Industrial Property

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Contents

LEGISLATION

ITALY

(Translation)

Decrees

concerning the temporary protection of industrial property rights at 14 exhibitions

(Of January 10, February 17, 22, 26, March 9, 10, 1964) [1])

Single Article

Industrial inventions, utility models, designs and trademarks relating to objects appearing at the following exhibitions:

I° Salone delle macchine per i movimenti di terra e per l'edilizia rurale (Verona, January 16-20, 1964);

LXVI^a Fiera internazionale dell'agricoltura e della zootecnica (Verona, March 8-16, 1964);

XVII° Salone della macchina agricola (Verona, March 8-16, 1964);

XVI^a Fiera campionaria della Sardegna (Cagliari, March 7-22, 1964);

XXVIII^a Mostra-mercato internazionale de l'artigianato (Florence, April 24-May 10, 1964);

XIX^a Fiera del Mediterraneo — Campionaria internazionale (Palermo, May 23-June 7, 1964);

I° Salone delle arti domestiche (Turin, March 18-31, 1964);

XI^a Mostra internazionale avicola (Varese, June 18-22, 1964);

XVIII° Salone mercato internazionale dell'abbigliamento (Turin, April 12-19, 1964);

XII^a Fiera di Roma — Campionaria nazionale (Rome, May 30-June 14, 1964);

XXVIII^a Fiera di Bologna — Campionaria con settori internazionali specializzati (Bologna, May 18-22, 1964);

XVI^a Fiera di Trieste — Campionaria internazionale (Trieste, June 21-July 5, 1964);

"Settimana della calzatura e del cuoio" — XXVIII° Salone internazionale (Vigevano [Pavie], September 12-20, 1964);

XLII^a Fiera di Padova — Campionaria internazionale (Padua, June 1-14, 1964)

shall enjoy the temporary protection provided by laws No. 1127 of 29th June, 1939 [2]), No. 1411 of 25th August, 1940 [3]), No. 929 of 21st June, 1942 [4]), and No. 514 of 1st July, 1959 [5]).

1) Official communication from the Italian Administration.
2) See *Prop. ind.*, 1939, p. 124; 1940, p. 84.
3) *Ibid.*, 1940, p. 196.
4) *Ibid.*, 1942, p. 168.
5) *Ibid.*, 1960, p. 23.

GENERAL STUDIES

The Regulation of Restraint of Trade in the Industrial Property Laws of EFTA States

By Dr. Fredrik NEUMEYER, Stockholm

(Second Part) *)

REPORTS OF INTERNATIONAL ORGANISATIONS

Note on the Report of the Secretary-General of the United Nations on the Role of Patents in the Transfer of Technology to Under-Developed Countries

Contents

I. Background

Under the date of February 14, 1964, the Secretary-General of the United Nations issued his long awaited report on " The Role of Patents in the Transfer of Technology to Under-Developed Countries " (U. N. document E/C.5/52/Rev. 1).

It may be useful to retrace here briefly the steps which led to the publication of this important study.

The study was conducted and the report issued by the Secretary-General of the United Nations in response to Resolution No. 1713 (XVI), adopted by the General Assembly of the United Nations on December 19, 1961, and reading as follows:

" The General Assembly,

Recalling *its resolution 1429 (XIV) of December 5, 1959, on the possibilities of a further expansion of international contacts, as well as an increased exchange of knowledge and experience in the field of applied science and technology,*

Taking note *of Economic and Social Council resolution 375 (XIII) of September 13, 1951, and of the reports on restrictive business practices prepared by the Secretariat and by the* Ad Hoc *Committee established under the above-mentioned Council resolution* [1]),

Bearing in mind *that a United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas will be convened under Economic and Social Council resolution 834 (XXXII) of August 3, 1961,*

Bearing in mind *that access to knowledge and experience in the field of applied science and technology is essential to accelerate the economic development of under-developed countries and to enlarge the over-all productivity of their economies,*

Realizing *that the protection of the rights of the patent-holders both in their country of origin and in foreign countries has contributed to technical research and, therefore, to international and national industrial progress,*

