing the nonuse of a registered trademark in Mexico, has been eliminated from the new law.

One of the principal innovations of this law, is the obligation that effective use of registered trademarks be made within a period of three years from the date on which they were registered, that is, from the date of grant of the trademark or from the date on which the new law became effective.

In line with the above, the new law establishes that the owner of a registered trademark must prove to the satisfaction of the Ministry of Industry and Commerce, within three years following its registration, the effective use thereof, at least in one of the classes for which a registration has been obtained. If use is not proven, the registration will be automatically cancelled.⁸ The cancellation of rights which takes place as a consequence of the omission to prove the effective use of a trademark will not require an express declaration or resolution by the Ministry of Industry and Commerce.⁹ As soon as the cause for cancellation arises, the notation will be made in the corresponding file and publication thereof will be made in the Gazette of Inventions and Marks.

Effective use of a trademark registration is understood to be the ongoing sales of goods or services protected thereby, in volumes and conditions which the Ministry of Industry and Commerce considers effective commercial exploitation.¹⁰

The new law establishes that trademark registrations which have lapsed for lack of renewal or that have expired for nonuse, may be applied for by any person after one year, counted from the lapsing or expiration date. However, the owner of the lapsed or expired registration may apply for a new registration immediately upon expiration or at any time thereafter.¹¹

It is important to note that this re-registration is not automatic and the corresponding application will have to undergo the novelty examination.

The re-registration of a trademark which has elapsed or expired for lack of renewal or use, effected by its owner, within the year counted from the lapsing or expiration date, in my opinion will produce the same effects as the former nonuse renewal.

It should be noted however that the new registration may be contested if it infringes third-party rights in accordance with Section VI of Article 147 of the new Law.

Finally, the period of grace for renewals, which in the 1942 Law was two years, has been reduced to six months.¹²

III. USE OF TRADEMARK REGISTRATIONS

a) *Actual Use*

According to the new law, a trademark registration must be used as originally registered. If use thereof is made in a different form, the trademark registration shall lapse following the corresponding resolution issued by the Ministry of Industry and Commerce.¹³ An exception to the provisions of this article will be made in the case of modifications which do not alter or affect the identity of the trademark, or which only modify the dimensions or the material on which it is printed or reproduced.

This provision is intended to avoid use of the mark in a different spelling from that found in the mark as

registered.

b) *Use of Same Mark for Same Products or Services*

Article 116 of the new law provides that the Ministry of Industry and Commerce may establish after appropriate hearings, a general resolution that products or services, manufactured or rendered by a single owner, which are substantially alike — that is, that they differ only in their incidental characteristics — must be sold under the same trademark or service mark registration.

The reasoning behind this provision is explained by the Executive Branch in the introduction to the Bill sent to Congress. The purpose is to prevent the same goods or services from being sold or rendered by the same mark owner at different prices and to assure that the public is not confused into believing that different products or services are being sold merely due to the fact that different trade or service marks are used. For example, this provision should prevent cases where the same product, such as soap or eye drops, are sold under different trademarks, and at different prices because of their different presentation to the public.

c) *Possibility of Prohibition to Use Trademarks*

A major innovation in the new law is contained in Article 125, which establishes that for public interest reasons, the Ministry of Industry and Commerce may make mandatory the use and registration of trademarks, for any goods or services.

The innovation is established in the second paragraph of the Article 125 and consists in the possibility of the Ministry of Industry and Commerce, after appropriate hearings, to prohibit, also for reasons of public interest, the use of trademarks, whether registered or not, on a certain product of any segment of the economy.

The general resolution in the cases discussed in the two preceding paragraphs, will be published in the Official Daily of the Federation, and will contain the conditions and terms to be observed. The failure on the part of the manufacturer to comply with such a resolution is punishable according to the law.

The above provision furnishes the Ministry of Industry and Commerce with the authority to prohibit the use of trademarks and to obligate the manufacturer to use a generic term instead.

