

The Pulse of Brazil's INPI

A glimpse at present and future trends regarding technology transfer and patent and trademark agreements

BY DENIS ALLAN DANIEL*

How is the Brazilian Patent and Trademark Office (INPI) interpreting and applying existing legislation to agreements involving technology transfer and patent and trademark licensing?

One of the purposes of this paper is to attempt to answer this question, in a practical manner, by means of an analysis of a series of official actions, issued by INPI, on technology transfer and patent and trademark license agreements. All official actions herein quoted were issued subsequently to September 16, 1975, which is the effective date of Normative Act 15. Another purpose of this paper is to analyze present and future trends in the technology area in Brazil.

It is known that INPI does not publish, in the Official Bulletin or elsewhere, the nature of any official action which it issued on agreements involving technology transfer and patent and trademark licensing. The contents of such official actions are only made available to the Brazilian recipient or licensee by letters signed by INPI Officials. In view of this policy it has become a difficult task, notwithstanding the existing basic guidelines established by Normative Act 15, to anticipate how INPI will react to the wording of certain standard clauses which are normally accepted in agreements of the category herein referred to.

Recent official actions issued by INPI disclose the fact that certain agreements which conform broadly to the existing guidelines, are nevertheless subjected to close scrutiny and diverse interpretation by INPI Examiners, and as a result of this, the parties to the agreements have been required to amend or delete certain provisions in order to conform to other laws and regulations, not specifically related to technology transfer and industrial property legislation. Some recent official actions also show that, while apparently complying with the guidelines of Act 15, the parties were requested to submit further information or explanations to enable the Examiner to evaluate what is considered as basic data for approval of agreements.

Listed hereunder are English translations of the selected official actions, in alphabetical order and with an indication of the category of the particular agreement involved, followed by our comments.

* Partner, Daniel & CIA, Rio De Janeiro, Brazil.

INPI OFFICIAL ACTIONS

ABSORPTION OF THE TRANSFERRED TECHNOLOGY AND INFORMATION ON TECHNICAL CAPACITY OF SUPPLIER AND RECIPIENT

Industrial Technology Agreement

"Information regarding the technological capacity (technological and administrative infra-structure) regarding the RECIPIENT must be submitted, separately, with a clear explanation of the Chronogram of Absorption of the Technology and the carrying out of the program to train the RECIPIENT's specialized technical personnel."

"A chronogram to be developed within the maximum term of four years must be submitted separately, containing an indication of the progressive degrees of nationalization of the Products referred to in the agreement which are to be manufactured by the RECIPIENT, in view of the provisions of item 4.1.2 (c) of Normative Act 15."

Technical-Industrial Cooperation Agreement

"The agreement will only be in condition for approval if the Brazilian recipient of the technology is a manufacturer of equipments, a fact which will permit a real and effective absorption of technology and consequent capacity to manufacture identical products."

"Submit a chronogram of absorption of the technology and of the carrying out of the program to train the RECIPIENT's personnel."

Specialized Technical Services

"A chronogram of the time and place of work of the foreign technical staff as well as a detailed list of the technical categories and respective periods of work, monthly salaries and other disbursements, should form an integral part of the agreement."

"Itemize the basis for calculating the remuneration, specifying how much was paid to each technician, and itemize the services performed by each technician."

Comments

It can be noted from these official actions that in some cases INPI requests that the chronogram of absorption should be an integral part of the agreement, whereas in other agreements this information is requested separately.

Prevailing practice indicates that it is possible to supply a chronogram of absorption and other detailed information regarding the technological capacity of the recipient by means of a covering letter addressed to INPI. The submission of a satisfactory chronogram is an important item for approval of the agreement, since

Brazilian authorities are concerned with the possibility that the recipient may not be adequately prepared to absorb the technology. If such proves to be the case, approval of the agreement may be denied.

Typical of the prevailing trend is the official action which states that the agreement will only be in condition for approval if the Brazilian recipient of the technology is a manufacturer of equipments covered by the agreement. If he does not actually manufacture the product to which the agreement refers, the official action implies that the agreement will not be approved since it is felt that the recipient will not be in a condition adequately to absorb the technology being transferred.

It is suggested that careful consideration be given to the preparation of a chronogram of absorption at the inception of the negotiations between the supplier and recipient, so that it may be included in the agreement as submitted to INPI. This may well save time and unnecessary delay. It can be assumed that requests for information on the technical capacity of the recipient will be made on a case-by-case basis.

An interesting point raised in one of the quoted official actions is the request for an indication of the progressive degrees of "nationalization" of the products referred to in the agreement. It is generally understood that the shorter the term within which the products will be "nationalized," that is, totally manufactured in Brazil, the greater the chances of quicker approval of the agreement.

ADVERTISING

Trademark License Agreement

"Delete clause 4(a) which refers to the fixing of percentages to be paid by licensee for expenses with advertising since it is in violation of the provisions of Articles 29 and 90 of Law 5772 and of Article 2, Section I(g) of Law 4137."

"Delete the following clause from the agreement since it conflicts with Law 4137: 'All advertising by LICENSEE under said trademark shall be submitted to and approved in writing by LICENSOR prior to release thereof to the public.'"

Comments

These two official actions are typical of the broad interpretation given to provisions of Law 5772, which is the present Code of Industrial Property, and of Law 4137, which is the Brazilian Antitrust Law. In neither of these two laws is there any specific restriction related to advertising. However, Articles 29 and 90 of Law 5772 state that the license agreement shall not impose restrictions on the industrialization, commercialization or exportation of the goods covered by the license, and to establish in a trademark license agreement that the licensee must pay for expenses with advertising of the licensor's trademark is broadly interpreted to mean a violation of these provisions.

Antitrust Law 4137 is also a trump card applied frequently by INPI. In the present case, to provide in the trademark license agreement that the licensee shall pay for expenses with advertising and that all advertising shall be submitted to and be approved in writing by licensor is deemed a form of abuse of economic power by creating difficulties for the operation or

development of a company (Article 2, Section I(g) of Antitrust Law 4137).

Strangely, the official actions quoted do not refer to the specific provisions of Act 15, that is, item 3.5.2 (VI) which provides that the trademark license agreement shall not include provisions which "restrict whatever publicity (advertising) or disclosure that may be made by the licensee."

ARBITRATION

Industrial Technology Agreement

"Replace paragraph (b) of Article XIII of the agreement which states that 'all disputes or controversies between the parties shall be settled under the Rules of Conciliation and Arbitration of the International Chamber of Commerce, and that arbitration shall take place in the City of Chicago, Illinois, United States of America' with the following: 'Disputes arising out of or in connection with this agreement shall be settled by the Court of Jurisdiction where the Defendant is located. The legislation of the country of the Defendant shall apply to such disputes.'"

