Technology Exchange in Brazil

A studied analysis of Normative Act 15 by U.S. corporate patent attorney

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BACKGROUND

Ordinance ("Normative Act") No. 15 of the Brazilian National Industrial Property Institute ("INPI") was promulgated on September 11, 1975 by the president of the INPI under authority of Industrial Property Code Law No. 5772 of December 31, 1971 and No. 5748 of December 11, 1970.

As such, this "Normative Act" 15 is not a "law" of Brazil in the same sense as an act of the Brazilian legislature or head of the executive branch of government. Accordingly, the full legal force and impact of this INPI Act, and of such action — or inaction — as may be taken — or refused — by INPI under authority of this act, is as yet not fully determinable.

However, the economic/political philosophy and pressures underlying Act 15 are reasonably clear, and the application of the act by INPI in implementation of such philosophy and in response to such pressures, is beginning to emerge in reasonable clarity in the year following its promulgation.

It is not a purpose of this paper to review or to analyze the economic or political bases or objectives of Act 15, but, rather, to identify and briefly to comment upon some of the more significant effects of Act 15 upon the future of technology exchange between foreign firms and Brazilian private and state-owned companies.

Simply in explanation of minimally necessary background, therefore, suffice it to note that Act 15 represents an attempt by at least one involved and important segment of the governmental authorities of Brazil — INPI — to pull together, and to enunciate in a single, broad act, the rules and regulations controlling the flow of technology into and out of Brazil, its use in the country, and its application in Brazil's international trade. An inherent and important corollary, of course, is a significant element of control of currency outflow and of internal application of available funds. Such functions of Act 15 are intended by its promulgators and advocates to have both immediate and long-term effects on the Brazilian economy by (1) reducing dependence upon imported technology in greater reliance upon a growing and increasingly-fostered national technical effort and capability; (2) decreasing the cost of essential imported technology — with the consequent "feedback" advantages of (a) improved foreign trade balance and (b) applicability of thus — "saved" funds for internal use, including national technology improvements; and, (3) particularly, in the longer term, further improving the country's foreign trade and exchange balances by enhancing the export of Brazilian technology and the finished and/or semi-finished goods produced by means of that technology.

These are commendable goals, readily understandable, with which all or most of Brazil's trading partners can readily sympathize.

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Results Questioned

However, as in the case of similar laws of some other countries, enacted apparently for similar reasons, it becomes necessary carefully to consider the effect of some provisions of Act 15 upon the desired objectives. If those provisions, strictly construed and implemented in all cases, work an unreasonable hardship upon the other, foreign party to a proposed technology transfer arrangement, to the point where the arrangement will not be possible, then, it is clear, the commendable objectives of the act have not been achieved.

Although it is as yet somewhat premature to draw final conclusions with regard to the overall net effect of Act 15, it does appear that serious problems may arise unless a "reasonable" construction is applied or unless modifications are made to some provisions.

Act 15 creates the following five classes of agreements within one or another of which all contracts for technology exchange must be fitted.

Contract Category	Applicable Part of Act 15
Patent licenses	Part 2
Trademark licenses	Part 3
Industrial technology supply contracts	Part 4
Technical-industrial cooperation contracts	Part 5
Specialized technical services contracts	Part 6

Although the act states (Section 1.1.1) that each of these contract categories is quite distinct from the others, in practice some provisions, particularly of Parts 4, 5 and 6, are, at best, imperfect templates for contract development and, at worst, create obstacles or inter-part conflict problems impossible to solve on bases of logic or precedent. Although the nature of Parts 2 and 3 are self-evident, here too, there are provisions in these parts which present similar characterization and intent problems when considering the act as a whole.

Parts 4, 5, and 6 do have one clear common denominator, i.e., each relates to transfer (not licensing) of technology not protectable by patent or trademark. While this statement may seem obvious and redundant, it does lead to a most vital question, i.e., "is the transferred technology protectable *at all* under such agreements?" This most important point will be considered later in more detail.

In general, on the basis of best information and experience to date, Parts 4, 5 and 6 may be said to apply, respectively, to the types of subjects matter as noted:

Act 15 Part No.	**Type of Subject Matter**
4	Detailed information, such as drawings, product and materials specifications, and operating "know-how" for the production of consumer or "light" industrial products and components.
5	Engineering and technical assistance, particularly as regards manufacture of "heavy" industrial goods and complete manufacturing facilities
6	Feasibility studies and similar planning and engineering projects

As will be illustrated by the following discussion, there are a number of ambiguities in the provisions of Act 15, as well as apparent conflicts between the provisions of the several parts of the act — all of which need clarification or modification for proper and effective implementation of practical commercial objectives. In particular, it would be most helpful to the guidance of concerned parties in the preparation and in the prosecution of contract approval and registration procedures, were there a better delineation of subject matter properly included in each of Parts 4, 5 and 6.

For present purposes, some of the major problem areas inherent in *patent licenses* (Part 2) and in *technical-industrial cooperation contracts* (Part 5) will be reviewed here in some detail — since between them, these two classes of agreements account for a very significant and substantial part of exchange of proprietary technology with Brazil. Necessarily, identification of such problem areas is limited to only a few of apparent greatest concern, and consideration of legal import and construction also is somewhat limited — since more in depth treatment probably is better left to those having more knowledge and experience in the civil law generally and the laws (including the general Civil Code), regulations and practices of Brazil in particular.

PATENT LICENSES (Part 2 of Act 15)

Under Section 2.1.2 of Act 15, a pending Brazilian application is proper subject matter of a patent license. An important, but unstated, corollary is that no royalties may be paid by the licensee until the licensed patent right matures into a granted patent, or, according to best opinion to date, upon allowance of the application.

Although this prohibition of licensing of an "unmatured" patent right is generally consistent with prevailing law in other countries, the practical result is more difficult because of its setting in the Act 15 context. It is not uncommon practice, in many countries, to include pending patent applications in a combined patent and know-how license under which at least some royalty payments may be made prior to patent grant on the theory that the licensee has had the benefit of the licensor's secret information. This is not possible in Brazil, since *technology not covered by patent or trademark is not licensable subject matter under Act 15.*

A major current difficulty with this provision of the act is the fact that grant of Brazilian patents are, on the average, long delayed. A recent study of 78 inventions, in three technical fields, filed in Brazil and in the United States from 1961 to 1975, showed 82% issued as U.S. patents but only four patents (5%) granted in Brazil — after an average pendency of seven and one-half years.

