Experiences With Three Licenses

Sometimes the licensee you need is close at hand, if you only look; some suggestions for success

BY HARRIS L. JOHNSON*

More and more U.S. companies are deciding to enter the international arena and to compete in that arena with the best possible tools they can command. This is a healthy and exciting development.

Initially, let me emphasize that Burlington is in the textile business. Our licensing efforts fall into the by-product category. Still, importance is attached to licensing since we not only license our own technology out, we also license technology in. Important sums change hands in both directions.

I have been involved in international licensing with three U.S. firms for 25 years. To be honest, it has been great fun to be one of the few in the field. Many American managers speak of the frustrations of dealing with foreign businessmen and seem to see Europeans as some kind of incomprehensible creatures. The businessmen that I have met in these areas are aggressive, hard driving, profit-oriented business people who offer formidable competition for U.S. industry. I might add that the same is true of the businessmen that I have encountered in other countries around the world.

My principle objective today is to provide you with some insights into what you might want to consider as part of your international licensing alternative and to suggest some situations that you will want to avoid. My responsibilities at Burlington include technology licensing in and out. However, the material presented today is a distillation of 25 years of international licensing experiences with three U.S. firms. All three had active international licensing programs.

I would like to touch upon three main objectives for foreign licensing:

1. To generate additional revenue from products or processes covered by company-owned patents and/or trademarks in the foreign country.

2. As a means of following an international strategy that develops a recognition for and a dependence upon your firm as a source of technological innovation. Utilizing its local patent portfolio and international trademarks can permit your company to maintain the option to enter the country's commercial industrial base through further licensing, actual imports into the country, or local manufacturing with its various shadings of equity participation.

3. To acquire in the exchange of know-how with your licensee new insights into the technology being licensed.

Benefits

In short, licensing provides an opportunity to engage in international marketing while generating royalty income without the burden of local manufacturing by your firm or the possibility of having an important export market eliminated from your marketing arena by some precipitous protective action by the host government.

Through licensing one does give up full management control of the manufacturing and marketing operation, and there are always apprehensions about quality control and profit and the ever-present fear of setting up a future competitor abroad. Having made the decision to evaluate licensing as a tool for entering a particular foreign market, the most important ingredient is the reliability of your selected licensee. There is obviously a long list of other factors that would favor success.

Before you actually sign up your foreign licensee, however, there are certain steps that you as licensor should take before committing yourself to an agreement:

1. The licensor needs to make a market survey in the proposed territory to establish whether local customs, habits and the competitive situation as well as governmental attitudes are compatible with the licensor's needs.

2. Obviously, full information should be obtained on a prospective licensee's financial and business standing in the country. This is most important in the selection of a licensee.

3. The licensor must also clearly identify whether the potential licensee has adequate production facilities, sales and merchandising experience, and whether the licensee is likely to make a profit. An unprofitable licensee will not pay royalties.

4. Investigation of the local and foreign federal government policies as well as the policies of the U.S. Government must take place in order to clearly establish whether the technology transfer can take place and the royalties can be paid at the level you require. Your attention is also directed to taxes, currency convertibility, and exchange rates, and whether tariffs may apply to technology import/export.

5. Finally, you as the licensor must make a judgment call on whether the potential licensee is capable of commercially exploiting your technology.

I have chosen three licensing cases, one of which I

**Director of Licensing, Burlington Industries, Inc., Greensboro, NC; paper delivered at The International Trade Center, Raleigh, NC, October 1983.*

will identify as a Burlington effort, so that specific points may be used to illustrate typical needs in your business relationships with your licensees.

CASE I

Licensing experience today, as a viable alternative to international business, is far more sophisticated than it was 20-25 years ago. This first case deals with a major textile machinery innovation developed as a result of a U.S. textile man touring one of the less prosperous countries of the world shortly after World War II. This innovation was licensed exclusively worldwide to a small U.S. firm. The fact that the license was worldwide meant that the licensee could manufacture and sell the machine on a protected basis anywhere that the licensor's patent rights existed. That seems simple enough. Let's look at the advantages:

- Licensor or patent owner had only one licensee to deal with. Royalties came from one source and technology flowed to one point.
- Licensee had a terrific market since the licensor had patents in all the major countries.

