pany, of Milwaukee, Wisc., one of those present at the meeting, said in a telephone interview that his company was considering setting up a major manufacturing plant in Yugoslavia instead of expanding existing plants in the Common Market area.

SOUTH AMERICA A TARGET

"President Tito's statement changed our whole attitude toward investment there," Mr. Scott said. "We look upon this as a way of possibly serving a market we are having trouble serving now — South America. Products produced by a joint-venture company in Yugoslavia could be exported to South America more readily than our plants in Great Britain, France, and Australia. Costs are rising so rapidly in the Common Market that we are thinking of Yugoslavia as an alternate to our European operations."

A team from Allis-Chalmers visited Yugoslavia, but Mr. Scott declined to say what a Yugoslavia-based plant might produce.

However, top Commerce Department sources said that the joint-venture plant would probably produce hydroturbines, which Allis-Chalmers seeks to export to South America.

Gerald Trautman, chairman of the board of the Greyhound Corporation in Phoenix, Ariz., said in a telephone interview that his company was involved in negotiating a joint-venture arrangement with the Centran Bus Corporation of Sarajevo for the Yugoslav leg of a trans-European bus route, comparable to the Orient Express rail line.

Additionally, Greyhound, largely as a result of the meeting with Tito, is considering establishment of a bus-manufacturing plant in Yugoslavia on a 50-50 partnership arrangement. "This is just in the talking stage," Mr. Trautman said. "But (the 50-50 provision) does make it easier."

"We don't like anyone to use the Greyhound name if we have a minority interest," he added.

Before the October session, the Borden Corporation of New York City had considered a joint venture in Yugoslavia in a dried-milk processing facility but corporate officials vetoed the concept with a minority-share ownership by Borden.

Now, the idea is under reconsideration. "It's an incentive," said Augustine R. Marusi, chairman of the board and president of Borden, of the new minority-ownership clause. "I personally hope that our people will look at that country more objectively now."

Najeb E. Halaby, chairman of the board and president of Pan American Corporation of New York, was also present at the meeting. Commerce Department officials said that a Pan American subsidiary, in cooperation with the Gulf and Western Motels chain, is now considering a joint arrangement with the Yugoslav government in building small, fabricated motels in tourist areas of the country. Mr. Halaby was not available for comment.

Several corporate officials present at the meeting including John E. Bierwirth, chairman of the National Distillers & Chemical Corporation of New York, and William A. Hewitt, chairman of John Deere & Company of Moline, Ill, said that their companies were not immediately considering any joint venture arrangements but that should they be approached for such arrangements in the future, the new majority ownership provision would "lend it added luster."

In view of the rapid change and growth of joint ventures (with licenses) in Yugoslavia, LES Nouvelles has asked LES member Dr. Popovic to author a study. Highlights of that study include:

(1) The previous requirement that 20% of the foreign investors' profits in a joint venture be reinvested in Yugoslavia has been dropped.
(2) Funds in the joint venture now may be withdrawn while the joint venture is in operation and capital may be repatriated upon termination of the venture.
(3) Foreign firms bargain and contract independently with Yugoslav firms (not with a branch of the State as in the USSR, Bulgaria, etc.).
(4) Terms of joint venture/licensing agreements may not be adversely affected by subsequent Yugoslav legislation.
(5) The U.S. Overseas Private Investment Corporation (OPIC) will insure U.S. investors against seizure of property.
(6) Foster-Wheeler, Stone & Webster, Stauffer Chemical, Crawford & Russell, Phillips Petroleum, Hoechst, Montedison and Pechiney-St. Gobain all are said to have had satisfactory experiences in Yugoslavia according to advice to LES Nouvelles.