Obviously, a prospective licensor may be reluctant to enter into a patent license where, under the Brazilian Industrial Property Code (Law No. 5772/71), the term of a patent is 15 years from the filing date, even though royalties may be payable, after grant (or allowance), as of the filing date.

Associated Problems

This basic provision of Part 2 of Act 15 leads to associated problems. For example, if several pending patent applications are included in a patent license, it becomes of interest to know if and when the licensor is entitled to receive the *full royalty* (if payable as a lump-sum) or the *full royalty rate* (if payable as running royalties). There is at least some opinion that INPI approval of royalty payments in such circumstances will be limited to payment of a part of the full royalty or royalty rate in proportion to the number or value of the granted patents. Such an approach by INPI can be analogized to similar problems encountered elsewhere, as in the United States, of determining a fair and reasonable royalty of one or several desired patents in a large "package". Moreover, there still is some uncertainty regarding the more general questions as to the permissability of lump-sum royalties under Act 15, since the Act 15 philosophy is that royalties should be paid only in proportion to and as income is generated by the licensee. It is to be hoped that INPI will assume a reasonable position as to such questions, recognizing the impossibility of a too-fine attempt at individual patent value assessment, as well as the practical difficulties inherent in withholding approval of full payment of reasonable royalties until all licensed patent rights are granted or allowed.

Under Paragraph 2.1.1(a) of Act 15, the patent license must provide for the supply of:

> "...information and technical data, ... formulae, specifications, ... drawings and models" etc.
> "for the use of the process and/or the manufacture of the product."

(Paragraph 2.1.1(b) requires "when applicable, the rendering of technical assistance by the licensor's technicians ...".

Finally, under Paragraph 2.5.1(c) the patent license must:

> "establish as compulsory the supply with the license of *all* of the formulae, specifications, drawings and other information, and *all* the data necessary to the

actual execution of the object of the patent." (emphasis added)

The information and materials required to be thus supplied by the licensor, particularly as recited in Paragraphs 2.1.1(a) and 2.5.1(c) seem to include, *inter alia*, information and services normally characterizable and supplied as complete engineering and technical assistance. Presumably, too, it is the object of these provisions of Act 15 to get data and materials of the latter type into the hands of the licensee at no added cost to him over the license royalty, which, under Article 2.2, must be related to the net sales price or the profit derived by the licensee by use or sales of the licensed patented technology — except, perhaps, for *per diem* payments for services of the licensor's technicians (Section 2.2.5). To the extent that such constructions in fact reflect the intent and objectives of Act 15, it is believed that such provisions of this act are not realistic and will prove unworkable in many if not most cases.

It is imperative, therefore, first to determine the general nature and scope of unpatented technology and services which must be provided by the licensor under a Part 2 patent license.

Supplemental Information

Although a patent specification should be sufficiently complete to enable the patented invention effectively to be utilized by one skilled in the art, it is reasonable, as a practical matter, to expect that, in many instances, at least some minimal amount of supplemental information will be required for such purpose. In the United States, for example, opinions often have been expressed that patent specifications do not sufficiently describe the means of practicing the claimed inventions, and efforts long have been made to reinforce the statutory requirements for setting forth in the specification the best mode (or modes) of practicing the invention. In many other countries patent specifications generally are much less complete than the usual specification prepared by United States patent attorneys. Perhaps the drafters of Act 15 had such problems in mind. Such an objective is understandable and worthwhile. If so construed and applied, the above-mentioned provisions of Part 2 of the act should prove to be workable and effective.

Although no particular limit on royalties is expressly provided in Act 15, it appears that, in many if not most cases, INPI is applying a general rule of limiting patent license royalties to levels conventional, in many instances, for pure patent licenses, e.g. around 5% of net sales price.

If Act 15 is construed to require the licensor's transmission, under the patent license and for no additional compensation, of information and services of greater scope that that above suggested, it is believed quite likely that the act will fall short of its intended objective and will have a serious deterrent effect on technology transfer to Brazil.

It is axiomatic that any reputable licensor, in order to establish a successful licensing relationship, will supply or make available to his licensee all such data and services as may be accessible to the licensor and needed by his licensee effectively to implement the purposes of the license. That is not the problem here. The problems lie in the uncertainties of Act 15 as to:

1. The proper legal vehicle or vehicles to be used.
2. The compensation payable to the licensor.
3. The protection afforded the licensor with respect to the valuable, unpatented, secret information, and detailed work product transmitted to the licensee.

It is not clear under Act 15 whether or not it is permissable that either engineering or technical assistance, or both, properly may be supplied, outside the patent license, either by the licensor or by another party, under separate agreement, e.g. a technical-industrial cooperation contract under Part 5. It is believed that not only is such separate supply of engineering and/or technical assistance proper, but that it is essential in many cases.

"Conventional" patent license royalties have been evolved on the logical basis of the benefit to the licensee from his utilization of the invention, for example, as a result of new profit on sales, or economies of manufacture. A patent license simply enables the licensee to share in the licensor's legal rights to such end. A patent license normally does not include any obligation of the licensor to transmit to the licensee all of the licensor's supplementary technology, including, for example, engineering designs (other than designs essential for manufacture of articles or equipment or essential process designs of methods which are the subject of the licensed patent), or detailed engineering. Normally, when such additional information and services are required by the licensee, and are uniquely obtainable only from the licensor, separate agreements are developed for separate consideration. Development of new engineering information and tangible engineering work product, whether of a basic design or detailed nature, is expensive. In particular, new design information is extremely valuable and normally is not sold as a "commodity" on the basis only of manpower time applied to a particular project. It is proprietary technology in every usual sense of the term and charges for it normally include a fee representative of its unique character and the high costs of its acquisition by the developer. As such, it is considered a valuable property right, which, so long as it retains its confidential or unique nature, can command a special price in the marketplace.

In many instances, particularly in certain technical fields such as metallurgy, chemicals and petrochemicals, it is common practice for a process owner to grant a patent or combined patent and know-how license to the user, and for necessary facility engineering to be supplied by another party — usually an engineering firm specializing in the relevant technical field. Indeed, quite often, the licensor does not possess the requisite knowledge or capability of supplying such engineering. Unless the licensor is a firm of substantial size, it is quite likely that it will not have available personnel for rendering extensive or protracted services in a foreign country.

Reality Ignored

In any event, reality is ignored and serious impairment of effective and needed technology transfer is invited if a patent licensor is required to furnish or otherwise to make available to a licensee in Brazil, for usual patent license royalties, supplemental information, and services of any kind above and beyond that information and those services minimally necessary for fulfillment of the patent promise of a workable invention of practical utility.