Comments

This appears to be one of the few instances in which INPI has requested the compulsory amendment of a clause which originally called for settlement by arbitration which was to be conducted according to the Rules of Conciliation and Arbitration of the International Chamber of Commerce. Such a request is questionable under Brazilian Law which does not preclude the submission of disputes or controversies to arbitration, even if such an arbitration is to be conducted abroad, regardless of the defendant's legal domicile.

Nowhere in Normative Act 15 or in any Brazilian legislation is there a requirement that arbitration proceedings involving a foreign party must be conducted in Brazil. Furthermore, no prohibition is made in Normative Act 15 ruling out arbitration in disputes involving transfer of technology and patent and trademark license agreements. It appears that subsequently to the official action quoted above INPI has become more liberal in the wording of arbitration clauses.

As a matter of fact, the growing trend in Brazilian courts is to refer certain cases to arbitrators, particularly when one of the parties involved in the dispute, having voluntarily agreed to an arbitration clause, takes the matter to court with the veiled intention of delaying a decision which could be adverse to him.

BREAKDOWN OF TECHNICIANS

Technical-Industrial Cooperation Agreement

"Estimate the number of technicians who will render services in Brazil, indicating their categories, respective salaries, as well as per diem expenses, period of stay and expenses with maintenance, in accordance with items 5.2.2 and 5.2.3 of Normative Act 15."

"Submit a nominal list and curriculum vitae of the Brazilian technicians who will be in charge of absorbing the technology to be transferred."

Specialized Technical Services

"Indicate the total number of engineers who will render ser-

vices in each year of the term of the agreement of the corresponding period in months (of each year), in which each of these technicians will render services."

Comments

These breakdowns are almost always requested by INPI in all technology transfer agreements and particularly when the agreement mentions a lump sum for payment of technicians. The breakdown is requested to determine whether the stated amounts are considered reasonable.

CONFIDENTIALITY

Industrial Technology Agreement

"Amend the term of the agreement appearing in clause 13, in view of the fact that it must be set in accordance with the term in which the additional information is disclosed. It should be remembered that the period of secrecy to be established can be up to five years after receipt of each information."

"We recommend that in the clause relating to Confidential and Registered Information the words 'during the contractual period' should be added."

"The agreement must indicate that the period of contractual secrecy may not go beyond the term of the agreement."

"The agreement states that all engineering, technical and other information supplied by SUPPLIER to or acquired by RECIPIENT hereunder shall be acquired by RECIPIENT in confidence and solely for its own use under this agreement, and RECIPIENT shall keep such information and documents confidential and shall not disclose the same to others (and shall take all reasonable precautions to prevent disclosure thereof to others by its employees), at any time during or after the term of this agreement. The words 'at any time during or after the term of this agreement' must be deleted and replaced with the words 'during the term of this agreement' in view of the provisions of Antitrust Law 4137/62."

Specialized Technical Services

"Amend Clause 2 in order that the following is stated: 'data and information received from the party who furnishes the technical services shall not be disclosed during the term of the agreement, since this would be in conformity with Article 2, Section I(g) of Antitrust Law 4137/62.00'."

Comments

Here again, in the absence of any particular legislation governing the matter, Antitrust Law 4137/62 has been quoted in support of the requirement to restrict the disclosure of information to the term of the agreement.

It is understood from Normative Act 15 that in industrial technology agreements there can be no clause which "precludes the free use of the technology, after termination of the period which is considered reasonable, counting from each one of the last item of information which was transmitted." What is considered a "reasonable" period will apparently depend on the particular case involved. One of the official actions quoted indicates that the secrecy period could be extended to five years after receipt of the last item of information received. Three years is the normally ac-

cepted secrecy period extending beyond the last item of information received.

In one case mentioned in the press, involving a government-controlled group in the petrochemical field, INPI apparently allowed a 10-year secrecy clause. Likewise, in the nuclear field INPI has apparently approved agreements with a 10-year confidentiality clause. There can be no doubt that there is flexibility in this particular area, specially when a government - controlled company is involved.

DETAILING OF THE TECHNOLOGY TO BE TRANSFERRED OR OF SERVICES TO BE RENDERED AND ILLUSTRATION OF THE PRODUCTS TO BE MANUFACTURED

Industrial Technology Agreement

"Submit catalogues illustrating the products to which the agreement refers."

"Summarize in detail the technology to be imported."

"Specify in the agreement the technology which will be furnished by the foreign company."

Technical-Industrial Cooperation Agreement

"Submit a pamphlet illustrating the technology to be imported."

Specialized Technical Services

"Submit to this Institute a detailed and complete chronogram of the services which will effectively be rendered by the foreign company."

Comments

Normative Act 15 states that the industrial technology agreement must explain and indicate or specify the aggregate of the data and technical information relating to the technology to be transferred. The agreement must also precisely identify the product or products as well as the activity or industrial field in which the technology will be applied.

It is recommended that with all industrial technology agreements, catalogues and pamphlets explaining the nature of the product should be submitted to INPI with the covering letter justifying the need to enter into the agreement. In the majority of cases INPI requires this ancillary data to establish background information for assessing the remuneration under the agreement.

EXPENSES WITH AND SALARIES OF PERSONNEL

Industrial Technology Agreement

"Clause 8 should be reexamined as regards travel expenses between the United Kingdom and Brazil, in view of the fact that according to Communiqué GECAM No. 85 of October 15, 1968, of the Central Bank, air fare tickets may be purchased in cruzeiros."

"Clause 8 should indicate an estimate of the total value to be paid in pounds sterling relating to the remuneration of tech-

nicians, with an indication of their number, individualization of the corresponding daily remuneration excluding living expenses, and an estimate of the period which is considered to be sufficient for furnishing the technical assistance and for carrying out the personnel training program, according to item 4.2.3 of Normative Act 15."

"Clause 8 should also include an estimate and individualization of the expenses relating to the support of foreign technicians in Brazil (specifying the per diem expenses, subsistence expenses and others) in accordance with item 4.2.4 of Normative Act 15, with an express mention that the said expenses shall be paid, in cruzeiros, directly to each technician."

Technical-Industrial Cooperation Agreement

"In Clause 4 an indication should be made of the category of the technician who will be sent to RECIPIENT, estimating the amount of daily remuneration and living expenses, according to item 5.2.2 of Normative Act 15."

"Estimate the number of technicians who will render services in Brazil, indicating their categories, respective salaries, as well as per diem expenses, duration of their stay and living expenses, in accordance with items 5.2.2 and 5.2.3 of Normative Act 15."