The study of Dr. Popovic follows:

YUGOSLAV LAW ON JOINT VENTURES — RECENT DEVELOPMENTS —

by
*Dr. Slobodan A. Popovic**

The readers of "Les Nouvelles" will certainly remember that I pointed out in a first article concerning this subject (see "Les Nouvelles", March 1971 issue, pages 55-57) that the foreign investment legislation of 1967 was burdened by some imperfections as a reuslt of which practical results were only modest. During the last years in Yugoslavia's newspapers it has been pointed out that we Yugoslavs could not be satisfied either with the rate or the scope of the attraction of foreign capital to Yugoslavia's economy. Titles such as "How to attract foreign capital" or "More convenient conditions for foreign capital" have appeared. In fact, even in 1970 we could see that liberalization of conditions regarding the import of foreign capital was the trend of the future. Changes in the existing legal regime thus were only a question of time and legal procedure. How important it was for the Yugoslav Government and the Parliament can be appreciated from the fact that the amendments and supplements of the laws regulating joint ventures were enacted almost in the same time as the Yugoslav basic Constitutional Amendments (which basically changed the constitutional and social-economic model of the contemporary Yugoslav society). For the sake of completeness, let us mention that the Constitutional Amendments were promulgated on

30th June, 1971 and the Laws regulating joint ventures on 28th July, 1971 (that is to say, during summer vacations).

Main Characteristics of the New Law on Joint Ventures

First of all, it is necessary to point out that in the new Yugoslav Constitution, Amendment XXII, point 4, declares the principle that Yugoslav economic organization can, under the conditions and within the scope established by federal law, invest their funds abroad and use the funds of foreign persons in the country. In addition, the Yugoslav Constitution establishes the important rule that the rights of a foreign person to the funds invested in a Yugoslav organization cannot be endangered after the conclusion of the agreement either by law or by any other legal regulation. Western lawyers in particular will appreciate this fundamental safeguard.

This constitutional principle, which definitely should eliminate any suspicion on the part of foreign investors regarding the legal security for their investments in Yugoslavia, is stipulated in the LAW AMENDING AND SUPPLEMENTING THE LAW ON ASSETS OF WORKING ORGANIZATIONS, reading as follows:

"Article 73b.

If the law governing the investment is changed after the registration of the agreement on investment of a foreign person in a domestic working organization, the relations regulated by this agreement will be governed by the provisions of the agreement and law which were in force on the date of the registration of the agreement if it were more favourable for the contracting parties, or if they regulate certain questions by mutual consent according to the provisions of the amended law.

The provision of paragraph 1 of this article is not applicable to the payment of liabilities to the social community."

Another amendment is provided by new Article 66a. Although the investment of the funds of a foreign partner into the Yugoslav economic organization, as a rule, is long-term, it is possible to stipulate in the agreement that the foreign partner can invest his funds into a domestic working organization also on a time basis (say, 5 or 10 years). The law states that the time cannot be shorter than the time necessary for the realization or achievement of the purposes of the business cooperation. This seems to be quite logical and acceptable. However, in the next new article — 66b — which defines the right to rescind the contract, the wording is rather different. It is stated in the first paragraph of 66b that the agreement on investment of funds for joint business cooperation cannot be rescinded *by the mutual consent* of the contracting parties before the lapse of the term previously agreed upon. This rule seems contrary to a fundamental principle of contract law as formulated in our country by the maxim: "What two persons agree upon, the same two persons also can amend or cancel." Consider the legal logic as regards the consent of the parties where they agree that the contract should last five years and later change their mind to provide that it should last say seven years or five years — this should be allowed.

Article 66b also provides that the parties can stipulate in the partnership agreement a right to terminate the contract if the joint venture realizes only a loss during the first two years or if the business results achieved are to a great extent below those which were foreseen. While the first reason for a termination of the contract is put into the wording of the regulation (properly so since it represents a specific idea of the law-maker in the field of joint ventures), it was not necessary in my view to mention the right to the unilateral termination of contract because of business results less than planned as it is a generally accepted rule of our contract law (and, of course, not only of Yugoslav law) that both parties should be able to agree to terminate, but one party should not unilaterally be able to take such action unless, of course, there is a breach by the other party.