The Secretary of Industry and Commerce indicated¹⁴ that this was intended for certain products of the chemical or pharmaceutical industries. However, he emphasized, this measure would be taken only after a careful study of the situation and after hearing those who would be affected by any such resolution. He further indicated that the objective of this provision is to permit the saving of considerable advertising expense and to remedy a vicious situation whereby the Ministry of Industry and Commerce fixes an official price upon a certain pharmaceutical product, and the same is avoided by presenting the product with a different trademark, which was not included in the list of products subject to the established price.

It was confirmed by the Secretary of Industry and Commerce that in the cases where the above measures would be taken, the manufacturer of the affected product could and should use his name in combination with the generic name of the product.

The practice of the above provision is not new. Similar

provisions have been enacted elsewhere. Pakistan, and I am told that for certain pharmaceutical products, the State of Massachusetts has treated the problem in the same way.

d) *Use of Combined Trademarks*

The most important innovation in the trademark chapter, and in all probability of the most transcendental importance, is the provision contained in Article 127, establishing that all trademarks originated abroad, or owned by foreign individuals or legal entities, and which are destined to cover goods *manufactured in Mexico* under license or not, shall be used in combination with a trademark "*originally*" registered in Mexico. Both trademarks must be used in equal prominence.¹⁵

The Spanish word used in the Law is "vinculada" which is translated by Spanish-English dictionaries as "tied" or "linked" and not hyphenated as most people think. You must remember that even when a word is properly translated, it may actually lose some of its true significance. I mention this fact, since in reviewing some of the translations of the Law, I noted that some translators use the word "jointly"; others, "in combination," or "association," for the Spanish word "vinculada."

The trademark "originally" registered in Mexico may not consist of words of a live foreign language of their corresponding phonetic equivalents, or by the combination of two or more words of a live foreign language.

As you may see from the wording of Article 127, this innovation refers exclusively to articles manufactured in Mexico and not to products exported to Mexico and does not include service marks. The term "trademarks originated abroad" refers to those trademarks which are commercialized — that is, registered or used in a foreign country — before they were used or registered in Mexico.

To comply with the above provision, your licensee in Mexico should register a trademark never before used elsewhere in the world, that is, a mark of Mexican origin, and use it in association with each of the licensed trademarks. In other words, a single new trademark, used with all licensed trademarks, will suffice.¹⁶ However, kindly take note that in my opinion, one or more wordmarks should be used tied with a wordmark; a device mark or marks, with a device mark; and a logo mark or marks with a logo mark.

With Article 128, the new law establishes, in order to bring its terms in accord with the Law of Transfer of Technology, that all acts, agreements, or contracts which are executed for the use of trademarks, originated abroad or owned by foreign individuals or legal entities, whether subject to royalties or not, *shall contain the obligation* that such trademarks be used in combination with a trademark "originally" registered in Mexico and owned by the licensee.

To comply with the above obligation, I suggest that parties of a trademark license agreement amend it to include a clause indicating that the obligation to associate marks composed on licensee in Mexico is effected for the sole purpose of complying with Article 128 of the Law. The National Registry of Transfer of Technology, will deny the recordation of the acts, agreements or contracts which do not include the above-mentioned provision.

The obligation to use the combination of trademarks mentioned above, shall commence within one year from

the date of recordation of the act, agreement, or contract or from the date on which the foreign trademark begins to be used, if no act, agreement, or contract was executed.

If the above-mentioned provision is not observed, the act, agreement, or contract shall not have any legal effect whatsoever and its recordation shall be cancelled. The Ministry of Industry and Commerce may extend the above term for another year in cases where there are reasons to justify such an extension.

Failure to comply with these obligations can result in the imposition of various penalties under the Law.

The parties which have already recorded acts, agreements or contracts with the National Registry of Transfer of Technology, which provide for the use of trademarks, must comply with the above-mentioned obligations, within a term of two years, counted from the date on which the present law became effective.¹⁷ Failure to comply with these obligations will leave the act, agreement, or contract without any legal effect and, in addition, the parties may be subject to certain penalties.¹⁸

The Ministry of Industry and Commerce may extend for one year the two-year term mentioned above, in those cases where there are justified reasons for doing so.