"Since the agreement does not indicate any estimation for the remuneration to be paid to the foreign technicians, in dollars and in cruzeiros, for services not only in Brazil but also in the United States, it becomes necessary to include in the agreement, by means of a supplementary agreement, the following:

a) include an estimate in dollars to be paid to SUPPLIER for the assistance to be rendered in the United States, in the installations of SUPPLIER, by its technicians;

b) submit an explanation regarding the purpose of this work, considering that SUPPLIER shall send to Brazil 20 technicians;

c) estimate in the agreement the number of technicians and the total remuneration (salaries in dollars and per diem expenses, living expenses etc. in cruzeiros) to be paid to SUPPLIER'S technicians who will come to Brazil, in excess of 20 men/months (these to be without any cost to RECIPIENT)."

"Modify the wording of clause 1 where it refers to expenses relating to travelling and to expenses with SUPPLIER'S technicians, explaining that RECIPIENT shall be responsible for the payment of these expenses, but in cruzeiros."

"The amount relating to expenses referred to in clause 10 must be estimated. The said estimate, if the parties agree, may be included in an Addendum to the agreement in order that the total amount may be duly itemized."

Specialized Technical Services

"Indicate the total amount relating to the remuneration of technicians, to be paid in dollars, indicating the number of technicians who will render services in each year of the term of the Agreement, as well as the respective monthly period for each of the said technicians, in view of the provisions of item 6.2.1 of Normative Act 15."

Comments

Official actions issued in this category show that INPI has become very strict in requiring estimates for remuneration of foreign technicians, to be paid in foreign currency and for expenses involving subsistence

allowances of these technicians in Brazil to be paid in cruzeiros. It is recommended that in agreements involving technology there should be a breakdown of technicians, their salaries and living expenses, and the periods which are considered sufficient for the furnishing of technical assistance and for carrying out the personnel training program should be clearly indicated. The more detailed this information, the better the chances of approval of the agreement.

IMPORTS OF COMPONENTS

Industrial Technology Agreement

"Submit an opinion from a Government body, more specifically CACEX, referring to the intermediary components to be imported."

"Submit an index of nationalization of the product, and an indication of the components which will be imported and their percentage in relation to the sales price."

Technical-Industrial Cooperation Agreement

"Submit information regarding the importation of inputs and/or components that may be necessary to the manufacture of the product or to the utilization of the process, as well as of machines and equipment and if they can be purchased in Brazil, indicating possible difficulties on a medium- or long-term basis. Also indicate the sources where the inputs can be obtained, the necessary quantities in order to attain the objective of the agreement and the quantities available in the market."

Comments

These official actions show INPI's concern regarding the necessity to import inputs and/or components that might be necessary to manufacture the product or carry out the process covered by the agreement. This concern is confirmed in the official form that must now be completed and submitted together with the draft agreement involving technology. One of the questions in the official form is whether it is necessary, as a result of the agreement, to import equipment, components or raw materials from the supplier of the technology or from a source indicated by the supplier. It can be taken for granted that if the degree of importation is very high the chances of successful approval of the agreement will be reduced.

IMPROVEMENTS AND/OR FUTURE UPDATING OF INFORMATION

Industrial Technology Agreement

"According to the provisions of Clause 9 (c) a separate agreement should be executed by the parties covering the license for the patents and/or patent applications owned by the foreign party in Brazil. This separate agreement should provide for the licensing of the patents or patent applications which the foreign party may own in the future and which must be covered by supplementary agreements and submitted for recordal at INPI."

Technological-Industrial Cooperation Agreement

"The agreement must state that the specifications and/or future information relating to the licensed products which are

patented, will be the object of a new royalty-free license agreement that must be submitted to INPI (see clause 5).” Our note: The following is the wording of Clause 5 of the agreement referred to in this official action:

“Clause 5 — LICENSOR shall furnish to LICENSEE complete information relating to all improvements and new developments with respect to the Licensed Products achieved by LICENSOR during the licensed term and irrespective of any patents which may be granted to LICENSOR covering such improvements and new developments, LICENSEE shall be entitled to use such information without further payment to LICENSOR other than herein provided.”

“The agreement must state that the developments and improvements made by the LICENSEE, if patentable, shall belong to the LICENSEE”.

Comments

Act 15 states that the technology agreement must provide for the furnishing of complementary technical data and information, specifically related to the transferred technology. Whenever these “improvements” are covered by a patent in Brazil, Act 15 states that a license agreement shall be executed relating specifically to such “improvements,” provided that the requirements which apply to such contracts “excepting those requirements relating to remuneration” shall be complied with. The official actions which have been quoted clearly show that any patent license agreement covering improvements related to the transferred technology must be the object of a separate royalty-free patent license agreement.

LIABILITY

Industrial Technology Agreement

“Clause 3.2 of the agreement must be amended in order that the party furnishing the technology be made responsible for damages resulting from proven failures in the transferred technology.”

“The restriction on responsibility of SUPPLIER provided in clause 9 (d) of the agreement must be deleted and the SUPPLIER must be totally responsible and must guarantee to RECIPIENT that RECIPIENT may continue to operate the process with our additional expenses.”

“Delete the following from Article II, paragraph (e) of the agreement: ‘RECIPIENT hereby further agrees to be responsible for any and all claims arising out of manufacture, use or sale of the “Product” and further agrees to indemnify and hold harmless SUPPLIER from any an all liability or expense resulting from any claims with respect to the manufacture, use or sale of the “Product” by RECIPIENT’, since this conflicts with Law 4137/62.”

Technical-Industrial Cooperation Agreement

“Amend clause 10 so that it states that the LICENSOR may not be held liable for defects in products manufactured by LICENSEE, which products have not followed information and manufacturing specifications conveyed by LICENSOR.”

Comments

In both agreements involving technology and technical-industrial cooperation, Act 15 states that the

agreement shall not exempt the party who furnishes technology from responsibility regarding possible suits by third parties, caused by “faults or defects” or by infringement of industrial property rights with regard to the technological content to which the agreement refers. The official actions quoted show that the interpretation of this provision of the act is very flexible. It seems entirely unreasonable to demand that the party supplying the technology must be totally responsible for damages resulting from proven failures in the transferred technology. It is evident that, if the recipient party does not follow information and manufacturing specifications conveyed by the party supplying the technology, the supplier cannot be held responsible for faults or defects in the transferred technology. We doubt whether Brazilian courts would decide otherwise. The quoted official action which required the amendment for the licensor not to be held liable for defects in the products manufactured by the licensee, when the products have not followed manufacturing specifications conveyed by the licensor, seems to be the most reasonable and fair policy to adopt. There are reasons to believe that this more flexible policy is being followed.