As it was stated in my previously published article, the agreement between foreign and domestic partners becomes fully valid with the date of inscription in the special register being maintained with the Federal Secretariat of the Yugoslav Economy. The law sets forth the conditions under which the inscription into the register can be refused (points 1-6 are cited in the previous article) and now we emphasize the two new supplements. After point 2, new point 2a has been added. This prescribes that the inscription into the register can be refused if, under the contract, the total amount of funds which the partners invest in the joint venture ". . . does not secure the realization of the conditions set forth in point 2 of the same paragraph". After point 5, a new point 5a has been added in which it is provided that the inscription also can be refused if funds invested by the foreign partner are less than 1,500,000 dinars (that is to say, less than US $100,000). The Federal Secretariat of the Economy, however, is authorized to prescribe, if necessary, the conditions under which the foreign partner could invest in a domestic firm funds less than 1,500,000 dinars. In our opinion, one could criticize as unnecessary the enactment of the mentioned supplements (new points 2a and 5a) as the existing regulations, i.e., points 1-6, had sufficiently secured the interests of Yugoslav economy as a whole, and especially with respect to the right of termination of the contract (. . . if the business results achieved are less than those foreseen . . .), the rights which belong, of course, to the contracting parties. These new regulations, however, are not very important obstacles for doing business in Yugoslavia, i.e., for the investment of foreign capital, so we shall pass to the next points.

The provision which should be stressed (as a step most welcome abroad) is the repeal of the obligation of foreign investors to reinvest 20% of the realized profits into the domestic organization (alternatively, this 20% can be deposited in a Yugoslav bank). Under the new law, the foreign partner enjoys the right to transfer funds realized from the Yugoslav joint venture so long as such transfer is in accordance with the provisions of the partnership agreement as well as the Yugoslav regulations on foreign exchange.

Pursuant to new Article 73a, the foreign partner enjoys a right to transfer the funds he has invested if the agreement on the joint venture is terminated

because of the business purposes have been fulfilled or if the term of contract has lapsed or if the contract has been terminated for reasons provided by this law or even in the event the contract itself provides that the foreign partner is authorized to withdraw the funds partially during the time of the contract. These are logical and more liberal provisions.

The Results Up to the Present and Prospects for the Future

We observed in our first article that the results achieved in Yugoslavia by the initial legislation on the investment of foreign capital into domestic economy were relatively small in value. This, in fact, is a sign which could be said to be "examining the pulse" of Yugoslav economy during the starting and experimental stage of cooperation between Yugoslav and foreign firms. Data now at hand (see the new Table) tend to show that my previous conclusions still are valid. The contracts summarized were concluded before the new amendments and supplements of the legislation on joint ventures, to be precise before June, 1971. Calculated in dinars (US $1.00 = 15,00 dinars) the total value of the joint investments shown in both the old and the new Table would amount to 3,629,081,963 dinars, from which Yugoslav firms invested 2,841,386,683 dinars while foreign capital was invested in the amount of 787,695,280 dinars. The Yugoslav public had thought that foreign capital would be invested in greater amounts and faster. Now they have renewed hopes since the amendments and supplements of the legislation have eliminated almost all important obstacles that had been detected in the initial practice during the last few years under the previous law.

It is interesting to mention how these data are observed by the International Investment Corporation for Yugoslavia (I.I.C.Y.) whose Managing Board on its session in Zurich, October 1971, has considered the activity of the Corporation during the last six months (that is practically the first half of the year). In the report made by the Management of the Corporation, it was said that certain events in Yugoslavia as well as in the world have slowed down negotiations between Yugoslav and foreign partners. Reasons cited include inflation in Yugoslavia (as a result of which "the second package of restrictive measures" have been enacted by the Government), difficulties on the world markets which some big companies in Western Europe and USA were faced with, and, lastly, the crisis of the world monetary system. On the other hand, the Management of the Corporation emphasized that the new Yugoslav legal regime provides better conditions for joint ventures. It was also stressed that the Corporation helped not only on the occasions of the negotiations between the interested parties or in the acquisition of the necessary financial funds, but also it took active part in the joint ventures themselves. Finally, it was noted that an increasing number of foreign companies are asking for partners in Yugoslavia, while in the past only Yugoslav firms presented their projects for business cooperation with foreign companies through the Corporation.