But the original parties to the agreement failed to deal with at least two very important aspects of an international exclusive license.

The licensor had failed to insist on a clause requiring the licensee to attempt to sublicense equipment manufacturers producing equipment that fell within the claims of the patents.

The licensee had failed to insist upon a clause requiring the licensor to take legal action against firms that produced competing equipment coming within the claims of the patents.

As a result, a program that was reasonably profitable to both licensee and licensor on an international as well as domestic front, only partially generated the return it should have. The reason was simple. International manufacturers soon discovered the value of the product and out-produced the small, but now growing, U.S. licensee. At first, the licensee was not too concerned with the international market because of the high growth rate achieved in the U.S.

Soon, however, the international manufacturer began to poke into the U.S. marketplace. It was at this point that my own involvement began. The next few years were frustrating because (a) the licensee would not sublicense its competitors, and (b) the licensor would not litigate and risk its patents without having the flexibility to resolve the litigation through sublicenses. Countless meetings failed to reconcile these problems. The result was less sales for the licensee and less royalty income for the licensor.

Key Element

Let's look back at this case. Recognizing a viable business alternative in licensing the product or process, great care must be taken to examine a licensing alternative from a policy/practical standpoint as carefully as if an investment was being made in plant and equipment. Selection of the proper licensee is the key element. Just as location is everything in real estate, selection of the proper licensee is the secret in licensing. The agreement should be negotiated by individuals experienced in the nuances of licensing technology. Great attention must be paid to local laws and customs. Firm decisions must be made and incorporated into the agreement for expected technological, market and legal developments. The case we have just examined really only suffered from inattention to how to deal with success.

The licensee, succeeding beyond its wildest expectations, was unwilling to share that success with competitors even though it was impossible to capitalize on the success of the technology by offshore manufacturing and broader marketing by the licensee.

Risking the patents without complete freedom to settle was the last thing the licensor wanted to do because a win did not gain a market broader than the licensee was then serving. A loss meant that even the licensee would stop making its royalty payments.

This case was a major success yielding less than it should have because of poor licensee selection and poor attention to the ramifications of the silent intent of the agreement.

CASE II

Let's examine a licensing effort that was designed for success and featured a product that was the answer to a manufacturer's dream.

An innovation developed by a major international think-tank was acquired by a textile manufacturer under an exclusive license with responsibilities for worldwide sublicensing after additional research and development work was accomplished. When that work was completed in about 18 months, the licensing team took their dog-and-pony show to the largest U.S. firm on its potential licensee list in order to learn if the licensee's market research and that done by the think-tank was correct on the potential value of the innovation to the industry.

To the utter dismay of the exclusive licensee, the large domestic firm rejected the innovation in a rather hazy, unfocused manner. The exclusive licensee was not able to penetrate and understand until several years later when the large domestic firm closed the division that would have been manufacturing the innovation. In the meantime, anxious because a million or so dollars had been invested in research and development, the exclusive licensee went to a large number of potential domestic and international sublicensees. The result of this saturation activity was also somewhat disturbing; happily so, however, since everyone approached wanted the product.

Decision-Making

The exclusive licensee went through a series of decision-making exercises to locate the proper sublicensees. Early reference has been made to some of the reasons why licensing is a viable option to generate sales in otherwise difficult-to-reach offshore markets. Let's examine the specifics needed in this instance.

The sublicensee would have to invest several million dollars in further R&D, training, sales aids, advertising, customer trials, and management costs. Therefore, it had to be a large company. The whole world was the market so the sublicensee had to be able to cover the globe with its marketing and technical support. The investment and marketing scope meant that an exclusive sublicense would be the only way to find the "right partner."

After the potential sublicensee was selected, negotiating the license agreement was the easiest part of the entire project since the sublicensee selected was sophisticated and recognized that an equitable document was the joint goal of both parties. This is not to say that many hours, many meetings, much travel and many drafts were not necessary. They were, but always they were undertaken in a spirit of cooperation. The agreement was executed by a U.S. division and the European home office of the exclusive sublicensee.

The exclusive textile manufacturer licensee selected an exclusive international sublicensee with sales of several billion dollars and with selling and support services around the world, including the communist countries. Obviously, patents did not exist in every country. But since the manufacturing facilities of the sublicensee were located in patented countries, a mutually-convenient and legally-acceptable method of royalty payment covering the non-patented countries was agreed upon. For the record, this was possible because products processed in non-patented countries were invariably sent back into patented countries, thereby becoming subject to the patents.