REMUNERATION

Industrial Technology Agreement

“The remuneration for technical assistance as provided in clause 7 of the agreement must be made to conform to the provisions of item 4.2.3 and 4.2.4 of Normative Act 15.”

“The agreement must indicate a fixed amount for remuneration which must be defined and must correspond to the technology to be transferred and must be explained and itemized. Payment must be related to the services actually rendered.”

“Submit a supplementary agreement reducing the amount of payments for the continuation of the technical assistance and improvement of the product from 2% to 1% of net sales price in view of Normative Act 15.” Our note: This is an official action issued on a request for renewal of the agreement.

“The agreement should provide that the price for calculation sheets, apparatus and other equipment and/or apparatus for manufacture or tests referred to in clause 3(b) must also be deducted from the net sales price.” Note: This requirement was contested and INPI accepted the arguments presented in favor of nondeductibility.

“Clause 8(b) should be renegotiated in order that there should be a reduction in the percentage of 5% of the net sales price, considered rather excessive in relation to the levels normally accepted for this class of products (sprinklers).”

“The wording of clause 10(a) of the agreement must be reworded since in view of article 17 of Decree 55762 of February 17, 1965 the registration of agreements involving technology transfer must be made in the currency of the country of the party supplying the technology.”

“The following information is requested: breakdown of the remuneration of US\$ 200,000.00. The agreement must indicate whether this amount refers to supply of manufacturing designs, supply of technicians for rendering technical assistance or assembly services, etc.”

"Clause 4 of the agreement must be amended to establish that the remuneration of US\$ 620,000.00 shall comprise Sections a), b) and c) of item 5.1.1 of Normative Act 15."

"The payment established in clause 2(c) of Article V providing for the payment of technical assistance in one sole payment without specifying when payment shall be effected does not comply with the provisions of item 5.3.4 of Act 15. The agreement should make it clear that payment shall be made when the services are actually rendered by the technicians or that payment shall take place after conclusion of the services rendered by means of an invoice issued by the party who is furnishing the technology, in which invoice the services rendered and the amounts must be duly itemized."

Patent Licensing Agreement

"Alter the definition of net sales price according to Act 15."

"Establish the same conditions of remuneration for the patents owned by the foreign party to be licensed to the recipient."

"Adopt the definition of 'net sales' appearing in Act 15."

Trademark License Agreement

"Delete paragraph f) from Article VI, since it is in conflict with Antitrust Law 4137/62." Our note: The following is the objected wording of paragraph f) of Article VI of the agreement in respect of which this official action issued:

"Anything contained in this article to the contrary notwithstanding, Licensee agrees to pay to Licensor, for the right to use said trademark, minimum fees of at least Ten Thousand United States Dollars (US\$ 10,000.00) for each twelve month period. If the minimum fee payment is not met for any twelve month period, Licensee shall be obligated to pay to Licensor within sixty (60) days after the end of such period the difference between the actual fees paid and Ten Thousand United States Dollars (US\$ 10,000.00) to satisfy said minimum fee payment requirement. In the event of war involving Brazil and for the duration thereof, the minimum fee payment requirement shall be waived."

Comments

In the majority of cases, the chances of success or failure in obtaining approval of agreements hinges on the remuneration clauses. Careful attention should be given to the remuneration provisions of Act 15, particularly to the definition of the term "net price" which is held to be the amount of billings, based on actual sales, less taxes, raw materials, inputs in general, imported components, commissions, credits for returns, freight, insurance and packaging.

INPI accepts lump-sum payments or running royalties which must be calculated on net sales price, or on net income from sales, or on profits earned. Lump-sum payments for technology should be broken down, defined and explained in detail. When payments are to be made on a royalty basis, the maximum amount to be paid for the technology, throughout the term of the agreement, must be estimated.

The accepted amount of remuneration will depend on the particular facts of the case and on the parties to the agreement.

Industrial Technology Agreement

"Alter the wording of Clause 3 in order that it is precisely established that there are no restrictions regarding export of all the technological processes covered by the agreement (Law 4137/62)."

"Exports of the products covered by the agreement must be free of any restrictions in accordance with Article 29 of Law 5772/71 (Code of Industrial Property) and Law 4137/62, paragraph 15 (Antitrust Law)."

"Delete '... together with the right to manufacture and sell the product...' and replace with '... without any restrictions to the commercialization and export of the products.'"

"Delete clause 6 (a): '... and the right to sell in Brazil and in other countries...' and add: 'there shall be no restrictions as to commercialization and export of products.'"

Trademark License Agreement

"The agreement should make it clear that the Brazilian company can freely commercialize the product covered by the trademark registration, including the possibility to export to any other country. If the LICENSOR wishes to restrict exports to countries in which it has exclusive license agreements, then information should be furnished regarding the countries in which these agreements exist, indicating the names of the Licensees, the date on which the agreements were executed and the terms thereof."

"Article 1 of the agreement must be modified in order that there are no restrictions to exports in accordance with article 29, paragraph 2 of Law 5772/71." Our note: The following is the wording of Article 1 of this agreement which was objected to on the ground that it merely indicated that the LICENSEE could manufacture and sell in Brazil, a fact which was interpreted as excluding the possibility of sales to other countries:

"Article 1—The object of the present agreement is the trademark ABC, registration of which was obtained under No. 123, in Class 3, and has been renewed up to March 30, 1978. LICENSOR hereby authorizes LICENSEE to use the above-mentioned trademark on the product covered by the registration and to manufacture and sell such product in Brazil, and for this purpose may use and affix the said trademark to packaging and labels."

Comments

These official actions appear to show that while in some instances the policy is directed to total refusal of any restrictions on commercialization and/or export of products covered by the agreements, in one case of the trademark license agreement it shows more flexibility. There are recent indications, however, which show INPI's tendency of demanding the exclusion from all agreements of any clause which restricts exports.

The official action which issued on a trademark license agreement indicates that at one time it was possible to restrict exports to countries in which the licensor has exclusive license agreements. Present trends show that this is no longer possible and that no restrictions will apparently be accepted on exports.

RESTRICTIONS TO USE OF TECHNOLOGY AND TO COMMERCIALIZATION OF PRODUCTS

Industrial Technology Agreement

"In clause 3(a) and 2(b) the reference to the use of the technology solely in the 'Territory' must be deleted, since such restriction is only acceptable during the term of the agreement."

"The reference to the right to use and sell referred to in clause 3(d) of the agreement must be deleted, even when referring to patented technology since there are only rights to manufacture involved. The use and sale are rights which belong to the parties who purchase the technology irrespective of any specific grant by the parties supplying the technology."