Affirming *that it is in the best interest of all countries that the international patent system should be applied in such a way as to take fully into account the special needs and requirements of the economic development of under-developed countries, as well as the legitimate claims of patentees,*

Requests *the Secretary-General, in consultation with appropriate international and national institutions, and with the concurrence of the Governments concerned, to prepare for the Committee for Industrial Development, for the Economic and Social Council, and for the General Assembly at its eighteenth session, and taking into consideration any pertinent discussions which might take place in the United Nations Conference on the Application of Science and Technology for the Benefit of the Less Developed Areas, a report containing:*

(a) *A study of the effects of patents on the economy of under-developed countries;*

(b) *A survey of patent legislation in selected developed and under-developed countries, with primary emphasis on the treatment given to foreign patents;*

(c) *An analysis of the characteristics of the patent legislation of under-developed countries in the light of economic development objectives, taking into account the need for the rapid absorption of new products and technology, and the rise in the productivity level of their economies;*

(d) *A recommendation on the advisability of holding an international conference in order to examine the problems regarding the granting, protection and use of patents,*

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[81]) In the matter of applications by James Cathro, 51 RPC 75 *et seq.*, 475 *et seq.* (1934), and in the matter of ... by McKechnie Bros. Ltd., 51 RPC 441 *et seq.*, 461 *et seq.* (1934).

[82]) Nordenfeld Gun Co. v. Maxim Nordenfeld (1894) A. C. 535; P. Meinhardt, *Inventions, Patents and Monopoly*, 2nd edition, London, 1950, pp. 148 *et seq.*

[1]) See *Official Records of the Economic and Social Council*, Sixteenth Session, Supplement No. 11A (E/2379 and Add. 1); *ibid.*, Supplement No. 11 (E/2380); document E/2443; *Official Records of the Economic and Social Council*, Nineteenth Session, Supplement No. 3 (E/2671); and *ibid.*, Supplement No. 3A (E/2675).

taking into consideration the provisions of existing international conventions and the special needs of developing countries, and utilizing the existing machinery of the International Union for the Protection of Industrial Property."

In view of the broad substantive and geographical coverage of the enquiry, the Secretary-General advised the Economic and Social Council of the United Nations (hereafter referred to as ECOSOC) at its resumed thirty-fourth session in December 1962 that the report could not be completed in time for submission to the third session of the Committee for Industrial Development or the thirty-sixth session of the Council. He accordingly suggested, and ECOSOC accordingly recommended, that the collection and analysis of information should continue during 1963 and that the report should be presented in 1964 to the Committee for Industrial Development, the Economic and Social Council, and the nineteenth session of the General Assembly (see U. N. documents E/3702 and E/SR.1237).

The Committee for Industrial Development at its third session in May 1963 received an Interim Report by the Secretariat (U. N. document E/C.5/35), noted the recommendation of the Council and accordingly decided to defer discussion of the subject until its fourth session in 1964 (see U. N. documents E/3781 and E/C.5/37).

The Preparatory Committee of the United Nations Conference on Trade and Development (hereinafter referred to as UNCTAD) at its second session recognized the importance of patents in facilitating access to technological experience and know-how, when applied in such a way as to take fully into account the special needs and requirements of the economic development of the developing countries. The Committee noted that a study had already been started on the subject as a result of the initiative taken by Brazil in the United Nations. It was suggested by the Committee that this work be expedited so that the study could be brought to the attention of the Conference (see U. N. document E/3799).

The General Assembly of the United Nations, at its eighteenth session noted the above recommendation of ECOSOC, as well as the suggestion incorporated in the above report of the Preparatory Committee of UNCTAD, and requested the Secretary-General of the United Nations to continue with the preparation of the study referred to in sub-paragraphs (a), (b) and (c) of Resolution 1713 (XVI), and to submit it to the United Nations Conference on Trade and Development, as well as to the Committee for Industrial Development, ECOSOC, and the General Assembly, at their 1964 sessions. The General Assembly also recommended that UNCTAD, in the deliberations under item IV of its provisional agenda (Invisible Trade), give serious consideration to the study prepared by the Secretary-General (see Resolution 1935 [XVIII] of December 11, 1963).

