Technology Licensing in Canada

Canada has few restrictions on technology licensing; patent law revisions not likely to unduly affect licensing

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Canada today is still one of a handful of countries where licensing of technology is relatively simple and where it is not subjected to a great number of regulatory or statutory restrictions and requirements, such as now prevail in the United States, the EEC, Japan, Mexico, most South American countries and, of course, all socialist countries of East Europe and Asia. Some of the restrictions on technology transfer in these various countries are discussed in a recent *Les Nouvelles,*[1] and include the U.S. Antitrust Statutes, the EEC Rules of Competition, the New Law for Technology Transfer in Mexico and the Fair Trade Commission Guidelines in Japan. In addition, in Japan, Mexico, most South American countries and all of the so-called socialist or communist countries, the agreements relating to technology transfer or licensing must be approved by or registered with some governmental authorities and no agreement is considered valid until this is done. This, obviously, produces enormous complications and delays in the licensing of technology in such countries.

Canada, fortunately, at least for the moment, has very few such restrictions, which makes it certainly an interesting country for technology licensing.

LICENSE AGREEMENT

In Canada, a license agreement for technology transfer is a contract and is interpreted according to the laws of contract. It is, therefore, quite separate from other proprietary rights, such as a patent right or a trademark right. Because of this, any disputes involving license agreements are normally under the jurisdiction of provincial courts rather than the Federal Court. Thus, an action for breach of a license agreement should be taken in the court of the province where the breach occurred or where the party that breached the agreement resides, and not in the Federal Court in Ottawa.

In view of the fact that our contract laws give to the contracting parties an almost limitless degree of freedom to negotiate and draft an agreement, almost any agreement between the parties, which is clear and unambiguous, will be sustained by our courts in the absence of fraud or misrepresentation, provided, of course, such agreement does not go against public policy, i.e. it does not produce an undue restraint of trade, such as illegal price fixing, improper tying conditions or the like.

Clear and Unambiguous

Due to such a great degree of freedom given to the parties in the drafting and the execution of the license agreement, it is important that the agreement be as clear and unambiguous as possible. It is, however, difficult to imagine a completely faultless agreement. In fact, different interpretations may arise simply as a result of the imprecision of the launguage,[2] and different judges may interpret differently various clauses of an agreement. Thus, for example, in the case of *Mechanical Pin Resetter Co. Ltd. v. Canadian Acme Screw & Gear Ltd.,*[3] the Ontario Court of Appeal held that the agreement was expressed in clear and unambiguous terms and that no evidence of surrounding cir cumstances should be admitted to explain the agreement. On further appeal, the Supreme Court of Canada[4] found, however, that it cannot be said that the agreement was clear and unambiguous in relation to the Canadian situation and that intrinsic evidence is admissible. It went further and overruled the judgment of the Ontario Court of Appeal with regard to the same agreement.

Essential Provisions

I think, therefore, that it is practically impossible to draft a completely unambiguous agreement and, in fact, a little ambiguity may sometimes be of value. I believe that, in many instances, ligitation has actually been avoided because each party interpreted as it liked certain provisions of the agreement. The following essential provisions of an agreement should, however, be fairly clearly defined:

1) Type of license and of rights granted.
2) Restrictions as to the field of use and/or territory.
3) Term of agreement and what happens thereafter.
4) Improvements of licensor and/or licensee.
5) Validity and/or Infringement of Patents
6) Consideration for License, Statement of Earned Royalties and Inspection of Licensee's Accounts.
7) Confidentiality of Information and Know-How.
8) Taxes.
9) Most-Favored Nation Clause
10) Termination, Arbitration, Force Majeure, Breaches, Official Language, Applicable Law.

Let me now briefly discuss these provisions one by one:

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1. Type of License and Rights Granted — Essentially, it should be clearly indicated whether the license is for patented or unpatented technology, i.e. know-how, and, particularly in the latter case, a good definition of such technology should be given. The license could, of course, include both patents and know-how and, in some instances, could give rights to use certain trademarks in addition to the licensed technology proper. If trademarks are involved, it is very important to register the licensee as a registered user of such trademarks before he actually starts using them. Otherwise you may jeopardize your Canadian trademark rights altogether.