So accept, if you will, that unlike our first case which floundered along because not enough attention was paid to the requirements of each party, this program was well conceived, well documented, and undertaken with enthusiasm by all concerned. The selected sublicensee was signed. This sublicensee, with manufacturing plants in the U.S. and Europe, brilliantly refined the innovation and, as we in licensing like to say, the product became technically commercial. Sales were made in all major countries. And, despite some early "teething" problems, the product was used successfully and met the objectives of the innovators and the customers. It was a strong effort, involving an international think-tank firm, a very large exclusive licensor, and a multi-billion dollar sublicensee, properly structured, properly researched, properly patented, properly introduced to the market and properly supported by all.

I must report that money was made by the innovative international think-tank firm and money was made by the exclusive licensor, but only by combining royalty income with savings generated through use of the innovation in its own manufacturing facilities. Money has *not* been made by the sublicensee! Why? Very simple, the worldwide economic situation forced customers to change production schedules from large volumes—which the innovation was designed to accommodate—to small volumes which have no requirement or need for the innovation.

A failure? Probably not. Overly structured? Probably not. It was and remains all that it was developed to be. Perhaps its time will still come. Licensing was the only viable way to get the product to market with this particular set of conditions.

The moral is that great care and attention does not assure a successful licensing program any more than it does in any business. The ultimate customer makes the final decision.

CASE III

We come now to a current Burlington licensing program. Burlington is in the textile and textile-related manufacturing business. We do not manufacture equipment. However, in the pursuit of product and manufacturing research and development we often develop equipment, processes and intermediate products that require a "partner" in order to meet the quality/economic balance necessary for continued pursuit of a project through commercialization.

Some time back Burlington took a long and serious look at one fabric manufacturing step, a process called sizing, and decided that although there had been innumerable improvements through the years, the process had remained basically the same for about 200 years. For the uninitiated, sizing is simply the application of a removable protective coating to the lengthwise or warp yarns that are used in the weaving process. The loom action exerts severe stress on the yarns in the weaving process and without the protective size or coating the warp yarns would be damaged. After weaving, the protective size coating is removed in the final dyeing and finishing steps.

The capital cost for conventional sizing equipment is high; considerable floor space is required; and control of the process is awkward. Yet everyone in the business has to utilize the available systems.

With that background, a commitment was made to a research and development program for a new sizing system. Several years and many hundreds of thousands of dollars later, we had a prototype machine and a process that interested our manufacturing divisions. However, like the case just reviewed, considerable money and expertise was necessary to put a commercial piece of equipment on the plant floor. True, a company the size of Burlington could have underwritten the entire vendor cost, but that required an allocation of resources that did not, on balance, make sense. We sought and found an international firm, the world's leading supplier of conventional sizing equipment, to manufacture this new sizing system. It is located in Georgia.

Fully Equipped

Through its agents, the equipment licensee is fully equipped to serve the worldwide needs of the industry. International sources of the protective size material are also available. What remains is the selling of process licenses to prospective users of this new development. The licensing will be done by Burlington licensing personnel in the U.S. as well as in foreign countries.

In the U.S., textile firms are expected to be able to convert to using the licensed process with minimum difficulty.

To license foreign firms will require a strong country-by-country survey to identify potential licensees. We will, of course, draw upon the experience of our equipment licensee and its agents in this phase. You should note that we have not abdicated the direct licensing responsibility by letting the local agent do the job. This must be accomplished by Burlington.

We have established a standard nonexclusive license that will be modified to the extent needed to satisfy local rules and regulations. Arrangements will have to be made to assure acceptable currency exchanges, but both in terms of rate and timing.

The equipment has been shown for the first time in Italy at the major international textile machinery show, and we are awaiting the reaction of the industry. I am told the display generated much attention and comment.

In summary, all of these cases dealt with U.S. licensees in some way or another, partly to illustrate that it is not always necessary to stumble through some offshore country knocking on doors in an effort to locate the right licensee. Sometimes your answer is as close as the next town. Look carefully. A great deal of international business may be being done by your neighboring industries.