General Assembly Resolution 1713 (XVI) had requested the Secretary-General to prepare the report " in consultation with appropriate international and national institutions, and with the concurrence of the governments concerned ". Accordingly, the Secretary-General circulated on October 8, 1962, to Governments and interested intergovernmental and non-governmental organisations, a questionnaire on The Role of Patents in the Transfer of Technology to Under-Developed Countries. The views and information received in reply to this Questionnaire have been fully used in the preparation of the Report.

II. Coverage of the Report

The Report runs into some 180 pages and consists of two main Parts: the first, entitled " Major Characteristics of Patent Systems ", deals with the law of patents; the second, entitled " The Effects of Patents on the Economies of Under-Developed Countries ", deals with the economic aspects of the problem.

The economic analysis of the effects of patents on the economies of under-developed countries considers the role of patents in the actual transfer of technology; the role of patents in relation to imports of patented products and processes; and, finally, the role of patents in improving the process of invention and innovation through the indigenous technology of developing countries themselves.

In accordance with the intent of the General Assembly, the study focuses on the problem of the treatment extended to foreign patentees. For this reason, considerable emphasis has been placed upon the international patent system and the extension of patent protection to foreign inventors. The report does not attempt to discuss all the rules pertaining to patents. However, it does cover the major issues. The major part of the survey of national patent legislation, annexed to the Report, is based on a survey prepared, at the request of the Secretary-General, by BIRPI.

General Assembly Resolution 1713 (XVI) also requested that the Secretary-General's report should take " into consideration any pertinent discussions which might take place in the United Nations Conference on the Application of Science and Technology for the Benefit of the Less-Developed Areas". Since the agenda for the Conference did not contain a specific item on the subject of patents, the Conference's papers and discussions did not provide any treatment of the subject. Consequently, the Report does not refer to the discussions of that Conference, but it expresses the view that it may be desirable to communicate the Report to the Advisory Committee on the Application of Science and Technology to Development, set up by the Economic and Social Council under Resolution 980 A (XXXVI) of August 1, 1963, following the Conference, so that it may take its analysis into account in its over-all study of the transfer of technology to developing countries (see U. N. document E/3816).

III. Summary and Conclusions of the Report

The summary and conclusions of the Report of the United Nations Secretary-General read as follows:

" *A. National Patent Systems*

" The chief purpose of the economic and legal analysis undertaken in this study, has been to consider, from the viewpoint of the economically under-developed countries, whether the patent system can play a useful role in encouraging the transfer of technology to developing countries and contribute to their economic development; and whether on

balance this system is a proper vehicle for accommodating the respective interrelated interests involved, i. e., the interest of the inventor in his creation; the social interest of encouraging invention; the consumer interest in enjoying the fruits of the invention upon fair and reasonable conditions, and the national interest in accelerating and promoting the economic development of the country.

" The grant of the patent privilege has been based on two primary legal and social justifications. The first is that patents are private property, i. e. the inventor has the exclusive right in his invention and the patent grant recognizes this right. The other is that they are exclusive privileges for a limited term of years granted by the Government in the public interest to encourage research and invention, to induce inventors to disclose their discoveries instead of keeping them as trade secrets, and to promote economic development by providing an incentive for the investment of capital in new lines of production. It is on this latter rationale that modern patent systems chiefly rely.

" In order to qualify for a patent grant, the product or process must conform to certain legislative criteria of industrial utility, novelty and/or inventiveness. Such statutory criteria of patentability are subject to interpretation and application by national Patent Offices and national courts. The thoroughness with which a Patent Office in practice reviews the patent applications filed with it to determine whether the invention claimed or disclosed therein is patentable depends not only on the controlling legislative provisions, but also on the extent to which the office is adequately staffed to carry out its review functions. Patent Offices of developing countries are likely to have more limited staffs and undertake a more limited review of patent applications than those of some of the more industrialised countries.