It should also be made clear whether the license is exclusive, sole (exclusive except as to licensor), or nonexclusive, and whether it entitles the licensee to grant sublicenses and on what terms and conditions. If the license is exclusive and involves a patent right, it should be registered in the Canadian Patent Office.[5] Apart from this requirement, it is not necessary to register license agreements in Canada. Even if the exclusive license is not registered, it will not be invalidated for that reason and there is no penalty provided for nonregistration of such a license; however, problems may arise if the licensor subsequently registers a similar license against a third party. The contracting parties should, therefore, see to it that their exclusive patent license agreement is registered, which is a very simple procedure, in any case.

One should clearly indicate in the license agreement whether the licensee is permitted to make, have made, use, sell and/or lease the products resulting from the licensed technology, otherwise problems in the interpretation of the license agreement may arise. There is no implied right to any of these things if this is not stated in the license agreement.

Finally, one should indicate whether the license is revocable or irrevocable and whether it is assignable or not. When a license is said to be irrevocable, neither party can terminate it without the permission of the party. If, however, the agreement does not show that the license is irrevocable by either party upon giving a reasonable notice to the other. Also, the licensee will not be at liberty to assign the license to anyone without consent of the licensor unless it is stated in the agreement that the license is assignable. It is, therefore, important to indicate, at least, that the license will be assignable to the successor in title of the licensee.

2. Restrictions as to Field of Use and/or Territory — The licensor in Canada can limit the licensee to any field of use or territory and this is irrespective of whether the invention is patented or not. If the licensee has accepted such restrictions, he is bound by them.

3. Term of Agreement and What Happens Thereafter — It is very important to specify the term of the agreement, particularly the term during which royalties will be payable. For instance, this term may extend for a fixed period, e.g. 10 years, or it may run for the life of the patent if a patent is involved. However, even if the license is based on a patent, the term of the agreement and royalty payment may exceed the life of such patent, and, if the licensee has agreed to pay royalties even after expiration of the patent, he cannot avoid this obligation.[6]

Furthermore, it is extremely important for the licensee to indicate in the agreement that, after expiration thereof and payment of all the royalties, he will acquire a paid-up right or license to use the licensed technology. If there is no indication to that effect, he may not be permitted to practice the licensed technology after the license agreement has expired, particularly if the agreement involves transfer of know-how.

4. Improvements of Licensor and/or Licensee — In Canada, the licensor may require the licensee to grant back to him fully and completely all improvements relating to the licensed technology and may also require that royalties be paid on such improvements. For example, in *Temple* v. *Hunt, et al.*= the British Colombia Supreme Court ruled in favor of the licensor in such a situation, pointing out that the action is for breach of contract, not infringement of the patent, and since the contract includes improvements of the patented device, the licensee has to pay royalties even though the improvement may be outside of the originally licensed patent.

Generally, speaking, however, Canadian licensees are reluctant to fully grant back or assign all their improvements to the licensor, particularly in view of the almost worldwide prohibition of such grantbacks, but they will usually accept to grant a royalty free, nonexclusive license to the licensor with respect to such improvements. The improvements of the licensor are also usually made during the course of the agreement. Also, it is obviously very important to define in a license agreement what actually constitutes an improvement.

5. Validity and/or Infringement of Patents — It is well established in Canada that the licensee will be precluded from attacking the validity of the patent on which a license is based, when there is an express provision in the license agreement to that effect.[8] This, of course, is contrary to the now famous U.S. Supreme Court decision of *Lear* v. *Adkins* 395 U.S. 653 (1969). In spite of the fact that this U.S. decision has been referred to in our courts, up till now, at least, Canadian courts have not been impressed by it and have confirmed that the general rule of our law is that the courts will give effect to the intentions of the parties as clearly expressed by contract.[9]

In fact, even if there is no express provision in the license agreement precluding the licensee from contesting the validity of the licensor's patent, normally there will still be an estoppel to that effect arising by virtue of the relationship between the parties and this estoppel will subsist so long as the licensor-licensee relationship subsists.[10]