The third of the above-mentioned problems associated with the required transfer of unpatented information along with a patent license concerns protection afforded to the licensor/transferor for valuable trade secrets and know-how, and his proprietary work product, as may be included in such transfer.

Under Act 15 (Article 2.4) the contractual obligations undertaken pursuant to a patent license terminate with the expiration of "the patent". At first glance, this provision seems quite reasonable. However, even minimal experience in a real-life context will see the surfacing of many underlying problems.

First is the matter of the protective time period in its simplest aspect. Obviously, and reasonably, a licensor who is engaged in an extensive, often worldwide program of licensing of his technology, wants to preserve its marketability for as long as he can. On the other hand, the philosophy reflected in Act 15, i.e. the requirement to *sell, not rent,* unpatented technology, also must be recognized.

Where the proposed patent license involves a single patent right, either an issued patent or a pending application, the licensor well may be concerned with a relatively short life of a Brazilian patent, and the consequent short period of remuneration. In such a single patent right case, it is not at all unlikely that the would-be licensor will have a rather difficult job in persuading a prospective licensee to accept a license unless or until the patent is granted. Unless heavy capital investment is needed, and the licensee doesn't want to risk that investment against the chance of the patent issuing, he probably is more likely to proceed without a license (assuming he doesn't need substantial accompanying know-how), paying nothing unless or until the patent is granted. Therefore, as a practical matter, long delay in the grant of the patent normally can be expected to commensurately decrease income realizable by the licensor.

Most substantial technology transfer arrangements involve, not one, but several or many patents and/or patent applications. Such cases present much more complex and serious issues which, apparently, were not considered in the development of Act 15.

For example, in such cases, usually there exists a substantial body of unpatented, secret information related to the patented technology, but which is difficult or impossible to associate with a particular patent. Under a literal construction of Act 15, when "the patent" expires, presumably any secrecy obligation of the licensee, with respect to associated confidential information imparted to the licensee, would terminate. The obvious problem (aside from the possibly short secrecy period) is how to identify the secret information "associated" with the one expired patent. If INPI insists on such an approach, the difficulties can be analogized to Shylock's dilemma in taking his pound of flesh without shedding a drop of blood. Such a feat is for magicians — not technicians or lawyers!

Alternative

An alternative would be to recognize the practical difficulties inherent in such situations, and to permit the secrecy obligation to continue at least until the expiration of the last to expire of the licensed patents. Such an approach would enable the parties to the contract to make independent judgments as to whether such a period (something less than 15 years, at most) would be acceptable. If the unpatented technology is "supplemental" in nature, and transferred, as suggested, pursuant to a separate agreement, its disposition by the licensee/recipient should be governed by such separate agreement, not by expiration of the associated licensed patent.

Paragraph 2.5.1 (e) requires the patent licensor "... to supply immediately to the licensee, detailed information on any improvements or developments he may introduce into the product or process covered by the license."

As a first consideration, this provision raises anew the above-discussed problem of fair compensation to the licensor for his unpatented supplemental information. Secondly, protection of unpatented improvements apparently may be lost by the licensee's disclosure of such information upon expiration of the patent with which such information is associated since, under Subparagraph 2.5.2b(iii), the license may not contain any provision which "prohibits the free use of the data and information transferred after the patent expires." It is not completely clear, however, whether "free use" of such information means only that the licensee himself can use that information free of payment to the licensor, or whether he also may disclose it to others or publicly — thereby effectively decreasing or destroying its value to the licensor. Assumably, in at least some cases, commercially valuable new unpatented information will be developed by the licensor late in the license life and supplied to the Brazilian licensee under this Act 15 provision. Under a construction permitting unlimited use or disclosure of information, its confidential character, and hence its value would be lost on patent expiration. Allowance of a reasonable minimum period of confidentiality after supply of such new information, e.g. three to five years, even after patent expiration, would seem compatible both with the interests of the licensor (preservation of his property right) and the licensee (continued advantage of use of information for which *he* has paid).

Patented Improvements

Patented improvements of the licensor also are included in the requirements of Paragraph 2.5.1(e). The inclusion of the new improvement patent must be formalized by an addendum to the principal agreement.

The monetary terms of supply of the licensor's improvements are not clearly set forth in Part 2 of Act 15. It might be inferred that they are to be included free of added cost to the licensee. In this regard, consideration of parallel, but somewhat different provisions of Parts 2 and 5 concerning exchange of the parties' respective improvements may be of some help. Under Paragraph 5.5.2(b), the contract may not require the technology recipient to "*assign* free of charge" his improvements to the supplier. Under Section 2.5(d), it is provided that the licensee must

> " .. own the rights to all improvements or developments he may introduce into the product or process covered by the license, and ... *such information may be transmitted to the licensor.*" (emphasis added)

Exactly *what* information may be "transmitted", and under *what conditions* is not clear. However, a "note" to Paragraph 5.4.2(c) indicates that, in the case of Part 5 contracts, patented improvements of the technology supplier must be covered by a specific patent license agreement, conforming to Part 2 provisions "except for the remuneration." At least some Brazilian practitioners hold that this provision cannot be negated even by express contractual agreement that no exchange of improvement licenses will take place.

Although Part 5 does not expressly provide for remuneration-free transfer of the supplier's unpatented improvements, the prevailing consensus seems to be that such is the intent of the act.

In contrast to such provisions of Part 5, Part 2 does not expressly forbid either "assignment" or licensing of the licensee's improvements, although the requirement of Paragraph 2.5(d) that the licensee must own his improvements may be construed as a prohibition of assignment to the licensor. The lack, in Section 2.5.d, of a parallel to the Paragraph 5.4.2(c) exception to remuneration for a license under the licensor's patented improvements might be construed to imply allowance of remuneration for such improvements covered by an addendum to a principal patent license. Nevertheless, it is possible INPI will conclude that no added remuneration, over that provided by the terms of the principal license, will be allowed. However, a question remains as to the permissability of an extension of those terms (perhaps on the basis of a modified royalty) until expiration of the improvement patent. If permitted, such provision, it is believed, would go far toward mitigating certain of the more onerous provisions of Part 2 as regards valid interests of licensors.