It is also necessary to mention that the loans as well as the guarantees for the private investment of American capital into Yugoslav organizations, made by the Government of the United States on basis of the Amendment of the Senator Javits, would influence very much further development of joint ventures between American and Yugoslavs. It was stated in the letter of Secretary of State, Mr. William Rodgers, to Senator Javits 28th September, 1971, that this policy will make possible more effective competition in the Yugoslav market between companies from the United States and companies from Europe. One must admit that the exchange of goods between the USA and Yugoslavia (amounting to a modest sum of approximately 185 million dollars in both directions) is very far from the real possibilities and mutual expectations.

Specific Disputable Questions

Let us consider now some of the possible controversial questions that could appear relative to negotiations or interpretations of the new Yugoslav regulations on joint ventures.

During meetings among Yugoslav experts, a question was raised relative to the effect of "pactum reservati dominii" (in Civil Law: an agreement between seller and buyer under which the seller maintains title to the goods delivered to the buyer until the total payment of the sales price), i.e., whether this clause could be provided on behalf of the foreign investor. The opinion prevailing today is that "pactum reservati dominii" is possible, not only on behalf of the foreign investor, but also on behalf of the foreign distributor of equipment, etc. This can be important to Westerners.

Under the Yugoslav law on joint ventures, it is possible to establish a joint Business Board or joint Business Council whose members are appointed by the workers' council of the Yugoslav firm and the foreign partner. The question raised concerns the determination of competence between the Business Board and the worker's selfmanagement. In my opinion, this joint Business Board is essential for a joint venture, because through it the influence of the foreign partner on the management of the joint enterprise is secured. The fact is that the many powers of the workers' councils are re-allocated and vested in the Business Board. Of course, the competence of the Business Board should be precisely determined in the partnership agreement and it seems to me to be a question which is not easy to negotiate. The law allows voting on the joint Business Board to be shared equally between the Yugoslav and foreign partner. It thus is advisable that the Western partner take advantage of this possibility. In discussions between Yugoslav jurists, it has been emphasized that the Business Board can decide independently all questions which were not explicitly reserved to the worker's council by the partnership agreement.

One other point not to be overlooked is that foreign persons may invest their funds in Yugoslav enterprises for joint business operations either in the enterprise as a whole, or in a specific section, i.e., unit of the Yugoslav enterprise. When the capital of the foreign partner is invested in the Yugoslav enterprise as a whole, the Yugoslav enterprise is responsible with all its funds for commitments arising from the joint

$ 1,00 = 15.-- Din.

PARTNERSHIP AGREEMENTS UNDER THE LAW ON JOINT VENTURES IN YUGOSLAVIA

(for 1968 and 1969 see "Les Nouvelles", March, 1971, page 56)

Date of Agreement	Name of Yugoslav Partner	Name of Foreign Partner	Participation in Dinars : Yugoslav Partner	Foreign Partner
18.Dec.69.	"Generalexport" Belgrade	L'Agip S.p.A., Roma (Italy)	72,000,000	8,000,000
12.Mar.70.	Zavodi "Crvena zastava" Gragujevac and "FIAT"	International Finance Corporation, Washington, (USA)	-	1,000,000
16.Apr.70.	"OHIS" Organsko-hemijska industrija, Skopje	Produit Chimiques PECHINEY, Neuilly-sur-Seine (France)	253,687.500	28,125,000
4.May 70.	"MEBLO", tovarna pohištva, Nova Gorica	Harvey Guzziner DH, Recanatr (Italy)	9,636,000	642,400
29.May 70.	JUGO-TUTUN Skopje	Baumgastneo Papiers S.A., Lausanne (Suisse)	5,100,000	4,900,000
15.Jun.70.	"Regeneracija", Zabok	Helsa-Werke, Gefrees (Germany, Fed.R.)	821,000	230,000
16.Jum.70.	Tobačna tovarna Ljubljana	"Reemtsma" Zigaretten-Fabriken, Hamburg (Germany, Fed.R.)	2,827,278	1,884.852
29.Jul.70.	"Natron", Maglaj and "Generalexport", Belgrade	Centroproducts S.R.L., Milano (Italy)	4,672,500	3,325,000
9.Sep.70.	Chromos-Katran Kutrilin, Zagreb	Hempel-Marine Paints, Copenhagen (Denmark)	4,400,000	2,800,000