While explaining to the Congress the above provision,¹⁹ the Secretary of Industry and Commerce indicated that in those instances where a foreign trademark is licensed to a Mexican individual or entity, the Mexican licensee is required in many instances: 1) to pay a royalty for the use of the foreign trademark; 2) to advertise and promote the trademark; and 3) to adapt his equipment and manufacturing systems so as to meet the standards of quality of the licensor of the trademark. These accommodations deprived the Mexican licensee of establishing his own business.

He further added that with the promotion of the trademark, the Mexican licensee introduces the product to the Mexican market with only the licensed trademark, thus increasing the prestige and position of the foreign trademark in Mexico and leaving a void when, if for any reason the license agreement terminates. In such a circumstance the Mexican licensee would be in a very critical position in view of the fact that in most cases he would not be able to manufacture the product any more and even if left with the possibility of manufacturing the product, he would be left without an established trademark for the sale of the product.

The above situation could become critical and even dangerous to the Mexican economy according to the Secretary, if the Mexican licensee had been exporting products to the international markets.

But apart from the economics, this provision, according to the Secretary, is designed to overcome a spiritual subordination prevailing among Mexicans, who while reading, seeing, and using foreign trademarks in a variety of ways every day, are led to believe that only the products that bear a foreign trademark are good, thus discriminating against those products that carry a Mexican trademark.

In addition, price was a factor in developing this provision. It was obvious, the Secretary indicated, that the use of foreign trademarks, especially in the export market, would be dangerous and detrimental to Mexico's economic development, since in most cases the additional costs involved by reason of the licensed use of the foreign

trademark would put the sale price of the product too high to effectively compete in international markets.

Finally, the Secretary declared that with this provision he hoped that the Mexican public would be able to recover and maintain confidence in Mexican products bearing Mexican trademarks. He cited various examples where the association of a foreign trademark with a Mexican trademark were illustrative of the desired purpose of this provision, such as IEM WESTINGHOUSE, for the manufacture of electrical apparatus, WILLARD AMERICA, for batteries and DINA RENAULT, for automobiles. In each case the Mexican public could identify the product as to its Mexican source, as well as its foreign source.

One month after publication of the law, the present director of the Bureau of Transfer of Technology and one of those who contributed in a substantial way to the draft of the new law, conducted within five days²⁰ two conferences in which he emphasized the reasons behind the provision requesting the mandatory combination of foreign trademarks with Mexican trademarks. His reasons are as follows:

1. To avoid long-term commitments for the payment of royalties and thus an adverse effect upon the country's trade balance of payments.
2. To avoid additional expenses incurred by a licensee such as: a) excessive advertising costs; b) unnecessary investment in manufacturing processes and specific machinery due to quality control demands by the licensor; and c) increasing royalty payments under long-term trademark licensing agreements.
3. To avoid restrictive clauses in trademark license agreements, whereby the licensee is obligated to purchase certain parts or components from the licensor, when such parts or components thereof can be obtained in Mexico.
4. To protect the international market for Mexican exporters, since in most cases the foreign trademark is also licensed to others in other countries thus preventing the Mexican licensee from exporting to those markets.
5. To protect the Mexican licensee when the foreign trademark license agreement expires.
6. To make Mexico's export products competitive in the international markets.

c) *Obligatory Licensing of Trademarks*

In accordance with Article 132, the Ministry of Industry and Commerce may, for reasons of public interest, grant compulsory licenses for the use of registered trademarks, in which even the Ministry of Industry and Commerce, after hearings at which the interested parties may participate, may fix the royalties payable to the owner of the trademark.

In his explanation before the Chamber of Senators,²¹ the Secretary of Industry and Commerce indicated that the above provision constitutes a novelty in International law, and that it would provide the Mexican State with a legal instrument to be used in those cases where an action could have an adverse effect upon the best interests of the country. He cited the case of a textile corporation that had become bankrupt. In order for the workers, who were to be subsidized by the government, to continue with the business, it was necessary to continue using the same trademark that had acquired great prestige in the Mexican

market. However, title to the trademark belonged to a person other than the company and the government lacked the legal means to provide for its use by the workers.