Nonexclusive Licenses

In any event, neither Part 2 nor Part 5 expressly prohibits the grant of a nonexclusive license to the licensor under the licensee's improvements. Interestingly, however, in at least some instances, INPI has construed the Part 5 prohibition of remuneration-free assignment of such improvements to include prohibition of royalty-free nonexclusive licenses. In construction of legislation wherein differing provisions or terms are utilized, and absent contravening evidence, as in the relevant legislative history, it normally can be assumed that different legislative intentions are thereby reflected. Application of such principles to the question of remuneration of the respective parties in case of licenses under the improvements of one or both parties leads to the view that, under Part 2, the question of remuneration, or lack thereof, is one for determination by the contracting parties. It is believed, however, that grant of a nonexclusive license to the licensor under the licensee's improvements should be on "equal terms" as between the contractants. Normally, one would consider such equality to be present if cross-licenses are exchanged, royalty-free, on improvements of both licensor and licensee. There is some opinion, however, that the requirement of Paragraph 5.5.2(b), regarding transmission of the recipients' improvements to the supplier

> "... under the same conditions as those applicable to the technology transferred and the services produced"

means that, for example, if the principal contract provided for payment of the originally transferred technology at, say 5% of the net sales value of a product produced under the contract technology, then the supplier also must pay at the same rate for the recipients' transmitted improvements. Similar reasoning, it appears, might be applied to transfer of improvements under a Part 2 patent license.

In either case, however, if such a position is adopted by INPI, it would appear to create more problems than those intended to be solved. In the usual case, the experienced licensor is more likely to make improvements than a licensee entering upon a new business. Were the licensor/supplier required to supply all of his improvements to his licensee/recipient, at no added charge, and with no protection for unpatented improvements beyond expiration of a licensed patent (in the case of Part 2 contracts), or some relatively short period, (e.g. 5 years) in the case of a Part 5 contract, but, at the same time be required to pay the same royalty for his use of the improvements of the licensee/recipient — even if these are of much lesser technical scope and value than the original body of technology transferred — the resultant commercial disadvantages to potential licensor/suppliers would, it is believed, be so substantial as to significantly adversely affect technology transfer to Brazil.

In at least one case of a proposed Part 5 contract, wherein the recipient and INPI took the position that the recipient was not permitted under Act 15 to grant to the supplier a royalty-free nonexclusive license under the recipient's improvements in exchange for a similar obligation by the supplier, the further view was expressed that, even if the contract expressly provided for no cross-exchange of improvements, the supplier nevertheless must unilaterally supply his improvements (or at least his patented improvements) under the terms of the principal contract and free of added cost. It is evident that uniform application of any such "lopsided" arrangement would be nonconducive to continued effective relations between the parties to such arrangements or to technology exchange generally.

A further result of Part 2 of Act 15, not normally previously encountered in patent licensing, arises under Paragraph 2.5.2(b) which provides that the license agreement may not:

> "contain any clause which, implicitly or explicitly, restricts and/or prevents the actual exploitation of the object of the patent, or the activities of the licensee, which are referred to ... by Law No. 5772/71 (the Industrial Property Code) ... and Law No. 4137/62 ..." (the Anti-Trust Law),

including any provision which:

> "i) regulates, determines, alters or limits the production, sale, price, publicity or divulgation, distribution, marketing or export ... and the reservation or distribution of markets or the exclusion of any market, except, in the last case, when permitted by specific legislation of the licensor's country, or when resulting from an international act or agreement to which Brazil is a party."

Although such provisions contain notes familiar to most attorneys and business persons having even a scanty appreciation of antitrust laws, application of these provisions, at least in certain fact contexts, can provide some rather unusual, and perhaps unanticipated, results. For example it is not uncommon practice for a licensor, holding patent rights covering both process and apparatus aspects of a particular technology, to grant to a party, desiring to practice the patented process to produce certain goods, a process use license including the right to *use* the patented apparatus in the practice of that process, but not to *make or sell* the patented apparatus. The licensor may wish, for example, to retain to himself, or for license to an equipment manufacturer, the right to make and sell the patented apparatus.

There exists a reasonably clear consensus that, under Section 2.5.2 of Act 15, the above-described arrangement is prohibited and that the licensee under the apparatus patents would be enabled to make and sell that apparatus despite even an express negation of such a right in his license. On the other hand, it appears to be a valid procedure to exclude from the process use license any grant under the apparatus patents and to grant licenses thereunder to another party for supply of the necessary equipment to the use licensee. The latter, by his purchase of the patented apparatus, would obtain an implied right to use that apparatus in the licensed practice of the process. However, it also appears that permissible "field-of-use" licensing in Brazil does not extend to the point of granting to one licensee a license under process claims and to another licensee a license under apparatus claims of a single patent. Therefore, to preserve the possibility of separate licensing of process and apparatus inventions, it would appear advisable to avoid the usual "blanket" application covering both aspects. This approach will require careful appraisal of patentability of the separate applications. Also, exclusion of, say, apparatus patents from a process patent license requires further consideration of patent "working" requirements. This factor is further discussed later in this review.

TECHNICAL-INDUSTRIAL COOPERATION CONTRACTS (Part 5 of Act 15)

A number of the problem areas of Part 5 contracts have been addressed above in connection with patent licenses. As previously noted, distinctions between the classes of contracts covered by Act 15 are sometimes difficult to draw. Indeed, a fundamental technology transfer question is raised regarding the intent and construction of Act 15 as regards parallel agreements in the form of a patent license under Part 2 and, for example, an engineering and/or a technical assistance contract under Part 5.

As explained above, past experience, and foreseeable future requirements of both the supplier and the recipient of patented technology, clearly demonstrate the need for considerable input of unpatented technical information and/or services by or on behalf of the supplier in many, if not most, cases. Absent clearer guidelines or precedents, each such situation presents a problem of construction of the apparently conflicting provisions of Parts 2 and 5. If the licensor of patented process technology is compelled, under Part 2 and for the price of a patent license only, to supply to the user licensee *all* data (available to the patent licensor)" ... necessary to the actual execution of the object of the patent," it logically might be concluded that there is no room for a parallel or supplemental Part 5 (or Part 6) contract covering supply of supplemental technical information or services such as engineering or technical assistance. But as already observed, if Act 15 is so construed, it is most likely to drastically curtail patent licensing in Brazil due to conflict with the necessities of real-life technology transfer. Assuming that such result is not the objective of Act 15, and that pragmatic considerations will prevail in construction of the act (e.g. that the above-quoted provision will be construed to require transmission of a bare minimum of essential technology), it remains, then, to determine under what form and under what conditions a practical arrangement properly can be devised to effect transfer of supplemental information and services.