German Policies for Licensing

Legal conditions of the German Democratic Republic are designed to stimulate, protect international transfer of technology

BY DR. GUENTER SCHOENFELD*

The exchange of scientific-technological results and performances forms a significent progressive factor of the German Democratic Republic's (GDR) trade and economic relations to non-Socialist countries. This corresponds to the conditions of the scientific-technological revolution that has intensified international specialization and concentration of research and development, and thus made scientific-technological results and performances a common merchandise in international trade.

This development finds its expression in the fact that today a considerable part of all operations in foreign trade is linked with export or import of technological knowledge—an appearance described as "international transfer of technology" affecting international economic relations at large. It is also reflected by the tendency of growth and the increasing significance of the technical-technological element in the GDR's economic relations with non-Socialist countries.

On the safe and solid basis of the GDR's close and steadily deepening scientific-technological cooperation with other socialist states, in particular with the other members of the Council for Mutual Economic Assistance (CMEA),[1] this country shapes and develops the international transfer of technology as the economically advantageous form of export. It is accomplished with a view to maintaining and opening up markets, as an instrument for securing access to modern technology, as a factor for intensifying her international economic relations. In doing so, the GDR complies with the orientation given by the Final Act of the Conference on Security and Cooperation in Europe. That is to deepen international industrial cooperation and to develop cooperation in the fields of science and technology, *inter alia* by the exchange and dissemination of technological information and knowledge.[2]

Here, it must be taken into account that the development and extension of these relations in a special degree calls for an atmosphere of confidence between the partners and states.

Relations in this sphere demand and establish long-term extensive and comprehensive obligations. This presupposes the strict observance and application of the principles of peaceful coexistence between states with different socioeconomic orders. It also presupposes their all-sided enforcement, in turn, being promoted by the enlargement and intensification of intersystemary scientific-technological relations.

The GDR, on the basis of these principles, has developed with a number of non-Socialist states variegated and broad long-term relations in the fields of science and technology on conditions grounded on equality of rights and mutual benefit. These relations are implemented within the framework of agreements that benefit all concerned.

It forms a typical feature of these relations that the transfer and exchange of technical and technological knowledge and experience became an essential element stimulating the intensity and breadth of these relations. This is reflected by:

—The application of the traditional form of the license agreement as an important and efficient form of the transfer of scientific-technological results. The purpose is productive utilization by the licensee with license relations increasingly focusing on granting of rights of use of the protected inventions and transmission of knowledge concerning nonprotected scientific-technological results (know-how).

—The integration of the transfer of technical knowledge and experiences (also by granting rights of use of protected inventions) into comprehensive transactions in foreign trade. Examples are contracts on the delivery and installation of industrial plants, in contracts on assembly and projecting, and contracts on technical assistance.

—The growing number of delivery and performance contracts on machinery and equipment corresponding to the highest technical standard.

—The inclusion of the transfer of scientific-technological results in contracts on the erection of joint enterprises and establishments.

—A large number of agreements on the temporary delegation of specialists and on the training and further training of staff (particularly regarding developing countries).

Exploitation Growth

The exploitation of all these forms for developing scientific-technological relations between the GDR and non-Socialist countries has grown in recent years, especially as a suitable form of support for the industrialization of developing countries. They illustrate that the international transfer of technology has become a firm and indispensable element of the GDR's

Lecturer, Institute of Foreign and Comparative Law of the GDR Academy of State and Law, Potsdam-Babelsberg.

economic relations to non-Socialist states. Serving to further enhance these relations on the basis of equal rights and mutual benefit and without any form of discrimination and one-sided intervention, are the legal conditions that have been created in the GDR for the international transfer of technology.

Independent implementation clauses in the Decree on the Management and Carrying Through of Foreign Trade have been devoted to the export and import of scientific-technological results. This alone is proof of the significance of these relations.[3]

This regulation covers all forms of export and import of scientific-technological results,[4] i.e. the delivery, grant of rights of use, and the sale of scientific-technological results or protective rights. Moreover, it extends to rendering technical assistance, delivery of functional designs, operational designs and models as included in the export and import of scientific-technological results.