The Minister emphasized that the compulsory license for trademarks would be exercised only in those instances where an emergency existed and that in this event there would be royalty payments to the owner of the mark.

Mexico is not a confiscatory State; her clean history proves this fact. The case cited by the Secretary of Industry and Commerce continues to be negotiated under normal circumstances. In any case the Government must prove that there exists "public interest" as defined by the Expropriation Law. In addition, there is no indication that the Government will ever implement this Article, and unless I may be wrong, there is no point in worrying about this portion of the Law. For your information expropriation of patents was provided for in our Law of 1942,²² and to the best of my knowledge, there was not a single patent expropriated under the said provision.

IV. AUTHORIZED LICENSEES

Section V on Authorized Licensees does not contain substantial amendments. It confirms the practice established by the Ministry of Industry and Commerce, that in order to register trademark license agreements, it is necessary to prove that such agreements were previously registered with the National Registry of Transfer of Technology.²³ In addition, the new law establishes that the recordation of a trademark license agreement shall be cancelled: a) when the Registry of Transfer of Technology cancels its own recordation; b) when the owner of the trademark and licensee jointly request the cancellation; and c) by judicial decree.²⁴

V. ASSIGNMENT OF RIGHTS

This chapter contains three important innovations:

- a) The assignment of a trademark registration shall not have any legal consequence unless and until it is recorded with the National Registry of Transfer of Technology, and thereafter with the Bureau of Inventions and Marks.²⁵
- b) The Ministry of Industry and Commerce may deny the recordation of any act related to the use or assignment of a trademark registration if it considers that such an assignment would have an adverse effect upon the public interest.²⁶
- c) The third innovation deals with the right, upon recordation of an assignment, to re-examine the registration to determine if the registration falls within one of the prohibitions against registration established by the new law. In this event, the assignment would not be accepted for recordation.²⁷

VI. CANCELLATION OF TRADEMARK REGISTRATIONS

The last two major innovations are contained in Section VIII of the Trademark Chapter, Annulment, Termination and Cancellation of a Trademark Registration, Articles 149 and 150. The former article establishes that a trademark registration may be cancelled if its owner has en-

couraged or tolerated its transformation into a generic term corresponding to one or more of the products or services for which it was registered. In this circumstance, such a mark is in the public domain as of the date on which the corresponding resolution is published in the Official Daily of the Federation.

In the case where various licensees are using a trademark of foreign origin and the same product is involved and they have reached an agreement in order to use the same additional mark, in accordance with Article 130 of the Law, it will not transform the foreign trademark into a generic term. As I said, Article 149 requires that the owner of the mark "must encourage or tolerate," and you cannot do this by complying with the Law.

I strongly recommend that you review the use of your mark or marks to make sure that in practice there is an adequate legend showing that the mark is a registered trademark. Second, you should keep a record of all efforts to caution others who may misuse the mark.

Article 150 is also of great importance. Under this Article the Ministry of Industry and Commerce may cancel a trademark registration when its owner trafficks or makes improper use of the mark with respect to the price or quality of a product or service protected by the mark, to the detriment of the public or the economy of Mexico.

The above is a general discussion of the major innovations regarding trademarks in Mexico's new industrial property law. However, to fully understand the spirit of the Mexican Law on Inventions and Marks, which has been subject to criticism both in Mexico and abroad, it has to be analyzed from two points of view.

44 First, you have to see it as a mirror of a changing process of the industrial property system being effected on a worldwide basis, and second, as a mechanism of defense.²⁸

Contrary to what has been said, our law is not a radical one. At least it is less radical than many other modern legislations that deal with industrial property rights.

It should be mentioned that the attitude or spirit prevailing among the representatives of all countries, including countries that are highly industrialized, in the meetings that have been called to review the Paris Convention, accept the fact that the Convention probably will be amended to accommodate to the interests and desires of developing countries who seek to participate in international trade.