To some extent, it is suggested, the solution of this problem lies in its statement. Thus, apparently — or at least hopefully — INPI will approve separate Part 5 contracts (otherwise conforming to Act 15 requirements) for the supply to a Brazilian recipient of technology and services *in supplement to* that minimum technology which the licensor is obligated to supply under a patent license. It is believed that careful distinction should be made between such unpatented technology and services as may be minimally necessary actually to utilize the patented invention, on the one hand, and, on the other, that which is desirable to make its assimilation and use by the licensee more efficient or more economical. In fact, carried to its logical conclusion, at least a major part of such minimally necessary technical information can and should be incorporated into the patent specification itself, as fulfillment by the patentee of his consideration for grant of the patent. To the extent that intangible experience, which cannot be so included in the patent, is necessary to embody the described invention in tangible, operative form or practice, such experience, it is suggested, is encompassed by the Part 2 requirement for the licensor's supply of technical assistance. Any engineering or other services beyond such minimum operative requirements, it is believed, could and should properly constitute the subject matter of an accompanying Part 5 contract (or, possibly, a Part 6 contract) between the Brazilian party and either the patent licensor or another party possessing such knowledge and capabilities. Thus, it is believed that an affirmative answer is the correct one in response to the basic question, "For a particular technology, can separate patent license and engineering and/or technical assistance agreements properly be implemented under Act 15?" In order best to assure full understanding and cooperation of INPI in such circumstances, it probably is advisable to make reference in each agreement to the other, or at least to be certain, if different INPI examiners are involved, that each is aware of the existence and applications for registration of all such parallel agreements.

A principal cause for concern among technology suppliers to Brazil is the Act 15 prohibition of licensing of unpatented technology. Trade Secrets and know-how long have been held in most countries, either in law or in practice, to be protectable either as property rights or under other legal theory, and subject to the possessor's disposition, as by licensing. Although attacks recently have been made in the United States on the basic proprietary nature of such information, such attacks have not as yet succeeded in overcoming the historical characterization of trade secrets as proper subject matter of a license agreement. Those engaged in technology exchange universally concur that trade secrets and know-how in many instances represent an element of practical commercial value at

(Please turn to Page 249)

ment is vitally important.

In closing, I would like to express our deepest appreciation to the United States for valuable technical assistance which has greatly contributed to today's economic development of Japan. I sincerely hope that our success has also been a success of United States licensors in international marketing and that licensing association between the United States and Japan would be maintained and would further develop in the future.

EEC Trademark — An Industry View

(Continued from Page 216)

mark takes away this exclusivity and consequently erodes the trademark right as such.

2) If two trademarks are considered as confusingly similar, this will be so for all times and not just for a 10-15-year period. Applying a different criterion after a certain period means corruption of trademark law and is bound to lead to confusion of the public.

If voluntary solutions cannot be found, it must be accepted that the prior rights must continue to be respected and that therefore certain EEC trademarks cannot be registered. This may be unpleasant for the applicant, but I firmly believe that there is no legal justification for undermining an established prior right just to please one of its owner's competitors, who is interested in the same mark for a larger territory.

Is this a disaster from the free-movement-of-goods point of view? I venture to say no for the following reasons:

a) Many national trademarks are not renewed after their original or second term, so the number of obstacles will to a large extent automatically disappear.

b) The EEC formally and legally constitutes one entity, but in quite some cases one considers the whole of Western Europe or even the whole Western world as one market. If one finds an unsurmountable anticipation in one or more commercially important countries, in practice one mostly decides to choose a different and less objectionable trademark anyway. The free movement of goods not being affected by a "free" trademark, I fail to see why it should be enforced in the event of a mark meeting with prior rights.

If I said so decidely no to this particular proposal, this certainly does not mean that I am negative on the European Trademark per se. Even more than in the past I am now convinced that a Common Market Trademark is a necessity and I gladly say in public that the Memorandum contains many constructive and positive elements, no doubt thanks to the valuable contributions and the hard work by Bryan Harris and the other three wise men.* On the other hand I see it as our common duty to fight for full protection of our existing national rights in the future, and if I say "our" I certainly do not mean big or multinational companies only, but the medium-sized and small ones as well, and "our" includes definitely also trademark agents and barristers who act for their clients' trademark rights.

My closing is an appeal to you to jointly work on a good EEC trademark convention which necessarily must be based on the principle that used prior trademarks may never be taken away from their owners, be it formally or virtually without their consent.

*Bryan Harris is Head of the Industrial Property Division of the Commission of the Common Market in Brussels who has presided the group which has drafted the Memorandum. The so-called "three wise men" are the three independent European Trademark experts who were called upon by the Commission so as to help them draft the Memorandum.

Technology Exchange in Brazil

(Continued from Page 224)

least equally great as patents. It is particularly important, therefore, to consider the intent and impact of Act 15 upon the exchange of unpatented secret information with Brazil.

The adoption, in Act 15, of the "sell, don't rent" philosophy as applied to unpatented information understandably is upsetting to prospective licensors. A licensor naturally becomes wary when faced with a requirement by INPI to delete, from his carefully constructed "know-how license," all references to "license," "proprietary rights," "licensed subject matter," "confidential information" etc. However, experienced licensors will readily recognize and admit that know-how, once transferred and adopted by a licensee, is, for practical purposes, irretrievable and thus, effectively, "sold." More important by far than the label applied to the transfer documentation are the legal and practical means available to the transferor to protect his present and future interests in the technology transferred to a particular recipient. Such protection normally is achieved in two basic ways, i.e., prohibition of disclosure by the recipient to others and by restriction to certain specified "licensed" use by the recipient himself. Limitations on both such protective devices are generally recognized and practiced. Thus, usually a "reasonable" nondisclosure period is applied. This period may be based upon the expected normal "lifetime" of the secret information, recognizing that it likely will become either technically obsolete or will fall into the public domain without fault of the recipient. In either event, protection is based upon a theory of the possessor's property right in information not generally available to the public or upon a contract theory of enforceability of the licensee's promise to refrain from certain acts. The laws of many countries have evolved many well-known limitations on the right of the owner of proprietary information, patented or unpatented, to impose use restrictions upon a transferee. Generally, though, such limitations do not conflict with the relevant basic premise of protectability of such information or rights, so long as those rights and the licensee's undertakings are valid in the context of applicable local law, and are not unfairly used or imposed, in derogation of an overriding public interest.