It is also very important to indicate in a patent license agreement whether or not royalties will continue to be payable if the patent is held invalid by a court of competent jurisdiction. If there is no provision to that effect, the licensee will continue to be liable to pay royalties even though the general public may use the invention freely. In the Canadian Patent Law and Practice by H.G. Fox, 4th edition (1969) on page 325, the following is stated on this subject:

"Where a patent has lapsed by reason of its expiration or has been revoked or held invalid as a result of litigation and the license agreement contains no provision regulating the continuation or determination of royalty payments, the licensee is obliged to continue payments of royalties provided in the agreement, if the license is for a term certain. The revocation of the patent is an irrelevant circumstance, for it is not an implied term of a license that the patentee will maintain the patent in force. Thus, it may be seen that the licensee may be liable to pay royalties in respect of his use of a patent when the general public is able to use its subject matter freely."

The question of infringement of the licensed patent by others or, what is even more important, the question of possible infringement of patents belonging to others, by the practice of the licensed technology, must be answered at the outset in the agreement. These are particularly important questions when a fairly heavy initial investment is required to practice the licensed technology and where mere termination of the agreement in the event of either type of infringement, may be clearly unsatisfactory.

6. Consideration for License, Statement of Earned Royalties and Inspection of Licensee's Accounts — The consideration for the license is a matter between the licensor and the licensee. It is also somewhat a matter of supply and demand for a particular technology. One has complete freedom to set up any system of payment for the technology, provided it involves no price fixing for unpatented products or during resale of the patented articles, and provided it is not tied-up with the requirement to purchase unpatented products from the licensor, or someone he designates, as a direct condition for granting the license. I shall discuss these restrictions in greater detail a little later.

The statement of earned royalties and the inspection of licensee's accounts are usually covered by conventional clauses. Some companies make it a practice to periodically, let us say every two or three years, inspect the licensee's accounts more or less to keep the licensee on his toes. Whether or not such tactics should be adopted depends a great deal on the relationship between the licensor and the licensee.

7. Confidentiality of Information and Know-How — Most license agreements have clauses which force the licensee to keep in strict confidence the technical information and know-how supplied to him by the licensor. In many instances, it is required that such confidentiality be maintained even after termination of the agreement and, in some instances, it must last for an undetermined period of time (essentially forever) which is normally defined as follows: "until the information falls into public domain through no fault of the licensee." Although such provisions are quite acceptable from the strict point of agreement drafting, I think they are clearly unrealistic and, although they may be enforceable in law, they are unenforceable in practice. Our economic system provides for the free movement of personnel from one company to another and, particularly since the advent of the Anti-Inflation Board in Canada, it is not uncommon to have a turnover of technical employees in the range of 15 to 20% per year and, under such conditions, it is clearly impossible to keep all technical information under wraps even if the employees are required to sign secrecy agreements.

Thus, unless the information is such that it can readily be kept confidential (e.g. one secret formula or the like) by a few people who would be held strictly responsible for its secrecy, it is normal to expect that it will be dissipated bit by bit due to the normal turnover of employees, as well as due to hiring of outside consultants and contractors and, eventually, its confidentiality will be lost. Although, in every clear case of misuse of confidential information by an employee, or a consultant, the court will grant an injunction to the plaintiff, it is quite difficult for a large corporation to use regularly its past employees or consultants on such grounds. Our company, for example, has, to my knowledge, never sued any of its present or past employees for breach of a confidential information agreement in spite of the fact that it employs more than 30,000 people. It should also be noted that matters do not become confidential merely because the contract states them to be so[11] and an employee may always use his accumulated working knowledge in subsequent employment.[12]

I would, therefore, urge the parties entering into a licensing agreement to be practical in the provisions relating to the confidentiality of the information supplied.

8. Taxes — When technology is licensed to Canadian companies from outside the country, a withholding tax is payable on the royalties of the Canadian licensee and, effective January 1, 1976, this withholding tax stands at 25%, unless Canada is a party to a tax treaty with a country which calls for a lower tax rate. Countries with which Canada has such tax treaties are as follows:

Tax Treaty Countries

Australia	Japan	South Africa
Austria	Liberia	South Korea
Belgium	Malaysia	Spain
Brazil	Morocco	Sweden
Denmark	Netherlands	Switzerland
Dominican Republic	New Zealand	Trinidad and Tobago
Finland	Norway	Tunisia
France	Pakistan	United Kingdom
Indonesia	Philippines	United States
Ireland	Portugal	West Germany
Israel	Romania	Zambia
Jamaica	Singapore	

The appropriate withholding tax rate should thus be ascertained in the case of each of these countries, but, in most cases, it is 15%.