"Alter clause 2(a) of the agreement since it is directed to restrictions to commercialization and is therefore in conflict with item 4.5.2 of Normative Act 15."

"Delete any restrictions to the commercialization of the product outside Brazil since this is in conflict with Laws 4137/62 and 5772/71."

Patent License Agreement

"Amend clause 5 to read that LICENSOR has the option, based on its quality control, to require from LICENSEE that the products manufactured by LICENSEE which do not meet the desired quality standards, shall be adapted to the quality standards within ninety days under penalty of the supply of the products being forbidden."

Trademark License Agreement

"Delete from clause 15 the requirement to cease production when the agreement terminates as well as the requirement to return the documents referred to in said clause, since this is in conflict with Law 5772 (articles 29 and 30) and Law 4137 (article 2, paragraph 1, section 3)."

Comments

The official actions quoted here are based on provisions of the present Code of Industrial Property (Law 5772/71), of Antitrust Law 4137/62 and of Normative Act 15. The present Code of Industrial Property states that patent and trademark license agreements shall not impose restrictions on the industrialization, commercialization or exportation of the product covered by the license agreement. Antitrust Law 4137/62 is commonly quoted whenever restrictions are made to the operation or development of a company since this is held to be a form of abuse of economic power.

TECHNICAL STANDARDS

Technical-Industrial Cooperation Agreement

"Are the products manufactured by Supplier 'standardized', that is, do they follow any technical standards? If they do, to what standards are they subjected to? Do the manufactured products have their own standard testing procedures? Are there any Brazilian technical standards (ABNT — the acronym for Brazilian Association of Technical Standards) which comply with the required purposes? If the products follow foreign technical standards, is there any Portuguese translation that can be submitted?"

Comments

Here is one of the most recent requirements made by INPI which reflects a general concern of the Brazilian Government on the matter of technical standards of products manufactured locally and for exports. A practical example of this new policy is that the CDI (Council of Industrial Development) will now apparently only grant fiscal incentives to those projects which are based on the metric system. INPI is also being pressured to only approve technology agreements when they are based on the metric system.

It is recommended that technical standards of products covered by the agreement should follow Brazilian standards or internationally accepted standards and for this purpose, whenever there are any doubts, the Brazilian Association of Technical Standards — ABNT, should be consulted.

TERMINOLOGY

Industrial Technology Agreement

"Since the agreement is for the furnishing of industrial technology, and does not involve any industrial property rights, eliminate, in accordance with item 4.5.2(a) of Normative Act 15, all inadequate terminology from the agreement."

"All references to terminology relating exclusively to industrial property rights, such as licenses, rights, royalties, patents, protections, titles, etc. must be omitted."

"Delete all references such as 'rights, sub-licensing, granted rights, and property.' The word 'royalty' must be replaced with the word 'remuneration' in clauses 8(b) and 1.4, considering that in accordance with item 4.5.2(a) of Act 15 the agreement cannot include, either implicitly or explicitly, any references to industrial property rights or terminology usually adopted in license agreements."

"Delete from the agreement all and any references to industrial property rights such as 'under license', and 'industrial and commercial secrets', since the agreement does not involve rights to said property."

Technical Industrial Cooperation Agreement

"The words 'the use of know-how of supplier' must be replaced in clause 3 because the recipient is paying for the acquisition and not for the use of know-how."

"The words 'exploitation of supplier's products' must be replaced in clause 5 with the words 'manufacture of supplier's products,' because the agreement refers to technical cooperation for the manufacture of the product and does not refer to a license agreement for exploitation of the product."

Comments

Careful attention should be given to the wording of agreements which do not involve industrial property rights. INPI is very sensitive to the use in technology agreements of words such as "licenses, royalties, protection, secrets," etc., since the policy is that technology is purchased and not licensed and thus these and similar words, normally included in license agreements, are not accepted.

TERM OF AGREEMENT

Industrial Technology Agreement

"The agreement must provide that the term thereof shall be five years."

"The agreement must state that the term thereof shall be five years counting from the first contract of sale."

"The term of the agreement must be altered since it must be established in accordance with the term in which the additional information is divulged according to clause 2. It should be remembered that secrecy may be extended for five years after receipt of each information received."

Trademark License Agreement

"Article 3 of the agreement must be modified in order that the term of the agreement should not go beyond the term of protection of the industrial property right relating to the trademark Registration. The agreement cannot state that the term thereof is unlimited."

"The term of the agreement shall correspond to the date of expiry of the trademark registration and for the pending application the term of the agreement shall be five years counting from the date of the Certificate of Recordal. When the trademark application is allowed, the Licensee must request the amendment of the Certificate of Recordal."

Comments

The standard practice is to limit the term of agreements involving technology to five years. In certain cases, the five-year term begins from the recordal of the agreement with the Central Bank or with INPI, and in some cases the five year term begins with the first contract of sale. In very special cases, INPI has apparently granted agreements for a period of ten years.

With regard to trademark license agreements, the term thereof is established according to the date of expiry of the trademark registration to which the agreement refers. When there are several trademark registrations involved, the practice has been to set the term of the agreement according to the term of each of the trademark registrations listed in the agreement. In such cases, it becomes necessary, whenever renewal of a trademark registration is applied for, to re-apply for recordal of the license agreement in respect of the trademark registration under renewal. When the license agreement covers a pending trademark application the normal policy of INPI is to grant recordal for a period of five years and when the application matures to registration the licensee must request the amendment of the Certificate of Recordal, in order that it may be adapted to the term of the trademark registration which has matured from the application.

A GLIMPSE INTO PRESENT AND FUTURE TRENDS

INPI seems strongly inclined at present to mainly record technology transfer agreements involving industries which rate a high degree of priority as regards Brazil's economy or agreements where Brazilian

Government entities or government-controlled entities are the beneficiaries of the technology transfer. By this it should not be assumed that INPI is rejecting agreements where nonessential industries are involved or when private industries are parties to such agreements. However, there is every indication that INPI is somewhat reluctant to record agreements for nonessential industries, particularly those which involve strictly private entities. This would hold all the more true when the parties to the agreement are a foreign company and its Brazilian subsidiary.

On this specific issue, the following words of the present Secretary of Industrial Technology,¹ who heads the government's program for developing technology in Brazil, speak for themselves: "Multinational companies have their own structure which is the source of their strength. One of the factors of their power is the technology which is always centralized at the head office. It is appalling to realize that the technological activity of their subsidiaries is practically nil. Yet the contribution of the multinationals in this area is very reduced. Heads of subsidiaries commonly complain that the head office will not permit any technological development programs at the local level. Even when production of the subsidiary is greater than production of the head office, all technological activity remains centralized."