The implementation clauses stipulate that the export or import of scientific-technological results may only be carried through on the basis of foreign-trade agreements which were concluded in writing. In the interest of mutually advantageous relations, they require approval by the competent state bodies of the GDR. This contractual obligation refers to all kinds or types of contracts possible: to sales contracts as well as license contracts and other contractual agreements on the export and import of scientific-technological results.

This obligation is also fulfilled if the export or import of scientific-technological results in connection with other foreign trade operations forms the subject of corresponding foreign trade contracts (e.g. in contracts on specialization or cooperation of production, on research cooperation or on export or import of plants). In such cases there is, according to the comprehensive character of the relations corresponding to which is, on principle, also a comprehensive contractual agreement, no need separately to conclude a license agreement or a sales contract concerning the respective scientific-technological results.

Competence

The competence for the conclusion of contracts on the export and import of scientific-technological results is due to foreign trade enterprises. Their competence is determined by the program of goods and performances given to each of them. It is secured that those foreign-trade enterprises conclude the contract on the export or import of scientific-technological results which are charged with export and import of the corresponding production plants, equipment, machines and tools. This as well as the possibility of transferring the right to conclude contracts to those production enterprises in which the given scientific-technological result was brought forth or in which it is used or intended to be used, as well as the general obligation of foreign trade enterprises and production enterprises to cooperation[5] create favorable conditions on which foreign trade in scientific-technological results can be linked with other foreign trade operations. It also provides for the complete and comprehensive inclusion of protected and not protected scientific-technological results contract.

Playing an important role in the export and import of scientific-technological results by GDR enterprises is the Central Office for International License Trade. In addition to promoting and developing, instructing and controlling export and import of scientific-technological results, the office advises foreign trade partners from the GDR in the preparation, conclusion and implementation of contracts as well as in the settlement of legal disputes. In this way, foreign-trade contracts on scientific-technological results are arranged in a specialized and experienced manner.

GDR law is applied to the contract on export and import of scientific-technological results. The "Law on International Economic Contracts" (German abbreviation GIW - Gesetz Uber Internationale Wirtschaftsvertrage)[6], offers a special regulation that meets the specific character of the transfer of scientific-technological results. The law is applied to international economic contracts and to legal relationships connected therewith insofar as the parties have agreed to be subject to GDR law or the relevant rules as to conflict of law refer disputes to GDR law (Article 1). It is based on the principle of freedom of contract. It grants, on principle, the parties the possibility to deviate from the provisions of this law.

International Contracts

Beside general rules (e.g. concerning the scope of application, legal acts, representation, periods of time, conclusion of contract, content of contract, securing fulfillment of contract, fulfillment of contract and violations of contract), the law contains rules on 16 different types of international economic contracts. It also regulates the contract on scientific-technological performances and the license contract as independent types of contract. It defines (Article 82) the contract on scientific-technological performances as a contract by which one party (agent) binds himself to work out a scientific-technological result and to transfer it to the other party, and the other party (principal) to pay the remuneration.

Thus, the basic type of contracts on scientific-technological performances, which is joined to contracts on work performance, is regulated on the basis that the agent works out a technically-feasible, scientific-technological result for the principal and transfers it to the latter.

The typical features are, on the part of the agent, the obligations to work out and transfer the scientific-technological result, to procure the property rights, to maintain secrecy, and to transfer the result to the principal free from rights of third parties. On the part of the principal, the obligations are to pay the remuneration, to give the required information, and to make decisions.

Regarding application to these contracts, the special rules on the contract on scientific-technological performances (Article 82-86) are supplemented by the rules on the contract on work performance (Article 61-73) as far as the latter are suitable for scientific-technological work performances.

Other relations, such as those not aimed at expanding of technically feasible results (e.g. analyzing and advisory service), those not yielding scientific-technological results (as tests and trials), or relations of research cooperation, are not covered by these rules. Here, the structure of the GIW admitting a combined application of different types of contract offers the possibility of connecting the application of the provisions of contracts on scientific-technological performances with other types of contract (e.g. contract on service performance or company). In this way, also phenomena of international cooperation in research and development which cannot be subsumed under one type of contract are regulated by the GIW.

Legal Situation

The legal situation looks similar regarding license contracts. The law first defines the pure license contract as an independent type of contract in the sense that by it the licensor binds himself to grant the enjoyment of scientific or scientific-technological results, industrial designs or trademarks. The licensee is obliged to pay the corresponding remuneration. This refers to protected scientific-technological results as well as those not protected (for which protection has been applied for, but also those that are not accessible to legal protection).