" Developing countries in fact can rarely afford the resources of skilled manpower and the costs of a comprehensive Patent Office review procedure such as exists in some industrial countries. For this reason, some of them have been considering the possible harmonization and unification of their national patent systems and, more particularly, the establishment of a joint Patent Office that would have the resources of trained personnel and finance that are necessary for successful patent administration but are not within the capacity of the individual under-developed countries. The first regional Patent Office and uniform patent law of this kind created so far is the African and Malagasy Industrial Property Office established pursuant to an Accord among the fourteen member countries of the African and Malagasy Union.

" In addition to affiliating with a regional Patent Office and pooling their joint research efforts therein, the under-developed countries may consider two alternative methods of meeting the problem posed above. They may dispense with strict standards in the review of patent applications and, following the practice of a number of countries, issue patents of importation, confirmation or revalidation, i. e., patents issued on inventions already patented in another country which are based upon the first corresponding foreign patent issued. Or, they may call on the services of an organization such as the International Patent Institute of The Hague which examines patent applications submitted by national patent administrations and gives opinions thereon to private persons.

" *B. International Patent Relations*

" Both in the under-developed countries and in most industrialized countries, but to a larger extent in the former than in the latter, the statistics indicate that, generally speaking, the percentage of patents granted to foreigners is much larger than that granted to nationals. It is therefore significant that the patent laws of most countries make no distinction between domestic and foreign applicants and follow the principle of national treatment, i. e. nationals of a foreign country or others who are domiciled or have an effective industrial or commercial establishment therein are guaranteed equality of treatment with the nationals of the country granting the patent. In a few countries, this principle is qualified by the notion that the foreign country should give reciprocal treatment to the nationals of the home country.

" Of the international treaties and conventions relating to the protection of foreign inventors, the most important is the Convention of the Paris Union for the Protection of Industrial Property, first established in May 1883 *) and currently adhered to by sixty-one industrialized and under-developed countries. The most important principles underlying the Paris Union are the principle of national treatment, described in the preceding paragraph, and the right of priority, whereby a national of a member country who has filed a patent application in a member country of the Paris Union bas a twelve-month priority over any other person for filing an application for the same invention in all other member countries of the Union.

" *C. Government Regulation of Patent Uses*

" There is an extensive range of national legislation directed against practices that are considered abuses of the national patent system — chiefly *the non-use of patents, restrictive business practices, excessive royalties.* This legislation, on the whole, applies to both the foreign and the domestic owners of the abused patents, although the legislation dealing with the non-exploitation of patents was historically directed primarily against foreign nationals, while exchange controls with respect to the limitation of royalties relate exclusively to foreign patentees.

" Provision for the *revocation or compulsory licensing* of patents which have not been commercially exploited in the country within a prescribed time after the patent has been granted is made in the patent laws both of industrial and under-developed countries. As a historical matter, this legislation was adopted because of concern over the fact that the foreign owners of inventions could, by refusing to exploit the patents covering such inventions, prevent the development of national industries which might give employment to nationals and utilize available national resources. Another important factor was the fear that foreign patentees could, by excluding other producers of the patented articles from

*) This should, in fact, be *March* 1883. *(Ed.)*

the market, be in a position to monopolize the import of such articles into the country and thereby exact higher prices from domestic consumers.

" There are still in existence, mainly in the case of some under-developed countries, statutes which provide for revocation of a patent where it has not been exploited within usually two years of its issuance, or where its use has been discontinued for more than two years. More recent laws, however, have favoured the less stringent remedy of compulsory licensing of patents under which anyone ready to work an unused patent may compel the patentee to issue him a licence. This trend has been aided by the Convention of the Paris Union under which patent revocation is permissible only if the granting of compulsory licenses does not suffice to prevent abuses resulting from the exercise of patent rights. In the case of the developing countries, there may be administrative advantages in a third method of automatic lapse of patents in the case of non-working beyond a certain period, since this method (unlike revocation or compulsory licensing) would not require government or private initiative to be implemented. By the automatic lapse of the patent, the public becomes possessed of the invention without any preliminary administrative or judicial action; but, on the other hand, this may impair inducement subsequently to work the invention which uay be provided by the existence of the patent.