It was on December of last year, just a few days before the Mexican Law was enacted, that representatives of large and small countries, industrialized and underdeveloped, drafted in Geneva a declaration containing the objectives for the revision of the Paris Convention. This declaration not only accepts the basic principle of preferential treatment for the underdeveloped countries in industrial property matters, but also requests that the Paris Convention be amended to permit maximum liberty to every member country to adopt the legislative and administrative measures they believe are required to meet their political, social, and economic development policies.

In the light of the above, it is hard to conceive of our new law as radical. It is only an effort to put industrial property rights in Mexico in a modern form that is in keeping with what seems to be an international standard

that is coming to be recognized more and more by both developed and underdeveloped countries.

Strong criticism was also made four years ago over the Law on the Registration of Transfer of Technology. However, it is interesting to note that up to now technology continues to be sold and received in Mexico, all under terms that are more favorable to the economic welfare of the country.

While the new law will act as a mechanism by which foreign interests will not usurp our economic vitality, it will hardly foster the creation of domestic technology that is of high priority not only by our government but by all Mexicans as well. Accordingly, patented technology and trademarks of foreign origin are still quite welcome in Mexico, and the rights in such property shall continue to be protected and indeed, with more vigor than before.

The new law on Inventions and Marks is a reality, something with which we all have to live. It contains changes, but what institution remains unchanged in this changing world?

Mexico still offers some of the best conditions for foreign investment that are available today. However, Mexico wants those who invest to consider their investment not only as means to perpetuate their own interest, but also as a means of contributing to the creation of a more free, more just, and more generous world for all.

NOTES

1. Portion of a translation by Victoria Nieto of Mex-Am Review of the "Mexican Themes" Booklet entitled *Independencia Economica*, published by the Editorial Department of the Ministry of the Presidency. (March 1976/Volume 44 Number 3).

2. *Ibid.*

3. José Campillo Saínz, "Goals and Questions on the Draft of Law on Transfer of Technology and the Use and Exploitation of Patents and Trademarks". *El Mercado de Valores, Nacional Financiera, S.A.*

4. Jaime Alvarez Soberanis, *Legal Aspects Concerning The Transfer of Technology in Mexico*, 1976.

5. César Sepúlveda "New Legislative Experiment", article published in "Excelsior" on December 23, 1975.

6. Case 2641/69 — Underwriters Laboratories Inc.

7. Article 112 of the new Law on Inventions and Marks, hereinafter referred to as "LIM".

8. Article 117 LIM.

9. Article 198 LIM.

10. Article 118 LIM.

11. Article 99 LIM.

12. Article 139 LIM.

13. Article 115 LIM.

14. Address of José Campillo Saínz, Secretary of Industry and Commerce before the Chamber of Senators on December 23, 1975.

15. I shall not discuss in detail whether Article 127 violates Article 2 of the Paris Convention. Notwithstanding the fact that this is a debatable and controversial point since Mexican licensees are the ones obliged under the Law to effect the association, I am inclined to the opinion that there is such a violation since in a strict sense Article 127 does not permit the owner of foreign trademarks to have the marks used by themselves. In this instance, it is not my opinion that counts but that of others, such as the Secretary General of WIPO which is an institution organized to apply the Paris Convention.

16. Some interpretations by the Ministry of Industry and Commerce Officials indicate that a different trademark of Mexican origin will be required to be used in association with each licensed trademark.

17. February 11, 1976.

18. Transitory Article No. 12.

19. *Supra* note 14.

20. Conferences by Mr. Jaime Alvarez Soberanis, on March 4, 1976 before the Mexican Bar Association; and on March 9, 1976 before the American Chamber of Commerce of Mexico City.

21. *Supra* note 14.

22. Article 73 of Mexican 1942 Law of Industrial Property.

23. Article 135 LIM.

24. Article 138 LIM.

25. Article 141 LIM.

26. Article 146 LIM.

27. Article 145 LIM.

28. "Mecanismo de Defensa", article by Mr. Miguel S. Wionczek, published on February 23, 1976, by Mexican Newspaper "Excelsior".