A great part of the expressed concern over the impact of Act 15 on agreements for the transfer of unpatented technology lies in the provision, in Article 5.4, that the term of any such agreement is:

> "... the term considered to be necessary to enable the recipient to master the technology by means of its actual absorption, its adequate use, and the attainment of concrete results derived from its incorporation ..."

and, in further limitation, for:

feror is compelled, by Act 15, to include his equipment patents in the Part 2 license, the transferee apparently would obtain, under Act 15, the right to make and sell the thus-licensed equipment. As noted, it is believed that the transferor properly may exclude his equipment patents from the license, relying upon the licensee's acquisition of an implied right to use the patented equipment on purchase from an authorized supplier. But under Subparagraph 5.5.2(d)(ii), the Part 5 contract may not contain any clause which:

> "stipulates as a condition or obligation the purchase of raw materials or components required for the manufacture of the product, or of machines and equipment from the supplier of the technology and/or from any other source he may determine, including domestic sources."

Informed licensing professionals assiduously will avoid "tying" arrangements prohibited by the laws of many other countries. It is not suggested that different criteria should be applied in Brazil as regards tying the purchase of unpatented, commercially available materials or equipment to that of proprietary goods. However, if construed literally as written, Act 15 appears to be much broader in its application to restrictions of supply sources than the usually encountered prohibitions against tying, impliedly including prohibition of designation as the sole supplier or suppliers of equipment even the party or parties authorized to make and sell patented equipment under the transferor's Brazilian patent rights. Although such result probably was not intended, clarification of Act 15 in this regard would be helpful.

There often are other, practical necessities for limitation of supply sources. A typical example is in the case of high investment, heavy capital equipment for which no manufacturing facilities or experience exists in the country. In order to provide incentive to such large investment, it often is necessary that local manufacture of such goods where feasible, be limited to only one or a few firms. In such cases, it appears reasonable that the transferee of technology under a Part 5 (or Part 6) contract be limited to such suppliers, so authorized by the transferor, as sources for the goods needed to implement use of the transferred technology — particularly, but not solely, in the case where such goods are covered by patents of the transferor.

Similar situations arise where only one or a few firms are technically sufficiently competent to provide goods which will serve effectively in their final application to the transferred technology so as to assure proper operation and thereby support the promise of the transferor and maintain his integrity and reputation, not only with the particular transferee, but with others in the relevant industrial community as well.

In many cases, in order (a) to comply both with the practical, commercial interests of the transferee in obtaining competitive bids and in directly negotiating prices with third party suppliers of equipment, and/or (b) to comply with anti-restrictive practices laws and regulations, a technology transferor will supply proprietary basic design information to the transferee who then may purchase equipment, to such design specifications, from a supplier of his choice, under suitable and reasonable secrecy and use constraints. Such an approach should be welcomed by INPI since it apparently achieves the principal objectives of Act 15. But there are accompanying problems for the transferor which must be solved. Thus, if he grants to the use licensee a Part 2 license under the relevant equipment patents, he loses the exclusive right, otherwise conferred on him by those patents, to make and sell equipment, or to license others to do so, in future cases. If he does not grant such a license, a question is raised, under Section 1.1 of Act 15 regarding proof of "working" in order to maintain the patents. In this regard, it should be noted that Article 33 of the Industrial Property Code (Law No. 5772/71) requires only that the patent owner, when so requested:

> "... prove that the subject matter (of the patented invention) is effectively exploited in the country (Brazil) either directly or by authorized third parties."

No registration of any contract is required under that Law. It is to be hoped that INPI, in construing Section 1.1, will place substance above form, and in cases where actual effective working of a patented invention is established, will not insist on the formality of registration of a Part 2 license.

Obviously, many other combinations of transferor-transferee interests and aims are possible in addition to the few examples treated above. Each raises different problems of application and construction of Act 15.

Other provisions of Act 15, such as the apparently unlimited liability imposed on the transferor, under Subparagraphs 2.5.2(b)(vi) and 5.5.2(d)(vii), for technology faults and defects or patent infringement, have not been discussed herein, but will require either reasonable construction or modification in order to accomplish the desired objectives of this comprehensive new act.

In light of such difficulties raised in attempting to accommodate parallel patent license and "technical assistance"-type agreements to the requirements of Act 15, one is tempted to forego the patent license and to rely entirely on the latter-type agreement — assuming first, that adequate, reasonable remuneration can be obtained for the authorized use of the transferred technology during the INPI-approved term and, second, that INPI will register agreements providing for a reasonable period of restraint on scope of use of the transferred technology (if applicable) and, particularly, on unauthorized disclosure of "confidential information." Logic and expediency support such an approach. Unfortunately, its adoption, even if successful, would reflect a failure of Act 15 to provide a workable context for practical application of the Brazilian patent law.

A brief comment on one aspect of Part 6 of Act 15 is considered most important. As observed in the foregoing background outline, Part 6 is the Act 15 vehicle for feasibility study contracts. Axiomatically, in many cases, a technical study is a necessary or highly desirable prelude to a fullblown technology transfer to enable a prospective licensee or recipient to determine if the technology if fact meets his technical and/or economic requirements. Commonly, a rational pro or con decision cannot, and should not, be made without full knowledge and competent personal assessment by the prospective "buyer" of essential technical parameters, which more frequently than not comprise information which is of valuable confidential nature and/or is connected with patented inventions.

for payment of reasonable liquidated damages in case of breach of such a condition. Theoretically at least, a requirement for such payment, at any time during, say, a 10 or 15-year secrecy-and-use-restriction term, should not be precluded by Act 15. Of course, if such a payment obligation should arise after the expiration of the INPI-approved term, payment to the injured supplier could be made only in nonconvertible cruzeiros but, coming from the transgressor's pocket, nevertheless would constitute a real deterrent to breach.

The alternative to such a rather unsatisfactory (but, perhaps, workable) result may well be, as noted, simply refusal of foreign technology suppliers in many cases to do business in Brazil. That is an end point which is not in the best interests either of Brazil, foreign technology source countries, or the private parties concerned. In such light, a solution along the lines suggested, or INPI's adoption of some similar response more flexible than assumed in the past, with respect at least to meritorious cases, appears worthy of serious consideration in order to achieve the worthwhile objectives of Act 15.

GENERAL COMMENTS

Again, it is emphasized that Act 15, perhaps too simplistically, categorizes technology transfer agreements by type, presupposing certain limited classes and interests of transferor and transferee, whereas in actual practice other relationships and interests frequently are involved.

For example, Part 2 apparently assumes that, for the transfer of patented technology, a simple licensor-licensee relationship between the transferor and the transferee is all that is necessarily involved and, consequently, that a single patent license agreement is adequate to implement the transfer.