9.Oct.70	"TAM", tovarna automobilov in motorjev, Maribor	"Klöckner-Humboldt-Deutz A.G.", Köln (Germany, Fed.R.)	285,847,000	40,983,600
14.Nov.70	"OLT" - Osječka ljevaonica železa i tvornica strojeva Osijek	"Wendel" Emaillfabrik, Dillenburg (Germany, Fed.R.)	18,600,000	6,200,000
17.Nov.70.	"LEK", Ljubljana	Bayer, AG., Leverkusen, (Germany, Fed.R.)	24,120,500	23,174,600
4.Jan.71.	"IPLAS", Koper	"Hoechst", G.m.b.H., Wien, (Austria)	8,619,000	8,284,000
29.Jan.71.	"IKL" - Industrija kotrljajućih ležaja, Belgrade	Aktiebolaget svenska kullagerfabriken Göteborg (Sweden)	56,947,219	22,143,750
12.Feb.71.	Obrtni centar Koper	Giuseppe Mazzucco, Padova (Italy)	1,375,500	724,500
8.Mar.71.	"KLIP" - montažno industrijsko podjetje, Ljubljana	Richard Daniel, Düsseldorf (Germany, Fed.R.)	1,971,310	897,540
7.Apr.71.	"ETA" - Tovarna za elektrotermičke aparate, Cerkno	E.G.O. Elektrogeräte, Oberdirdingen (Germany, Fed.R.)	11,609,710	11,153,290
15.Apr.71.	"FADIP" Bečej and "Jugohemija", Belgrade	DUNLOP Ltd., & "I.I.C.Y."	21,158,000	16,200,000
19.Apr.71.	"Interprodukt" and "Intercommerce", Umag	Atko Handels AG, Zug (Suisse)	1,382,000	1,327,500

venture. When the funds of the foreign partner are invested in a special unit of the Yugoslav enterprise, the latter is responsible with all its funds, *but only up to the amount of funds invested in that special unit* (unless it has been provided in the partnership agreement that the Yugoslav enterprise should be responsible for these commitments above the stated amount).

Some may ask about the rights of creditors of a Yugoslav enterprise in connection with debts incurred before establishment of the joint investment and particularly in connection with the funds that the Yugoslav enterprise has invested as its share in the business unit in which the joint investment has been done. The proper answer would be that the creditor is protected not harmed by the investment of funds in a joint venture (especially if the debtor acted *mala fide*).

It also is clear that a joint venture can be established as a new and independent enterprise and so avoid the complications above mentioned.

Among Yugoslav jurists, opinion is divided on the question of whether a mortgage on behalf of the foreign partner on the property of the Yugoslav enterprise is possible. Some jurists consider that a foreign person cannot even hold such a mortgage and they also consider that the Yugoslav firm may not do the same thing — except, of course, in the case of ships and aircraft. Others consider that the law should be interpreted with more flexibility and that is quite possible to establish a mortgage on the real property of the Yugoslav enterprise on behalf of both the creditor and the investor.

How to Negotiate and to Draft Agreements on Joint Ventures

As an example of a properly drafted and negotiated partnership agreement in the field of joint ventures, I direct your attention to the agreement between the UK's DUNLOP (the first British Company investing in a Yugoslav enterprise) and the Yugoslav partner FADIP. The joint venture covers the manufacture of high pressure hydraulic hose and related equipment by a joint venture whose technology is granted under license from Dunlop.