Whenever INPI is confronted with an agreement for the furnishing of technology between a foreign company and its Brazilian subsidiary, very careful consideration is given to the necessity, the content, the value of the technology being transferred and the amount of remuneration.

This may be the warning of a strongly nationalistic policy based on the need for reserving the domestic market, whenever possible, to those local industries which to all appearances can meet the internal demand, and also in the course of a reasonable period of time, will be able to export their products to certain markets, at competitive prices, considering that these products destined for export, are subsidized by the government, by means of generous tax benefits or by financing at low interest rates. The desire to save on remittances abroad, of fees and royalties, in order to attempt to improve Brazil's balance of payment and simultaneously to stimulate exports, should also be considered as contributing factors to this trend.

Exports Technology

Brazil is beginning to be an exporter of technology particularly in the road building and oil prospecting fields, in addition to certain industrial areas, by exporting genuinely native technology or technology transferred from abroad but already fully absorbed by local industry.

Exports of Brazilian technology in the cited cases, are greatly facilitated due to the fact that Brazilian labor costs are lower than these same costs in developed countries, also because the Brazilian Government grants a wide range of tax benefits to exported goods and these benefits to some extent are equally applicable to exports of technology from Brazil.

One must also consider that an increasingly large

number of Brazilian technicians are being trained abroad and this, in the long run, would theoretically allow Brazil to become less dependent on foreign technology even in the capital goods area in which Brazil is still largely deficient, and where it believes it can attain self-sufficiency within the next few years,

Government financed research programs as well as technological research funded by large industrial concerns and, in some instances, transfer of technology directly from foreign suppliers to Brazilian Government entities, such as FINEP (Financiadora de Estudos e Projectos,² engaged in financing research programs in the technology area, are factors to be considered in order to lend further support to this trend in Brazil's present transfer of technology policy.

There are signs that indicate that FINEP will play an important role in Brazil's technological future. By financing local industry engaged in the manufacture of capital goods, this Government entity would have a strong influence in the approval and implementation of engineering projects developed by local companies. Whenever such companies find it necessary to obtain technology from abroad, FINEP will apparently insist on having the technology agreements approved not only by INPI but also by FINEP itself.

It is expected that within a period of approximately five to ten years, provided there are no restrictions of foreign investments or loans which continue to be necessary to aid in the growth of a rapidly developing country, Brazil will become less dependent on foreign technology in view of the factors mentioned above.

Another key factor which must not be forgotten, is that Brazil is encouraging, in certain cases, the organization of joint ventures with the majority control held by Brazilians and tends to limit or even exclude the setting up of wholly-owned local subsidiaries of foreign companies engaged in the manufacture of capital and consumer goods, which request tax benefits to import machinery and equipment through CDI (Council of Industrial Development), particularly in those fields where the Government is of the opinion that local industry is fully capable of supplying the local market. An example of this is the computer sector.

Restrictions to Automobile Industry

A very significant reflection of the present trend is Normative Act 30 of January 19, 1978.³ According to this Act, INPI will no longer approve and record technology transfer agreements in the automobile industry. The only agreements in this field of industry which will be recorded are those relating to Specialized Technical Services, "when necessary and still unavailable in Brazil."

Act 30 also prohibits payments resulting from any agreements whenever they are directed to: (a) projects of new models as well as the respective manufacturing methods carried out abroad, excluding projects involving engines and mechanical components, the technological levels of which have not yet been reached in Brazil; (b) expenses charged by the foreign parent company to its Brazilian subsidiary, in connection with rendering of any kind of administrative, financial and marketing services; allocation of expenses involving research and technological development carried out by the parent company; salaries of foreign employees and

expenses related to the transfer of employees, involving executive personnel or personnel assigned to activities which are not directly linked to specific and temporary technical services.

The reasons given by INPI for issuing Act 30 are mainly directed to the necessity of utilizing existing local capabilities, expanding local technological participation in the development of automotive vehicles, and preparing the automotive sector "for the final stages of its full development in Brazil." However, one real motivation for Act 30 is to reduce the present level of technological dependence and disbursement of foreign exchange which in the sector of transport material, embracing the automotive industry, has reached figures that the government feels are excessive. These figures are understood to represent 40% of the total yearly remittances for purchase of technology. The automobile industry was apparently the target of Act 30 because of the advanced stage of development of this industry in Brazil.

Philosophy

INPI's philosophy in issuing Act 30 is also prompted by the need to have certain sectors of industry free from foreign dependence. INPI officially confirms this in Act 30 when it states that agreements involving technology in the automobile industry will be refused because "... with time they consolidate the local firm's degree of dependence..." Consideration is given, however, to cases of eventual arrival of technicians who can be classified under the provisions of item 4.2.3 of Act 15, since this grants conditions for the absorption of technology.

Recent press reports and statements by INPI Officials lead one to believe that this policy of nonacceptance for recordal of technology agreements involving the automobile industry, may possibly be extended to other types of industrial activities. The trend thus seems to be toward even stricter controls concerning technology transfer on a broad basis and, whenever possible, to dissuade the local party from entering into agreements with foreign suppliers of technology in the hope that it will secure the same (or similar) technology locally.

By following this policy, the authorities hope to stimulate local technology, by financing research institutes as well as private and government projects, and recently there have been increasing demands by local industry to have the government grant tax incentives for research conducted by local industries, and other tax facilities which would hopefully induce Brazilian industry to conduct increased efforts to avoid importing foreign technology.

One can expect that barring any unforeseen developments, the trend will lead to importation of only very advanced technology not obtainable in Brazil, based on strict criteria determined by INPI with a view to having Brazil become as self-sufficient as possible from a technological point of view.

INPI realizes that Brazil cannot be entirely independent in this respect and the President of INPI in a recent statement mentioned that "as our economy in the industrial field is expanding at reasonable rates, the importation of technology is still an indispensable necessity." However, this statement should not be

taken at face value, in the sense that further and stricter limitations can be expected, although transfer of technology must continue, but only in a very limited scale and involving certain types of sophisticated technology which are presently nonexistent in Brazil.

Compulsory Submission of Agreement in Draft Form

A further revealing step was taken by INPI when it issued Normative Act 32 of May 5, 1978.⁴ This act establishes a system of compulsory prior examination for patent and trademark license agreements calling for royalty payments, and for agreements involving technology, technical-industrial cooperation and specialized technical services, with the exception of agreements limited to inspection and/or supervision of services related to assembly of imported equipment, as well as to technical services of "an occasional nature" up to a limit of US \$20,000.