Parts 4, 5, and 6 were designed to accommodate transfer of unpatented technology in which the transferor does not, or cannot, claim continuing proprietary rights. In case of Part 5, for example, Act 15 similarly assumes the uniform existence of a straight-forward, simple transferor-transferee relationship of the nature of the usual vendor-vendee type, for example, a manufacturer of heavy capital goods selling the related equipment manufacturing technology to a vendee who wishes to manufacture such goods.

In actual practice, however, transfer of technology may be made between several different classes of transferors and transferees. For example, a party to the transaction may be (1) a user, (2) an engineering firm, or (3) a manufacturer. The transfer may not always be between two parties only. For example, the proprietor of a patented process may possess and be capable of transferring the relevant process-related technology under a patent license. Associated engineering and/or equipment manufacturing information may comprise the special expertise or capability of another firm. The recipient may be the Brazilian product manufacturer alone, or perhaps he is interested only in the process information, and it is desired that the engineering and/or manufacturing information be transferred, directly, or through the product producer/licensee to a Brazilian engineering firm and/or to one or more Brazilian equipment manufacturers. The transferred information, in each case, may be patented, or unpatented but confidential, or both. The various possible combinations obviously are legion. Yet the provisions of Act 15 seemingly assumes, in the case of each contract for transfer of a particular technology, two parties only and a single technology category.

The difficulties of "fitting" all such possible transfer situations into one or another of the few types provided by Act 15 may be seen by the following examples illustrating the quite different interests of the parties to a Part 5 engineering contract.

Case 1

Transferee is an equipment manufacturer. Transferor also is an equipment manufacturer and the proprietor of the technology to be transferred.

This is the case apparently contemplated by Part 5, and, apart from problems such as previously discussed, should be relatively easy to accommodate.

Case 2

Transferee is a producer of consumer products. Transferor same as in Case 1.

Here the parties' interests will be quite different from those of Case 1, and will depend, in large measure on the nature and scope of the technology involved. If, for example, the process for manufacturing the product is patented, presumably a Part 2 patent license would be entered into between the transferor and the transferee. Yet, with respect to the related equipment for practice of the process, various types of "sub-cases" may exist as illustrated by the following examples:

Example (a)
the equipment is standard, commercially available equipment, or
Example (b)
the equipment is not patented, but heavily involves, in design, construction or operation, confidential information of the transferor, or
Example (c)
the equipment also is patented.

Each of these three variants, of just this one example of many possible combinations of transferee-transferor relationships, involves quite different needs of the parties to the contract.

In Example (a), if the transferee requires the transferor's assistance in plant layout, preparation or review of equipment purchase specifications, etc., presumably such information and services properly could be supplied under a Part 5 or Part 6 contract, without difficulty.

In Example (b), however, the problems created by the Act 15 compartmentalization and oversimplification of technology transfer agreements become apparent. Some of the problems concerning the method of transfer and protection of the supplier's unpatented technology, such as valuable engineering and other equipment-related confidential information for use by the transferee in practice of the licensed process, have been discussed above.

Example (c) illustrates perhaps an even more difficult circumstance for accommodation within the confines of Act 15. In the postulated relationship, the licensee/transferee, as a producer of goods made by the licensed process may not be interested, or, in the opinion of the transferor, may not be technically competent in the manufacture of the associated equipment. However, if the trans-

"... a period of five (5) years, from the actual start of production, which may be extended."

It appears quite clear that Act 15 thus negates in principle a theory of protectable property rights in unpatented technology, and adopts instead an "induction-time" theory reflecting an extremely pragmatic approach apparently weighted much more heavily upon the side of the practical needs of the Brazilian economy than that of the interests and needs of foreign owners of technology. Impliedly, protection of the supplier's interests, for the short "induction" period, may be enforced by the courts under the civil law.

A considerable body of professional opinion considers the express five-year time limitation to be the controlling provision as regards the permissable duration of all terms of a Part 5 contract, and that extension of the contract life, is a possibility only, to be determined unilaterally by INPI at or near the end of the initial five-year term. This view finds support in the practice of INPI during the last year in insisting upon such five-year limitation as a condition for INPI's grant of approval and its refusal to agree in advance to a future extension. At a recent Brasilian conference on United States investment in Brazil, INPI's representatives reiterated the INPI position of firm preference for a five-year limitation on secrecy obligation respecting unpatented information. It is hoped that such position will be softened in recognition of valid considerations in proper cases, such as investments and commitments of the technology proprietor and his licensees in other countries, especially in cases of unique technologies which cannot be obtained in Brazil under such a firm Act 15 construction without differentiation between fact contexts of differing merit and needs. On the other hand, if such a position is solidified and uniformly applied by INPI, it appears a virtual certainty that such a restriction seriously will deter the flow of much needed technology to Brazil.

It is by no means clear at this time either that the act requires such a broad, restrictive construction, or that the contracting parties are utterly without other recourse to implement a different mutual intent. Thus, Subparagraph 5.5.2(d)(vi) of Act 15 provides that the contract may not contain any clause which

> "d) ... restricts and/or prevents the supply of the technology and the services, or the activities of the recipient, which are referred to directly or indirectly, by Law No. 5772/71 (Industrial Property Code) and Law No. 4137/62 (Anti-Trust Law) ..."

including any provision which, *inter alia*:

> "(vi) prohibits the free use of the technology and the services when a *reasonable period* has elapsed after each transfer of the latest information." (emphasis added)

Under a contract theory of protection of secret information, an obligation of confidence assumed by the transferee is not an *in rem* matter but, rather, a personal relationship between him and the transferor, and, as such, presumably is proper subject matter for private agreement between the parties to any contract, including one under Part 5 of Act 15.

Subparagraph 5.5.2(d)(vi) does not expressly limit the "reasonable period" to a maximum of five years. Nor is the adoption of a longer period of secrecy or limited use expressly prohibited under the laws referred to in Paragraph 5.5.2(d). Presumably, therefore, the parties to a Part 5 contract are free to agree to a longer period of applicability of such provisions which would be valid and enforceable by the technology supplier under the Brazilian Civil Code, by way of action for damages in case of breach; not injunctive relief.

The practical problem with such an approach is the necessity to convince INPI to approve and register an agreement containing such provisions; i.e. of the "reasonableness" of the conditions in the particular fact context, since absent approval and registration, no monies can be transmitted to the supplier outside Brazil — or applied by the recipient as tax credits. Thus, Section 1 of Act 15 provides that registration of a contract by INPI is the condition for:

> "a) legalizing payments arising therefrom, whether within the country or abroad, subject in either case to the prevailing legal provisions and restrictions;
> b) allowing, when applicable, fiscal benefits subject to the norms established by specific legislation." (e.g. application by the technology recipient of contract payments as tax credit.)

and, in the case of patent or trademark licenses

> "c) giving evidence ... of the actual exploitation of a patent or trademark in the country, subject to the other conditions established by the Industrial Property Code."