" Many countries have an administrative requirement that all patentees pay annual or periodic fees, which usually increase with the age of the patent. The size of these payments is considered to be an important factor in bringing about the abandonment of unused patents.

" In the case of inventions of special interest to the public welfare or security, provisions have been made in many laws to throw their use open to others than the inventor. Thus, in many countries, no patents may be issued for inventions in certain fields (especially food and medicine). In other cases, where patents are issued, provision is made in the public interest for: *(a)* the compulsory licensing of the patent to the Government or to any other interested party; or *(b)* the expropriation of the patented invention by the Government. In both cases, there arise issues relating to the compensation of the patentee and the administrative or judicial mechanics and authority for determining such compensation.

" National policies differ as to the circumstances under wbich Governments, or persons other than the patentee or his voluntary licensee, may use patented inventions. There also exist national differences as to the nature of the public interest which justifies the compulsory licensing or expropriation of patented inventions, and as to the procedures employed in connexion therewith. The public interest deemed to justify the exclusion from patentability, compulsory licensing or expropriation of patents may relate to such diverse matters as the national defence, public health, improvements in the international balance of trade, development of special resources available in the country or general industrial development.

" Many countries, mainly those which have reached a certain level of industrialization, have taken legislative, administrative or judicial action against *restrictive business practices* that may occur in connexion with patent license and transfer agreements. Such agreements may include clauses prohibiting the licensee from exporting or selling in designated areas; requiring him to use only materials, equipment, personnel supplied by the patentee (' tie-in ' clauses); fixing the resale prices of wholesalers and retailers and, in some cases, of the manufacturing licensee himself limiting his output; and compelling him to pay royalties for unused patents (' compulsory package licences '). For some cases (e. g. tie-in clauses), legislation of this type is part of the national patent law, but more usually it constitutes part of the general antitrust legislation of the country. Since business restrictions of this kind are considered against public policy, it is immaterial whether they appear in patent or in general business agreements, and since, moreover, the effective enforcement of policies against restrictive business practices requires a larger number of trained specialists with adequate investigative powers and appropriate legal sanctions, legislation of a general nature would appear to be a more efficient method of coping with this problem than legislation that is part of the patent law and adds to the duties of a Patent Office.

" National Governments have sought to cope with the problem of restrictive business practices in international patent license agreements by taking legal action against abuses — at home or abroad — of patents issued by them, or by adhering to treaties dealing with restrictive business practices in international trade. There are at present two multilateral treaties in effect which establish supranational programmes for the prevention and control of restrictive business practices. These are the Paris Treaty of 1951 establishing the European Coal and Steel Community, and the Rome Treaty of 1957 establishing the European Economic Community, both concluded by Belgium, the Federal Republic of Germany, France, Italy, Luxemburg and the Netherlands.

" In many countries, the terms and conditions of patent assignment or license agreements with foreign patentees are generally subject to governmental review, chiefly from the point of view of their probable effect on domestic private and public interests. One area of potential abuse by a foreign patentee is the charging of an *excessively high royalty or fee.* For this reason, Government review of the terms of agreements between foreign patentees and domestic licensees or assignees is exercised chiefly with a view to the reasonableness of royalties and the transfer abroad of royalty payments. (See the following section for a discussion of the economic aspects of this issue.)

" *D. Economic Effects of Patents*

" In the development of under-developed countries, the transfer of technology is only one of several essential elements taking its place alongside such other factors as financing, trade and the development of human and natural resources, as well as the development of a country's indigenous technological resources. Within the purview of this factor of the transfer of technology, itself, moreover, the role of patents is limited by the fact that patented knowledge is only a part of the total technological knowledge which should and does

flow to under-developed countries. This is so partly because much of the technology required by these countries is not at that latest stage of technological advance which is covered by patents. Partly, it is because the under-developed countries lack so much in general know-how and management experience, that the knowledge covered by patents alone is usually not sufficient for the introduction of new products and processes.