In these tax treaty countries, the licensor can deduct the portion of the royalties withheld by the Canadian licensee, for his income tax purposes and, consequently, should not object to the retainer of such tax.

Lump-sum payments for know-how are not subject to the Canadian withholding tax; however, when the know-how transfer also includes the right to use the process or apparatus made from the know-how supplied, it will be considered that the fee paid for the know-how is a royalty and a withholding tax will be payable thereon. This has recently been confirmed by

a decision of the Supreme Court of Canada in *Western Electric Co. Inc. v. Minister of National Revenue.*[13]

License agreements should, therefore, take into account this withholding tax and indicate how and by whom it is to be paid. This, obviously, is particularly important in the case of countries which have no tax treaty with Canada.

9. Most-Favored Nation Clause — The question of the most-favored nation clause is left to the discretion of the licensor and the licensee. There is no obligation in Canada to charge the same or substantially the same royalty to every licensee. This, however, is often done as a matter of good business.

10. Termination, Arbitration, Force Majeure, Breaches, Official Language, Applicable Law — These are fairly standard provisions which are covered in most agreements and which, again, are left to the discretion of the licensor and the licensee.

With regard to the breaches of the agreement, I should, perhaps, mention that they will not necessarily terminate the agreement. In *Respirex of Canada Ltd. v. Flynn,*[14] for example, the defendant alleged that the patent licensing agreement was terminated because the plaintiff failed to employ the defendant and also failed to use its best efforts to promote, develop and manufacture all of the products and inventions of the defendant that were the subject matter of the agreement. It was held that the original contract between the plaintiff and the defendant was still in existence at the time when the defendant chose to manufacture and sell units covered by the patent licensed by the agreement. The conduct of the parties was found not to be consistent with a termination of the agreement by the parties.

Although the plaintiff was in breach of the agreement, in that it never employed the defendant fulltime as required by the agreement, it was not a fundamental breach going to the root of the agreement, which would render the contract purposeless. Such a breach would entitle the defendant to damages but not to terminate the contract. The defendant did not claim nor prove damages. The defendant, by his conduct, therefore waived this breach of contract.

An obligation to use best efforts must be applied subjectively, not objectively. The evidence, in the case referred to above, did not establish that the defendant had discharged the onus of showing that the plaintiff failed to do something which it could reasonably have been expected to do, having regard to all the circumstances.

Furthermore, in case of a breach of a covenant in a license agreement, the injured party will normally be entitled to recover only its provable damages for such a breach, but there will be no penalty or punitive damages assessed against it. A recent decision of the Supreme Court of Canada in *H.F. Clarke Ltd. v. Thermidaire Corp. Ltd.*[15] has clearly confirmed this principle.

COMPULSORY LICENSES IN CANADA

In the Nonmedicinal Field

As in most other countries, a patented invention, which has not been worked in Canada on a commercial scale within three years of the patent grant, is subject to compulsory licensing. There are some other, so-called, abuses of the exclusive rights, which are enunciated in section 67 of the Patent Act, but the main one is clearly nonworking. When such abuse has been proved, the Commissioner of Patents may grant a compulsory license under the patent, which may be either exclusive or nonexclusive. However, statistics indicate that, since 1935, only 12 such licenses have been granted.[16]

One such license is reported in the case of *Hare v. Bejs I Västeras AB and Nitro Nobel Aktiebolag*[17] where the Commissioner of Patents granted a compulsory license to manufacture a soot preservative covered by Canadian Patent No. 720,077, and set a royalty of 50% of the cost of manufacture of the patented product. Cost of manufacture was held to include cost of materials, labor, overhead and depreciation. In *M. Howard-Leicester v. Hans Badertscher,*[18] a water vaporizer covered by Canadian patent No. 838,764 was involved. The Commissioner of Patents set a royalty of 1% of the net selling price over the first three years of the license and 2% therafter. These are fairly recent cases which give an indication of the type of compulsory licenses that may be granted. Such compulsory licenses cannot, however, force the patentee to transmit his know-how to the licensee and apply only to the bare patent rights. The decisions of the Commissioner of Patents relating to such compulsory licenses can be appealed to the Federal Court of Canada.