Arguably, therefore, by its own terms, registration of a Part 5 contract by INPI should not extend to interference with provisions of the contract other than those enumerated above, such as the conditions of confidentialiaty or use restrictions which otherwise are subject to and valid under the general laws of Brazil. Presumably, if such conditions appear in a Part 5 contract which has been registered by INPI, even though approval expressly is given only for five years, after expiration of such period the contract nevertheless would remain a viable legal instrument — except for the above-recited specific INPI registration purposes. Such conclusion, of course, must remain as tentative unless or until the Brazilian courts pass upon the matter, including the questions concerning the legal basis and import of Act 15, e.g. whether or not that act, because of national public policy or general welfare or other reason, takes precedence over other specific legislation and the general civil law of the country, with which some Act 15 provisions apparently conflict. However, assuming the validity of the argument, such result would create an interesting impasse which, nevertheless, might be sufficient to accomplish the intended, reasonable objectives of the contracting parties. Thus, after expiration of the INPI-approved term, the supplier could not receive further payments, absent grant by INPI of another or an extended approval. On the other hand, the recipient could not engage in the prohibited disclosure or use of confidential information without risking court-imposed damages for breach. Under such circumstances, the burden then would be on the Brazilian party, if he should want to make further use of the transferred technology, to persuade INPI to the reasonableness of his position and to grant further or extended approval and registration.

Parenthetically, even an ethical and good-intentioned recipient probably will be less likely to succumb to business and government incentives to disregard such a secrecy or limited use condition if the agreement provides

Paragraph 6.5.1 (e) requires that such contracts:

"include a guaranty to the effect that the supplier may not, at any time, claim any industrial property rights which may be connected with the contents of the technology transferred, except in the case of future innovations linked to such technology, provided that these are regularly protected in Brazil and in the supplier's country of origin, residence or domicile, and that they are covered by a license agreement."

Section 6.5.2 forbids any references to industrial property rights such as "license" ... "royalties," "patented information," etc. in these agreements which may not:

"include any restrictions on the free use of the information and data received ...".

Such studies often are performed at little or no profit to the technology owner, based on his expectation of license or technical contract income after a successful demonstration of feasibility. The work involved normally is completed in a short time — which, under Article 6.4, controls the contract term. Under Article 6.2, remuneration is to be based essentially on the "proved cost" (presumably that of the supplier). It would seem that the intent is directed to a "standard" engineering fee-type payment, and does not contemplate "royalty-type" consideration. Clearly, a Part 6 contract cannot comprise a "license" of the originally transferred technical subject matter, and the supplier cannot protect his future improvements unless patented (not only in Brazil, but also, for some reason, in his own country) and, even then (and most ambiguously) if they are "covered by a license agreement." What if the transferee refuses a license, and no one else has accepted one? Can the transferee use the improvement patent with impunity? Similar provisions appear elsewhere in Act 15. The intent is unknown. Apparently, the transferor and transferee cannot subsequently enter into a patent license or an engineering agreement if the technology first was the subject of a Part 6 agreement. Income is inadequate; confidentiality is destroyed. Such results also seem in conflict with other Brazilian legal norms.

Without a better guideline, and if literally construed, these Part 6 provisions effectively will stop such technical studies in the future. This result, if it occurs, will work significant hardship on Brazilian firms by precluding their acquisition of information essential to the decision-making process. It is difficult to believe that such effect was intended, but at least some Brazilian industrial property rights experts consider that this is the operative effect of Part 6. An early resolution by INPI of this apparent problem is urgently needed. Meanwhile, the entry into feasibility and similar studies of substantial technical content, otherwise protectable as valid industrial property rights, appears inadvisable.

The treatment of trademarks, under Part 3 of the Act, is not considered here, but is of sufficient importance in its effect on technology exchange to require separate discussion.

With apologies for the length of this review, it is believed that only by a rather detailed analysis of some provisions of Act 15 will its possible or probable effect on technology transfer with Brazil be fully appreciated. In many particulars, the present comments appear critical of Act 15. These comments, though made from the viewpoint of a foreign technology supplier, are made with full recognition of and appreciation for the critical technical and economic needs and objectives of Brazil, and the untiring efforts of the dedicated people, both within the Government and within the private and state-controlled industrial sector, to satisfy those needs and to achieve such objectives. However, such efforts cannot, without risk of failure, neglect or too deeply submerge the needs and objectives of those countries and firms upon whom Brazil necessarily must rely to a significant extent for some considerable future period, for assistance in bringing about such objectives, including those enumerated at the beginning of this review. As in the case of technology exchange itself, communication and mutual cooperation are keystones in the legal-economic structuring of the means for such exchange, and the comments herein are offered in that spirit of constructive criticism which, if similarly received, will, it is hoped and believed, contribute to better understanding and improvement of the means of technology exchange with Brazil to the end that both Brazil and her foreign partners will realize an increasing and mutually beneficial relationship.

Licensing in Yugoslavia

(Continued from Page 232)

ing 1973 through 1975 were purchased from EEC countries while only 15% came from the United States. Two thirds of the licenses were purchased by the Yugoslav metal working, chemical, and electrical industries.

There are currently over 1,200 registered agreements for the transfer of foreign technology. Of these, over 700 are in the field of industrial property, over 400 relate to long-term industrial cooperation and over 100 to joint ventures.

A list of representative companies and products for which licenses have been granted in Yugoslavia is attached.**

The single conclusion which can be drawn from a brief examination of Yugoslav licensing information is that the legal and economic framework is somewhat unstable, although generally of favorable disposition toward licensing of valuable foreign technology into Yugoslavia. The regulations pertinent to foreign licensing and foreign exchange have, according to available information, varied considerably in their applicability and interpretation as well as frequent amendments. For this reason, it would appear to be ill-advised to enter into serious consideration of a licensing or cooperative arrangement in Yugoslavia without current and detailed advice of Yugoslav counsel. With such advice, it appears that licensing arrangements may be successful and mutually profitable in Yugoslavia.

LICENSES IN YUGOSLAVIA FOR SOME KINDS OF GENERAL CONSUMER GOODS

Cosmetics

Helen Rubinstein	Lanvin	Gillette
Max Factor	Margaret Astor	Colgate
Juvena	L'Oreal	Kolynos
Revlon	Schwarzkopf	

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