" On the other hand, the significance of patents for, and their impact on, under-developed countries may transcend the field of transfer of technology. The patent system will affect under-developed countries also via the import of commodities which are patented products or incorporate patented processes in their production. Finally, the patent system has a relation, not only to the transfer of technology but also to its creation, to the extent to which patents issued to national and resident inventors may promote the development of an indigenous technology.

" As regards foreign patentees, the situation where the national enterprise in the under-developed country will be able to produce the product or work the process covered by the patent without any technical, managerial or financial cooperation from the foreign patentee, or from other foreign sources, is quite exceptional especially in the least developed countries. This is particularly so, in view of the fact that commonly the operation and application of new inventions is not feasible without the benefit of the relevant unpatented technological know-how embodied in formulae, processes and blue-prints, trade secrets, etc.

" Probably the most frequent case in practice will be the one where the national producer in the under-developed country would seek recourse to the technical support and other resources of the foreign patentee. This may be so either because these are not obtainable elsewhere or because the national producer does not have the ability to select and combine the different technological and financial factors needed without the patentee's help. If the domestic enterprise wants to use the foreign patentee's technological and management know-how or capital, and cannot obtain these as readily anywhere else, the foreign patentee will look for assurances of a safe and profitable situation. Patent protection in the developing country may or may not have a high place among these profitable conditions or guarantees which he expects. In any case, the fact is that patent protection is actually asked for and expected in a large number of situations, and quite apart from its actual economic significance it may be of psychological importance for the foreign patentee-investor.

" However, the terms and conditions of licensing agreements are legitimately a subject for the concern and control by the Governments of under-developed countries. Of particular concern to them are undue financial sacrifices exacted from the national licensee resulting in balance of payments burdens, and other unduly restrictive features of licensing agreements which diminish the benefits of introducing the patented innovation in the under-developed country.

" There are difficulties in determining what is an excessive balance of payment burden, and the necessary information cannot be obtained from the available statistics. Moreover, the actual burden which royalty payments to foreigners impose on a country cannot be measured in balance of payment terms alone, but must also be evaluated in terms of the contribution that the technology in question makes to the development of a particular industry within the country and the long-run contribution that it makes to decreasing the country's dependence on foreign imports and increasing its exports of the product in question.

" Undue financial sacrifices may appear not only in the form of excessive royalties, but also in excessive prices paid for materials or components or for the services of technicians obtained from the patentee, or an undue share of profits or an undue amount of equity transferred to the patentee in return for the use of his patent or for his technical services, unduly high management fees, etc. It will be seen that the financial terms of these agreements are highly complex and their effective control calls for considerable administrative resources and flexibility.

" The handicaps and possible abuses from which under-developed countries may thus suffer in connexion with patent licensing, are basically due to the monopoly of technical knowledge, management knowledge, capital resources and marketing access enjoyed by the firms and economies of the more advanced countries, rather than to the existence of patents as such. The basic problem to tackle for the international community is the one-sided relationship under which the possession of know-how and capital resources are so unequally distributed. The balance of payments burdens resulting from this one-sided relationship are heavy and take many different forms. They have never been fully appreciated, or even properly measured, as compared with the burdens of adverse terms of visible commodity trade of under-developed countries.

" Although the burden of the patent system is most readily apparent in the form of the heavy payments which are made for licensing fees and royalties or profit transfers to foreign patentees, yet frequently a serious burden of the patent system may lie in precisely the opposite form, namely those patents which are not being utilized within an under-developed country although they could be used advantageously in its productive economy. This burden is not measured by the volume of fees and royalties: since the patents are not in fact worked, no fees and royalties are paid. The true burden here lies in the absence of the social and economic benefits which the working of the patented product or process could have meant to the under-developed country and in the inability of the under-developed country to utilize its resources in the fullest and best possible way, in consequence of the non-working of the patent.