Act 32 states that when ever the "contracting" involves one or more agreements, all the respective drafts must be submitted simultaneously and in such a case prior examination of all agreements is compulsory, even if some of the agreements are not those which the act states must be submitted for prior examination. In other words, if the parties are executing a technology agreement and at the same time are executing a royalty-free trademark license agreement, which would normally not require compulsory prior examination, both agreements must be submitted in draft form in accordance with Act 32.

The preambles of Act 32 explain that the purpose of submission of agreements in draft form is (a) to improve examination of agreements, (b) to conform agreements to legal and administrative provisions since the issuance of official actions requesting conformity delay records, (c) to obtain the benefits of more favorable negotiations and more expeditious decisions, and (d) to enable the increase and stimulation of the use of local technology and engineering as a result of the advance knowledge of negotiations before the agreement is actually executed by the parties.

There are serious doubts as to whether the submission of agreements in draft form will expedite final approval and recordal of agreements. INPI continues to be understaffed although efforts are being made to improve the deficiency and the President of INPI has repeatedly confirmed that Act 32 will accelerate decisions.

It is feared, however, that the fact that INPI can, and presumably will, interfere in the negotiations at a stage when the parties have not yet executed the agreement will have a negative effect and could even result in a disruption of negotiations between the foreign supplier of technology and the Brazilian recipient.

Dual Texts

According to Act 32, to request prior examination, the draft of the agreement must be submitted in Portuguese and in the language chosen by the foreign party, the texts of which must be placed in parallel columns. With the bilingual draft of the agreement a special form must be submitted "in order to standardize the data supplied to INPI."

This official form calls for sundry information re-

garding breakdown in shares or stock of the Brazilian recipient company, with listings of stockholders and their participation in the capital. The form also makes inquiries as to whether there is any connection between the foreign supplier and the Brazilian recipient, whether there are other contemplated agreements between the parties and general data concerning the recipient's line of business, the "organogram" of the company, the project and/or contemplated agreement, the necessity to import equipment, components or raw materials from the supplier or from other sources.

The form also requests information as to whether alternative sources, either abroad or within Brazil, for the technology being negotiated have been considered. The reason for the preference given to the party who will supply the technology must be indicated as well as a listing of the alternative sources which were consulted. A description of the technique or process to be covered by the agreement must be furnished, and relevant documentation must be attached.

With regard to remuneration the form must be completed to show the negotiated and agreed basis for calculation of the remuneration mentioned in the draft-agreement, which should itemize and/or demonstrate all costs to be incurred both in foreign and/or local currency. If remuneration is to be on a percentage basis, the maximum amount to be paid for the technology during the term of the agreement must be estimated.

Act 32 and the official form to be completed and submitted with the draft agreement are well within the framework of INPI's general policy in the technology area. Whether the parties to agreements will or will not be discouraged from going through the formalities now required, remains to be seen.

INPI's Philosophy and Future Aims

INPI's President, Dr. Ubirajara Quaranta Cabral, in a speech before the Brazilian House of Representatives, disclosed some revealing remarks. He defined technology as being "knowledge which permits the production of a certain product or the rendering of services, in acceptable economical conditions." He further stated that "such knowledge, which generally consists of drawings, information and documents, is in reality merchandise like any other which can be sold, purchased, etc., and 'transferred.'"

Here rests one of the basic principles of present technological policy in Brazil: technology is sold and not licensed. Normative Act 15 incorporates this principle into legislation when it provides that an agreement shall be regarded as "an agreement for furnishing industrial technology" when the specific purpose thereof is the "acquisition" of knowledge and techniques which are to be applied to the production of consumer goods or of inputs in general, which are not protected by pending patent applications or by issued patents in Brazil.

An example of the practical consequences of this principle is the official action issued by INPI requesting that the words of "use of know-how of supplier" must be substituted in the agreement "because the recipient is paying for the acquisition and not for the use of know-how." Another official action requested the deletion from the agreement of all and any references

to industrial property rights such as "under license" and "industrial and commercial secrets" and the justification given for such deletions was that the agreement did not involve rights to such "property."

Dr. Cabral points out that a fundamental aspect in the process of effective technology transfer in Brazil is the activity and end purpose of the party acquiring the technology. If the party is, for example, a manufacturer of a certain consumer product, the purpose of the company is not the technology of the project and/or its process but rather its result, that is to say, the installation which will permit it to manufacture the desired product. From the company's point of view, according to Dr. Cabral, the absorption of the basic project therefore does not present any interest. However, he stated that from the government's point of view, it is in the country's interest to avoid the repetitious purchase of new analogous basic projects every time the same or some other local company wishes to expand or launch another line of product.

Dr. Cabral added that this leads to the necessity to have INPI call upon local Brazilian engineering firms as "intervening parties" to certain agreements. He pointed out that since these local companies are engaged in rendering services and have projecting as their main activity, the absorption of the technology relating to the project is of real interest to them.

Product Engineering

54 This is in line with Act 15 which indicates that in cases concerning the rendering of product engineering services to companies which manufacture capital goods and the components thereof, and in order to enable the recipient party to become fully conversant with the transferred technology, the services shall be rendered directly to the said companies, unless it is shown that they do not possess the necessary technical and administrative capacity, in which case the services shall be contracted by or through local Brazilian engineering and/or consulting company, with the actual absorption of technology as the objective.

Dr. Cabral stated that within the economic framework of the present market, the importation of technology is a "necessity" but, on the other hand, he expressed his views that it is not advisable to increase Brazil's rate of dependence, which is already high, on foreign technology. According to Dr. Cabral, the solution appears to be to continue importing technology but without discouraging local technological capacity, and this can be achieved through the joint efforts of government and local Brazilian firms which are oriented toward technological matters.

He explained that the joint efforts of the government should consist essentially in securing foreign loans, not necessarily linked to the implementation or management of the project by a foreign entity. He further stressed that it must be ensured that the selected technology is adequate in relation to Brazilian conditions (culture, geology, climate, abundant labor, etc. . . .) as well as to enable its effective absorption, as a prerequisite to its local adaptation, if necessary, and to its improvement.

He further stressed that present policy regarding local companies should be to make the best possible use of local technical capacity, particularly in the sense that local engineering firms as well as research centers

should, whenever possible, take an active part in the process of absorption of technology. He suggested that engineering firms and equipment manufacturers should set up or expand their planning staffs along technological lines.

Finalizing, he pointed out that Brazil's aims in the 1980 decade should be directed to a technology export drive, to enable Brazil to reach an equilibrium in what he refers to as the "technological trade balance," that is, exports of technology should reach a closer level with imports of technology. He acknowledged that this is a very special challenge since Brazil's development plans still require the importation of technology in order to expand its manufacturing facilities.