Although the number of compulsory licenses is not very significant, it is believed that the fact that they are available to the licensee, leads to many agreements being concluded of common accord, rather than pursuing the lengthy and tedious route of compulsory licensing.

In the Medicinal Field

Prior to 1969, it was also possible to obtain a compulsory license under section 41 (3) of the Patent Act to produce in Canada foods or medicines covered by Canadian patents, at any time, without resorting to section 67 abuse provisions. Nineteen such licenses were granted from 1949 to 1969[19]. Since 1969, however, it has been made possible to obtain a compulsory license for importation of medicinal products which are covered by Canadian patents. This, so to say, opened the flood gates and, since 1969, 187 such licenses have been granted.[20] The royalties imposed by the Commissioner of Patents under such licenses are now generally standardized at 4% of the net selling price of the medicine in final dosage form, when sold in arm's length transaction. As an extraordinary example, one such liense (*Frank W. Horner Ltd. v. Beecham Group Ltd.*[21]) involved four separate patentees and 30 patents. The royalty was fixed at 4%, 1% being payable to each patentee. Under such circumstances, the value of patents relating to medicinal products has substantially declined in Canada and some pharmaceutical companies have almost entirely stopped filing patent applications in Canada for drugs and their methods of manufacture. Why should one bother protecting one's pharmaceutical inventions through patents when the pharmaceuticals themselves can be readily imported from abroad almost by anyone?

COMBINES INVESTIGATION ACT

In Canada, this is somewhat equivalent to the U.S. antitrust laws. However, in the field of licensing of technology or of patent licensing, we have had no problems till now with this particular law. There has been nothing in Canada even remotely similar to the now famous U.S. decision in *Zenith* v. *Hazeltine*[22] where damages in the amount of $35 million were awarded. In a talk given in Montreal in 1966, the Director of Investigation and Research under the Combines Investigation Act indicated that tying arrangements, where the patent owner, for example, grants a license on condition that the licensee will purchase supplies of other goods from the patent owner, which are not covered by the patent, would be regarded as an attempt to extend the protection of the lawful patent monopoly. Also, an agreement to maintain the resale price of a patented article would be regarded as an unwarranted extension of the patent monopoly. However, since that time, I have not found a single case of a patent or technology transfer agreement where a party has been successfully sued under the Combines Investigation Act. The main problem, perhaps, was that, till recently all legal actions under the Combines Investigation Act had to be undertaken by or on behalf of the Attorney General of Canada, namely the Government, and there was no provision for inter-party litigation under this Act. Thus, a plea of conspiracy in the case of *Amoco Canada Petroleum Co. Ltd.* v. *Texaco Exploration Canada Ltd.*,[23] where the Combines Investigation Act was invoked by one of the parties, was rejected by the court. Here, the defendant, in a patent infringement action, pleaded that the plaintiff was disentitled to relief on the ground that it was a party to an agreement in restraint of trade. The allegation was that the plaintiff and two other companies agreed to assert three patents for the same invention knowing that two of the patents must be invalid. It was held that the plea must be struck out. The court indicated that it does not raise an arguable defense of the plaintiff's actions. Each of the three owners of the three patents claimed to be the owner of the patent for the invention which the defendant was allegedly using. The fact that none of the three was willing to admit at the time that its patent for the process in question is invalid and that the defendant may, therefore, be in triple jeopardy, could not justify, according to this court decision, a refusal to permit any one of them to sue for infringement of its patent, which must be presumed to be valid until the contrary is found to be the case as a result of an attack on the validity of the same.