" Where, however, the patent could not be economically worked in the country, the burden may result from the higher prices which may have to be paid for the importation of the patented products, as a result of the monopoly position gained by the inventor through the grant of the domestic patent. This, however, will be the case only in so far as the price of the imported product is not already controlled by the patent or market situation in the developed countries

from which the product could be obtained. Conversely even the grant of a domestic patent will not give the inventor a monopoly position in the local market in the case of interchangeable products which are typically manufactured by competing suppliers, each of whom has his own set of patents on processes, components, etc.

" In any case, the effect of higher prices specifically due to patent protection is almost impossible to disentangle from higher prices due to such factors as exclusive know-how, trade secrets, restrictive practices, or the dominant market position of the supplier, all of which are intrinsically unrelated to the patent system. Since patents are thus only one of the factors which may bring about higher prices, the question arises whether measures directly affecting price levels or general anti-trust legislation are not an economically more effective and administratively more feasible technique of coping with the problem, than legislation devoted specifically to the patent system.

" The importance of stimulating indigenous innovation and pioneering applications of new technology in under-developed countries at reasonable cost is undoubted. Even though it may be true and inevitable that the bulk of the improved technology applied in under-developed countries will be taken from the stock of technological knowledge existing and being created elsewhere in the world (and will thus be transferred rather than newly created), yet this transferred technology will often have to be specifically adapted and adjusted to special local needs and circumstances. The encouragement of national and resident inventors and innovators in under-developed countries is particularly important because of the manifold special risks which attend investment in under-developed countries in any case. In so far as patent grants provide encouragement and protection, they may serve in some measure as an offset to the many risks that national innovators are running and the handicaps they are facing, compared with their counterparts in the industrially more advanced countries.

" *E. Conclusions*

" The analysis presented in this report covers the economic, legal and technical implications of the patent system for the economies of under-developed countries. The basic position from which the problem has been approached was that of the United Nations, i. e. that the economic progress of the under-developed countries is a matter of concern not only to themselves, but also to the world community at large, and that — as stated in General Assembly Resolution 1713 (XVI) — ' access to knowledge and experience in the field of applied science and technology is essential to accelerate the economic development of under-developed countries and to enlarge the over-all productivity of their economies '.

" The issue of patents to nationals and residents is one — though not the only — method at the disposal of Governments of under-developed countries for encouraging and rewarding invention and technical progress. The establishment of patent systems in under-developed countries for nationals and residents, moreover, raises no specific problems, subject to the possible need for technical assistance or pooling arrangements in administering such systems, and the general importance of conserving the scarce scientific manpower for directly productive tasks. In this direction, non-examination systems of patent issue may recommend themselves specially to under-developed countries. The possibility of utilizing international resources for the purpose of examination of patent applications from under-developed countries also clearly suggests itself.

" The real issues revolve around the position of the foreign patentee — and it is with these that Resolution 1713 (XVI) on the role of patents in the transfer of technology to under-developed countries is concerned. Where a patent granted to a foreign national is not worked in the under-developed country, there may result artifically high prices of the patented article when imported into the under-developed country, but such high prices may be the result of other factors than the exclusionary monopoly given the patentee. The patent system may thus be an element in the over-all picture of adverse terms of trade for under-developed countries, but its impact is not separably measurable. In this context, it has nothing to do with the balance of payments burden of royalties since no royalties are paid where the patented product is not locally produced. The situation may be eased from the point of view of under-developed countries if the more developed countries operate — as some often do — the patent system in a context of general (especially anti-trust) legislation which serves to reduce or counteract possible misuses of the system for restrictive or price-raising purposes, not only at home but also on operations abroad. The under-developed countries are also in a position to adopt, and many have in fact adopted, measures to control unreasonable prices and other abuses of the patent system.