The Dunlop-Fadip venture has initial capital of US $5.5 million. Dunlop's share is 24.1% and includes the capitalized value of the know-how together with technical assistance, while Fadip has contributed 44.6%. There are two other partners in the joint venture: the Yugoslav foreign trade company JUGOHEMIJA with 12% and 19.3% by the International Investment Corporation for Yugoslavia (I.I.C.Y.). The latter is registered in Luxembourg and has its headquarters in London and Belgrade.

This joint venture required three separate contracts. One contract covers the investment in the joint undertaking, another the license and technical assistance including the training of Yugoslav personnel in the United Kingdom, while the third contract covers design and commissioning of the plant (the plant will be similar to one of Dunlop's plants in the United Kingdom).

A most interesting detail of this joint venture is the composition of the eight member governing Business Board. Three members are appointed by Dunlop, three by Fadip, one by Jugohemija, and one by the I.I.C.Y. The Board meets every six months and is to make its decisions by a two-thirds majority; unanimity is required only for certain very important decisions. The General Manager is one of the three Fadip board members and the Deputy Manager is one of the three Dunlop board members. By means of this voting arrangement and by having a Deputy General Manager from the British company, Dunlop is assured adequate control over the joint venture. It is certainly of interest to add that this joint venture agreement states that the costs of production (controlled by the Business Board) will include wages at the basic pay rates (otherwise, in Yugoslav accounting practice, wages and salaries are not considered as a cost of production, but are treated as advances on the sharing of profits). Another interesting feature of this agreement is the provision that the Workers' Council can decide only on the distribution of Fadip's share of the profits. As regards production, the joint venture will cover the demand of the Yugoslav market hitherto supplied by imports, and over 40% of the output is expected to be exported to Eastern European countries and some of Dunlop's Western markets.

By giving more information to LES members concerning our new joint venture law, we in Yugoslavia hope to attract more Western capital by laying to rest fears born of misinformation or a lack of information. LES Nouvelles as well as Yugoslavs welcome comment and opinion.

FINAL NOTE: As LES Nouvelles goes to press, Dr. Popovic has sent us some late news. The government of Yugoslovia, acting through the National Bank, has made the DINAR convertible in certain trade situations. Thus, foreign firms now are entitled to hold Dinar accounts which are convertible at any time at the election of the foreign firm. For example, a foreign firm can sell for Dinars to a Yugoslov firm, the Dinars to be kept in a special account with any bank authorized by the National Bank. Such Dinars remain available at all times for transfer in any currency, i.e., dollars or francs or pounds.

**About the Author: Dr. Slobodan A. Popovic was born in Belgrade, Yugoslavia, on January 22nd, 1933.*

Dr. Popovic graduated in 1956 on the Law Faculty of the University of Belgrade, and after that he has finished two years post-graduate studies of Civil and Commercial Law (1956-1958). He passed the Doctor's Degree in Law on the subject-matter of trade and service marks in Yugoslav and International Law, in 1965.

From 1956 till now Dr. Popovic has been permanently in private practice with patents, trade marks, licensing, etc., before the Yugoslav Patent Office, Courts and other Authoritiex, substantially as the agent and counsellor of the foreign persons and companies (as a partner of the Patent & Trademark Office ANDRIJA I. POPOVITCH, of Belgrade, established by his father in 1927). He took part on various international meetings concerning the problems of the protection of industrial property, e.g., East-West Meeting in Budapest, 1966, and in Vienna, 1968, as

well as the Venice Congress of the I.A.P.I.P. in June, 1969.

Upon the foundation of the Yugoslav Association for the Protection of Industrial Property (Yugoslav National Group of I.A.P.I.P.) Dr. Popovic has been elected Member of the Managing Board.

In the autumn 1969, appeared the book of Dr. Popovic under the title "Protection of Trade and Service Marks under Yugoslav Law" (in the Serbian language but with a summary in English — see the review about the book in "Les Nouvelles", May, 1970). He is also the author of several articles dealing with problems in civil, commercial and industrial property law, published in the Yugoslav law reviews.

For a certain period of time, he has been occupied with the problems of new joint ventures legislation in Yugoslavia (see e.g. his article in "Les Nouvelles" of March issue, 1971), and he has been elected Member of LES in February, 1971. At the LES Copenhagen Meeting in August, 1971, he was the leader of Workshop 10: "Joint ventures with and licensing to and from Yugoslavia".