The grant of a license may consist in the grant of rights of use or of option on future rights of use, and/or in the communication of information and knowledge (know-how) for their utilization by the licensee. Thus, any scientific-technological results possible may be the object of the license contract if and insofar as there is a bilateral economic interest in concluding the contract.

So, does actual secrecy of know-how not form a prerequisite for the conclusion of a license contract on the transfer and utilization of unprotected scientific-technological results. Although the legal definition of license departs from the typical case that rights of use are granted on payment of royalty this does not excluse that the provisions concerning the licensing contract on the exchange of licenses or contracts not implying visible consideration.

The law, moreover, is applied to exclusive and nonexclusive licenses as defined in Article 179, as well as to licenses limited in territorial and technical terms, and in respect of defined acts of use (manufacturing, marketing). It furthermore lays down that the licensee needs the consent of the licensor for granting sub-licenses.

Regulation of the obligation of the licensor (Article 177) starts from the function of the license contract in international economic relations to offer the licensee the actual possibility to use the scientific-technological results. Accordingly, the licensor's obligation is to provide the licensee with such documentation and information as are by their nature, extent, and quality necessary for the enjoyment of the object of the license, in accordance with the aim of the contract. So, as far as required by the purpose of the contract, also the delivery of the necessary know-how belongs to the licensor's obligation to fulfill the contract. This, besides, also corresponds to the evident tendency that the object of license in the majority of all license contracts comprises the transfer of know-how.

Other rules, the details of which shall not be dealt with here, are devoted to securing the freedom of defective title, cooperation of the parties in preserving and defending contractual protective rights, secrecy, and other issues.

It can be stated that these rules in their entirely cannot be applied only to pure license contract. They are arranged so (confer for instance the arrangement of the licensor's main obligation in accordance with the agreed purpose of the contract, or the required consent of the licensor to grant of sub-licenses) that they can be also applied, in combination with other individual regulations, to comprehensive contractual relations.[7]

In this way, appropriate regulations under the law of contract have come into existence. They offer relevant legal solutions also to complex and comprehensive phenomena of the international transfer of technology.

As is known, development of international transfer of technology just in inter-systemary economic relations requires the effective mutual acknowledgment and safeguarding of the owners' rights to scientific-technological results and marking of goods. Protection of intangible property by the national legal orders insures the ownership interests of trading and cooperation partners from other countries with a view to developing economic relations that are grounded on equal rights and mutual benefit. It also stimulates intensification of the international transfer of technology and represents an essential criterion of international economic relations.

The GDR system of the protection of industrial property provides for the grant of patents for new, industrially feasible inventions that represent technological progress and an inventive performance, as well as for the protection of creative, unmistakable trademarks as well as new, advanced industrial designs, and for the protection of business and trade names and of the indication of geographical origin.

Grants Rights

Being a member of important international organizations, agreements and conventions in the field of the protection of invention (e.g. WIPO, Paris Convention and others), the GDR grants the applicants for protective rights from other member countries the benefits arising from these agreements.

The conditions for the legal protection of inventions being of special significance in the context of the international transfer of technology are of such a kind as largely to meet also the specific character of the international transfer of technology.[8] This results from the political aims of the protection of inventions in the GDR. It is marked by the basic idea to grant adequate legal protection for new inventions enhancing the wealth of findings and lending itself to productive utilization, a legal protection stimulating the emergence and economic utilization of such inventions in the interest of economic growth and efficiency.

It goes without saying that the forms of legal protection serving this aim within their own socialist economic order differ from those applied in inter-systemary economic relations. Therefore, it forms a logical consequence that the GDR system of the protection of inventions provides for two forms of protection. Those are the economic patent as the typical form of socialist economic conditions and relations, and the exclusive patent as the form of protection serving inter-systemary economic relations. It is up to the foreign applicant to choose one of these forms of protection.

He may acquire an economic patent, the consequence being that the right of use is due to all Socialist economic units of the GDR on payment of the legally stipulated inventor's remuneration. Also, applicants from non-Socialist countries obviously make use of this realizing that this form of protection, in conformity with and in implementing the state foreign trade monopoly of the GDR, also corresponds with the interests of importers of commodities. Being in the focal point in the acquisition of exclusive patents, undoubtedly, is the interest of the patentholder to grant licenses to GDR economic units.