In fact, there has been more discussion in Canada of how the U.S. antitrust laws affect Canadian business practices,[24] than about our own Combines Investigation Act. However, an amended Combines Investigation Act has come into force in 1976 and, although it is still too early to assess its impact on the patent and technology licensing, it has definitely more teeth in it than the previous one. For example, in the very recent case of *Eli Lilly and Company* v. *Marzone Chemicals Ltd.*[25] it was held that section 31 (1) of the newly enacted Combines Investigation Act is available as a defense in a patent infringement action or to effect the relief granted. This section gives rise to a cause of action to a person injured by certain behavior which is contrary to the Combines Investigation Act.

From the practical standpoint, however, I think that one should not be concerned unduly about the Combines Investigation Act when licensing technology in Canada. Provided there is not created a flagrant monopoly or a clearly unfair trade practice, I do not believe that the Combines Investigation Act will invade the business of technology transfer in our country, at least in the near future.

LICENSING OF NONPATENTED TECHNOLOGY

The licensing of nonpatented technology certainly presents special problems. First, exclusive licensing of such technology is virtually impossible since a third party may develop it independently and may even make it available to others. Thus, if there is no patent protection, essentially there is no exclusivity.

Secondly, it is difficult to maintain nonpatented technology in complete confidence for a long period of time. I have already mentioned above the normal turnover of employees, the constant use which is being made by corporations of outside consultants, contractors and the like. This dissipates the technology which is not protected by patents within a few years, and it is unrealistic to force the licensee to keep it secret indefinitely. Thus, licensees are reluctant to agree to royalty payments for a long period of time on nonpatented technology on the basis of a lump-sum payment. In this regard, I would suggest that companies should be liberal in communicating to each other unpatented technology, particularly if it does not form part of a specific process or development on which a company has spent a lot of effort and money. I think that we should have an open-door policy between companies in this regard and that various technological improvements, particularly those of relatively minor importance, should be communicated to one another freely and without too much of a hassle. In our company, for example, we take pride in the fact that we try to promote as much as possible a free flow of unpatented technology and ideas between ourselves and companies working in similar industries without requiring special payments or the like. We have also obtained a great deal of technology and information from others in like circumstances. I, therefore, completely disagree with those who want to charge a show-how fee, a know-how fee and then royalties for nonpatented technology which may have rather limited value and which is not clearly a trade secret. I think that corporations have enough problems with taxation, government restrictions, tariffs and the like without creating additional problems with the transfer of non-patented and generally known technology. I feel that we should all cooperate in this field to the best of our ability for the common good. However, in countries where no adequate patent protection is available, the only way by which one can recover some of his research and development costs is through the sale or licensing of the know-how, and the above remarks do not necessarily apply in the case of such countries.

LICENSING OF PATENTED TECHNOLOGY

Patented technology is obviously much more amen-

able to licensing. It shows that the licensor has a proprietary position in his technology and that he has expended special efforts in order to protect it by patent. Obviously, patented technology makes it possible to grant exclusive licenses and provides a good support to the unpatented know-how which may accompany the patent. In fact, the patent itself may be of minor value, but as a support to the know-how which will accompany it, it is of great importance. The patent will also usually provide a good definition of the licensed technology and it will sometimes dictate the term of royalty payments under the license. It is, therefore, in my view, very important to obtain patent protection when one desires to license the technology to others. At this time, I favor the inclusion of patents and know-how in the same license agreement, and I think this is the best way of reaping a fair return on one's research and development efforts which have attained the stage of commercial exploitation.

THE FUTURE OF LICENSING IN CANADA

In June of 1976, the Canadian Department of Consumer and Corporate Affairs published a working paper on patent law revision together with a new proposed patent law for discussion purposes, before new legislation on patents is submitted to Parliment. It proposes some drastic changes in the Canadian patent law, which would considerably weaken our patent system. The new act also provides for a much more stringent control of patent licensing. Thus, there is an indication that all patent licenses would have to be registered; there would be provisions for compulsory licenses in public interest and not only in case of nonworking; licenses would be granted for complementary inventions; there would be prohibition of improvement grantbacks, and the licensee under a patent would be entitled to take legal action for revocation of the patent if he so desires. Fortunately, there are indications that many of these provisions will never be included in the eventual new patent law. However, it is fairly certain that, when a new patent act comes into force in the next two or three years, it will be more stringent than the previous one and will be less favorable to the patentees and the licensors of patented technology.