Dr. Slobodan A. Popovic is married and has two children. His free time is divided between the family and two hobbies: the soccer and the chess.

LICENSES TO SEXUALLY REPRODUCE

by
*Benton S. Duffett, Jr.**

Why not? During late 1970 President Nixon signed into law the Plant Variety Protection Act (84 Stat. 1542) which is designed *"to encourage the development of novel varieties of sexually reproduced plants and to make them available to the public, providing protection available to those who breed, develop, or discover them, and thereby promoting progress in agriculture in the public interest"*. Pursuant to this recent legislation a Plant Variety Protection Office has now been established at Hyattsville, Maryland, which is administered by the U.S. Department of Agriculture.

It is anticipated that the primary users of this new system for protection will be found among the 4,000 plus companies within the United States which provide planting seed for American agriculture. Heretofore, those seed companies which were venturesome enough to seriously engage in the development of a new plant variety which reproduces by seeds (other than a first generation hybrid) had no means of protecting their investment in the research and development leading to the variety, as well as in expenses connected with its introduction. Plant breeders were provided little incentive to originate new varieties of important agronomic crops such as cotton, soybeans, wheat, rice, etc. Their competitors were free to buy the planting seed for the new variety on the open market, to grow the same, and to compete directly in the marketplace during the next growing season, by selling substantially identical planting seed. In fact, the Federal Seed Act (7 USC 1551-1610) required that the competitors label the seed of the new variety being offered for sale with the *same* variety name chosen by its originator. One cotton firm recently reported its costs in developing a leading variety of cotton at $572,000. Following introduction of the variety, it was highly regarded and widely adopted in several Southern states, but the firm nevertheless experienced a substantial loss on the new variety since after the first growing season its competitors stepped in and supplied cotton growers with the major portion of their planting seed requirements.

The Plant Patent Act (35 USC 161-164) provides no help to plant breeders working to improve plants which reproduce by seeds since it is limited to scope, and provides protection only with respect to those plants which are commonly reproduced asexually (i.e. by grafting, cuttings, division, etc.), such as rose plants, shrubs, fruit trees, etc.

The new system of protection offered by the Plant Variety Protection Act, which complements the Plant Patent Act, is in many respects similar to the patent system and even includes the possibility of the appeal of an adverse decision to the Court of Customs and Patent Appeals. Instead of a "patent", a "certificate of plant variety protection" will be granted which will run for 17 years from the date of grant. As with plant patents, no form of generic protection is available, and the grant will cover only the specific variety described.

While the new Plant Variety Protection Office has not yet issued any "certificates", or even begun the examination of applications, over 135 applications are already on file. There are also indications that the possibility of variety protection is already serving to stimulate increased research among private plant breeders.

It accordingly follows that owners of applications and "certificates of plant variety protection" will choose to grant royalty bearing licenses to other seed companies particularly in those instances where the owner of the "certificate" lacks the capability to fully commercialize a new variety. Such licenses would give a commercial licensee *inter alia* the right to sexually reproduce the protected variety, and to sell to growers seed capable of growing the protected variety. It is believed that many of precedents and practices developed in patent licensing, and more particularly in the area of plant patents, could be satisfactorily extended and applied in the licensing of rights granted under this new system for protection.

Sec. 44 of the Plant Variety Protection Act does include, however, a provision which is foreign to existing patent statutes, and which may influence future licensing decisions in this area to at least some degree. More specifically, the Secretary of Agriculture is given the power to *"declare a protected variety open to use on the basis of equitable remuneration to the owner, not less than a reasonable royalty, when he determines that such declaration is necessary in order to insure an adequate supply of fiber, food, or feed in this country and that the owner is unwilling or unable to supply the public needs for the variety at a price which may reasonably be deemed fair"*. This Section was included to overcome an emotional negative reaction which might otherwise have been encountered in Congress from those fearing that the owner of a "certificate" might arbitrarily choose