Exclusive Patent

The effects of the exclusive patent, i.e. exclusive rights of use and disposal, include the right of licensing. A number of license agreements have already been concluded on this basis. At any rate, there has not been a necessity up to now compulsorily to transform an exclusive patent into an economic patent (i.e. a kind of a compulsory license). In addition, legal prerequisites for protection of inventive patents as well as the procedural rules concerning the application, examination and grant of protective rights allow one to secure inventions quickly and effectively in the GDR (protective rights are granted, on principle, 18 months after filing of the application). This is especially true with the use of the invention having taken place. It leads to protective rights which, after a thorough examination of the prerequisites for protection, show a high degree of security (on the international level, too) regarding the protectability of the invention.

This is achieved mainly by the examination procedure. In principle, it consists of two stages. The formal requirements and basic demands (e.g. in respect of the technological character of the invention) are immediately examined, and the prerequisites for protection are completely examined. The utilization of the invention is taken as an orientation.

After the first examination a provisional protection is granted. This requires confirmation as a result of complete examination. These prerequisites for a rational and effective acquisition of protective rights for inventions might be especially advantageous just as far as the preparation of licensing relations are concerned.

Although the GDR's legal order neither demands secrecy of know-how for the conclusion of agreements on the export or import of scientific-technological results, nor knows any special intangible property protection for know-how in the GDR (just as it is the case in other industrialized countries), the law of competition as well as the Law on International Economic Contracts contain norms for the protection of secret know-how. (Serving this aim is, for instance, the licensee's and licensor's obligation to maintain secrecy, according to Article 184 GIW).

Thus, there is nothing impeding contractual protection of know-how against use and transfer or publication of know-how contrary to agreement. When looking at the advanced systems of protection of marking and design that undoubtedly also play a certain part in the context of the international transfer of technology—but which we do not want to look at in detail here—one will find out that the conditions of the protection of industrial property in the GDR constitute a system of elements supplementing each other and compatible with each other. They offer to foreign enterprises a comprehensive protection of their legal positions regarding intangible property for the demands of their economic and technological relations to partners in the GDR.

Another fact deserving attention is that, under the conditions of intensified international cooperation in the industrial sphere that frequently is linked with transfer of technology, the component of special legal protection that results from this cooperation gains in importance. The GDR pays great attention to the special protection of scientific-technological results and markings of goods originating with international industrial cooperation, i.e. the protection of the "joint-inventive activity," in her relations to the countries of her business partners as well as in the competent international organizations.

She enters into corresponding agreements on the rights to joint results of scientific-technological cooperation, and on their legal protection and use, and participates in WIPO activities to settle these problems.

Further aspects of the GDR legal system that also affect the international transfer of technology (for instance, regulations under financial and taxation law) shall not be given consideration here. The essential thing as to what legal conditions the GDR legal system offers to the international transfer of technology is perhaps the concept of special external trade law and law of external trade contracts in connection with the protection of industrial property, a concept that aims at promoting this important element of international economic relations and which was intended to be elaborated within the framework of this article by the example of essential legal regulations.

NOTES

1. Of. G. Schoenfeld, Die Rechtsgrundlagen der wissenschaftlichtechnischen Zusammenarbeit (WTZ) der Mitgliedslander des RGW (Legal Foundations of scientific-technological Cooperation of the CMEA Member Countries).

2. Final Act of the Conference on Security and Cooperation in Europe, of 1 August 1975, in: Fur Entspannung und dauerhaften Frieden in Europa - Dokumente, Berlin 1979, S. 126 et.seq. (German).

3. Third Implementation Clauses to the Decree on Management and Carrying Through Foreign Trade—Export and Import of Scientific-Technological Results, of 7 January 1981 Gesetzblatt der DDR (GDR Law Gazette), Teil I, Nr. 7/1981.

4. According to Article 1, paragraph 3, of this regulation, scientific-technological results are:

-Inventions.

-Knowledge, findings and experiences of other types concerning commodities, procedures and technologies in preparing and carrying through production.

-Representative and individual projects of industrial and other objects.