It should be noted, however, that all these provisions will affect only patented technology and not technology licensing per se. As I mentioned at the outset, licenses form part of the laws of contract and, as such, are under the provincial rather than the federal jurisdiction. Furthermore, under our constitutional system, I believe that this will not change in the foreseeable future. Thus, even if the patent laws in Canada are weakened or become more unfavorable to the patentees, I do not think that they will unduly affect the licensing of technology since there is absolutely no reason why there could not be one license for the know-how and another collateral license for the patent. The patent license can then be registered and subjected to the various requirements of the new patent act while the know-how license will, in my view, be the more important of the two and provide for satisfactory compensation to the licensor. I, therefore, believe that, irrespective of the future patent system in Canada, our licensing system, in the foreseeable future, will remain essentially unchanged, and this is as optimistic a forecast as I can make.

NOTES

1. Finnegan, Marcus B., Les Nouvelles, Vol. XI, No. 2, pp. 75-79 and 108-112.
2. Henderson, Gordon F., "Patent Licensing — Problems from the Imprecision of the English Language", Canadian Patent Reporter, 63 C.P.R. 99, November 1970.
3. Canadian Patent Reporter, (1969) 58 C.P.R. 226.
4. (1970) 65 C.P.R. 150.
5. Section 53(2) of the Canadian Patent Act.
6. Pigeon Hole Parking (Eastern Canada) Inc. v. Automatic Parking Inc., Québec Supreme Court, (1971) 6 C.P.R. (2d) 71.
7. Temple v. Hunt et al., British Columbia Supreme Court, (1975) 19 C.P. R. (2d) 169.
8. Deering Milliken Research Corp. v. Louiseville Spinners Ltd. Québec Supreme Court (1971) 4 C.P.R. (2d) 18, and Louiseville Spinners Ltd. v. Deering Milliken Research Corp., Québec Court of Appeal, (1972) 7 C.P.R. (2d) 18.
9. *Ibid.*, 7 C.P.R. (2d) 18 at p. 20.
10. Pigeon Hole Parking (Eastern Canada) Inc. v. Automatic Parking Inc. (1971) 6 C.P.R. (2d) 71, cf. particularly the Editorial Note at p. 72.
11. Drake International Ltd. v. Miller et al., Ontario High Court of Justice, (1975) 21 C.P.R. (2d) 129.
12. Wright, Donald J., "Confidentially Speaking — Equity on Industrial Property Matters", Canadian Patent Reporter, 61 C.P.R. 53, April 1970 — discusses this subject in some detail.
13. Western Electric Co. Inc., v. Minister of National Revenue Supreme Court of Canada, (1971) 1 C.P.R. (2d) 185.
14. Respirex of Canada Ltd. v. Flynn, Ontario High Court of Justice, (1975) 22 C.P.R. (2d) 104.
15. H.F. Clarke Ltd. v. Thermidaire Corp. Ltd. (1974) Supreme Court of Canada, 17 C.P.R. (2d) 1.
16. Information obtained from the Commissioner of Patents in January 1977.
17. Hare v. Bejs I. Västeras AB and Nitro Nobel Aktiebolag (1971) 2 C.P.R. (2d) 145.
18. The Patent Office Record, April 22, 1975.
19. Information obtained from the Commissioner of Patents in January 1977.
20. Information obtained from the Commissioner of Patents in January 1977.
21. Frank W. Horner v. Beecham Group Ltd. et al. (1971) 5 C.P.R. (2d) 20.
22. Zenith Radio Corp. v. Hazeldine Research, Inc. 395 U.S. 100 (1969), modified 401 U.S. 321 (1971)
23. Amoco Canada Petroleum Co. Ltd. v. Texaco Exploration Canada Ltd. Federal Court, Trial Division, (1975) 24 C.P.R. (2d) 84.
24. Lane, Nathan, American Antitrust Law and Canadian Patent Rights 3 C.P.R. (2d) 115, February 1972. Henderson, Gordon F., Foreign Courts and the National Interest 17 C.P.R. (2d) 130, April 1975.
25. Newsletter #55, The Patent and Trademark Institute of Canada, August 18, 1976, p. 512.