PROTECTION OF PROPERTY RIGHTS OF UNPATENTED TECHNOLOGY

Although it is a common belief that Brazil does not recognize know-how in the same manner as other countries, there can be no doubt that Brazil considers know-how as proprietary information. However, property rights can only be asserted over confidential information furnished during the term of the agreement. This is evidenced by official actions which have issued by the Brazilian Patent and Trademark Office (INPI) on technology transfer agreements, indicating that information received from the supplier of technology can only be maintained confidential during the term of the agreement.

The following official action confirms this view. An agreement involving technology transfer included a clause which stated that all know-how furnished by supplier to recipient should be acquired in confidence and solely for the recipient's own use under the agreement, and recipient should keep such information confidential and take all reasonable precautions to prevent disclosure thereof by its employees. The clause ended by stating that this applied "at any time during or after the term of this agreement."

INPI reacted strongly to this clause by demanding the deletion of the words "at any time during or after the term of this agreement" and their replacement with the words "during the term of this agreement." Brazil's Antitrust Law⁶ was quoted in this official action as the legal basis for the requirement to limit confidentiality of know-how to the term of the agreement. The current reasoning is that to enforce confidentiality after the term of the agreement would constitute a form of abuse of economic power.

Protection of trade secrets is recognized by law in Brazil, albeit in a flimsy and circuitous way. The Penal Code of 1940,⁶ still in force to this date, and the Code of Industrial Property of 1945,⁷ which is partly still in force, define as one of the crimes of unfair competition the unauthorized disclosure or exploitation of a trade secret. It must be acknowledged that the existing legal provisions only apply to an employee who had knowledge of the secret as a result of services he was rendering to his employer. Nevertheless, these provisions show recognition of Brazilian legislation to the principle that the owner of a trade secret has a right to keep it secret. It should be stressed that when this legislation was enacted, know-how in Brazil was still in a very incipient stage and this explains why the Brazilian lawmakers were not concerned, at the time, with

protection of know-how in a more adequate manner.

The present provisions of the Code of 1945 quote the various specific acts of unfair competition by the employee, and add in a broad sense that "an injured party" shall have a claim for damages caused by "any acts of unfair competition which are not specified by law."⁸ This would appear to lend support for a court action based on unfair competition which caused him damages by disclosing to others, during the term of the agreement, confidential and proprietary information.

On the other hand, the party who furnishes the technology can merely attempt to recover monetary compensation for damages sustained as a result of breach of the confidentiality clauses of the agreement. If the recipient of the transferred technology, notwithstanding the existence of a contractual clause which is in full force, binding him to keep the know-how secret, discloses during the term of the agreement confidential and proprietary information to third parties, he shall be liable to damages for breach of contract in accordance with the Brazilian Civil Code.⁹

The provisions of this Code state that "... the party who, through voluntary action or omission, negligence or recklessness, infringes a right, or causes damages to another party, must compensate the damage caused."¹⁰ In addition to the loss actually sustained by the party supplying the technology, damages resulting from what the supplier reasonably failed to earn can also be claimed.¹¹ Evidence in such cases is of primary importance and the clauses of the agreement should be carefully worded in order to establish the conditions for assessing damages.

Whenever possible, patent protection in Brazil should be sought on the know-how being transferred. This is definitely the preferred route considering the unpredictable results of court actions which are based on unpatented know-how. Another advantage of securing patents on the know-how is that the term of technology agreements is five years, with dim possibilities of renewal, whereas the term of patent protection is 15 years with a possibility of extension, provided the patent application was filed prior to the present Code of Industrial Property and the patent was granted for a term of 15 years counting from the date of filing.¹²

CONCLUSION

Present trends show that Brazil will continue to import technology but only in a very selected manner. Sophisticated technology, unavailable in Brazil, and involving essential industries will be given priority, particularly when the recipient is a government entity, a government-controlled entity or a Brazilian company whose majority voting capital remains in the hands of the local Brazilian partners.

The feeling that to import technology creates de-

pendency is widespread. Local companies are urged not to buy ready-made technological packages from abroad since it is acknowledged that this may be simpler, but in the long run it is dangerous because the recipient company remains forever dependent on know-how from abroad. By changing this ready-made-technology-purchase mentality it is hoped that local companies will engage in research and develop their own technology.

The current balance-of-payments problem also bears a strong influence on present technological policies. Considering that Brazil at present spends, according to the Secretary of Industrial Technology, between US\$1.5 and US\$2 billion a year on specific technology or technology built into equipment, and considering further that the export drive is a strategic factor in the government's economic policy, it is felt that there is no choice other than to cut back on technology imports.

Normative Acts 30 and 32 offer revealing material for an analysis of present and future trends. These two Acts could be simply and superficially interpreted to represent further restrictions on technology transfer to Brazil. However, one should delve deeper and attempt to understand the underlying reasons for adopting these so-called restrictions. Not to do so would be neglecting the basic needs of survival of a developing country such as Brazil, with a population reaching 120 million people and vast natural resources, representing an undoubtedly vigorous and attractive market.

NOTES:

1. Mr. Jose Walter Bautista Vidal is the present Secretary of Industrial Technology of Brazil's Ministry of Industry and Commerce.
2. FINEP was established by Decree No. 61.056 of July 24, 1967 and the purpose of this company is to prepare and finance studies of projects and economic development programs; studies of improvement of natural resources and rendering of technical assistance. The Federal Union, the BNDE (National Economic Development Bank) and other government entities of Indirect Administration own shares in FINEP.
3. Act 30 was published in the Official Bulletin of the Brazilian Patent Office on January 30, 1978.
4. Act 32 was published in the Official Bulletin on May 9, 1978.
5. Brazil's antitrust law is Law No. 4137 of September 10, 1962.
6. Brazil's present Penal Code is Decree-Law No. 2848 of December 7, 1940.
7. The Code of Industrial Property of 1945 is Decree-Law No. 7903 of August 27, 1945. Provisions of this Code relating to crimes of unfair competition are still in force in view of Article 128 of the present Code.
8. Sole Paragraph of Article 178 of the Code of 1945 (Decree-Law No. 7903).
9. The present Brazilian Civil Code is Law No. 3071 of January 1, 1916.
10. Article 159 of the Brazilian Civil Code.
11. Article 1059 of the Brazilian Civil Code.
12. The courts in Brazil are granting extensions of term of patents whenever the patent issued from an application filed prior to December 31, 1971 (date of the present Code) and the Patent Office grants the patent for fifteen years from the date of filing and not from the date of grant or issue. These court decisions granting extensions are based on the fact that the law (the Code of 1971) could not alter the term of patents which issued from applications filed at a time when the Law granted patents for fifteen years from the date of issue and not from date of filing.