" Where the patented product or process should be advantageously introduced into the economy of under-developed countries, a number of issues arise. The case where this can be done without the technical co-operation or other resources of the foreign patentee or any other source outside the under-developed country is in practice exceptional; where such a case exists provisions for compulsory working or licensing will deal with the situation if fairly and effectively administered. This will also be the case where the patent can be worked with such additional foreign know-how and resources as can be acquired from third parties or in the open market. The best course of action by the under-developed country will depend on whether it prefers the patentee to come and work his invention himself (possibly in a joint venture with local enterprise) — provided he is willing to do so on acceptable conditions — or whether it prefers the invention to be worked wholly by nationals. There may be sound economic reasons for either preference in given cases. In spheres of production vital to the national interest and the development of special resources, or to public health, limitations on patentability, or provision for limiting the scope of the patent grant by special working or compulsory licensing in the public interest are natural, as is evidenced by the inclusion of such limitations in the legislation of many countries.

" Where the technical services, management experience and perhaps capital resources as well as other connexions of

the foreign patentee himself are essential for the introduction of the patented process in the under-developed country and cannot be procured elsewhere, his minimum terms and conditions will have to be met in one form or other if it is decided to bring the innovation to the under-developed country. In so far as this can be described as a one-sided relationship and may express itself in undue balance of payments burdens on the under-developed country (or else in undue delays in introducing the new technology), such results are not attributable to the patent system as such, nor is the resulting burden properly measured by the patent royalties.

"The Governments of the developing countries have a legitimate interest in preventing excessive exploitation of their one-sided technological and financial dependence. One such possible method is the screening and control of license agreements, and avoidance of unduly restrictive features. The world community and the Governments of more developed countries can assist by inducing patentees not to be unduly restrictive in the conditions and terms on which they are willing to spread technology into under-developed countries; a variety of policy measures ranging from domestic compensation of patentees, provision of international funds for this purpose, equivalent investment guarantees and legislation against restrictive practices applying to business operations abroad, could be used for this purpose.

"In its final paragraph, Resolution 1713 (XVI) raises the question of the 'advisability of holding an international conference in order to examine the problems regarding the granting, protection and use of patents'. No views on this question have been expressed by any Governments in their replies to the Secretary-General's inquiry. In fact, as pointed out in the report, the problems arising in connexion with the transfer of technology to developing countries, go much beyond the operation of national patent systems or the conduct of international patent relations, so that a Conference such as that contemplated in the resolution could only deal with part of the issues. More could be done through the adoption at the national level of appropriate legislative and administrative measures along the lines discussed in the Report. In the final analysis, the question of patents can be best seen in the broader context of facilitating the transfer of technology, patented and unpatented, to the developing countries, and enhancing the ability of the latter to adapt and use such foreign technology in the implementation of their development programmes. This may be considered as falling within the scope of inquiry of the Advisory Committee on the Application of Science and Technology to Development, established by Economic Social Council Resolution 980 A (XXXVI), to whose attention the analysis presented in this Report may usefully be drawn."

IV. Preliminary Comments of BIRPI on the Report

It is doubtless too soon for BIRPI to make detailed comments on the Report of the Secretary-General of the United Nations. The Report is long and deals with a complex subject. It will have to be studied more carefully and more in detail than has been possible in the short time which has elapsed since its publication.

Nevertheless, a few general observations on the Report's conclusions may already be made and, in view of the fact that UNCTAD is currently studying it, are timely.

The four conclusions of the Report which are of principal interest seem to be the following:

(a) According to the U. N. Report, the issue of patents to nationals is one of the methods at the disposal of under-developed countries for encouraging technical progress, but in establishing patent systems such countries possibly need "technical assistance or pooling arrangements in administering such (their patent) systems" (pp. 20 and 21 of the U. N. Report).

It should be pointed out that BIRPI has an important programme of such technical assistance:

(i) BIRPI offers *training grants* for officers selected by their Governments for the administration of their patent systems;

(ii) BIRPI is at the disposal, with a *model law* and other materials, of under-developed countries wishing to adopt patent legislation consistent with their needs;

(iii) BIRPI is at the disposal of such Governments to give advice on, and assist in the establishment of *regional patent offices* if several countries wish to pool their resources for administering their patent systems.

(b) According to the U. N. Report, possible abuse of patents by foreign patentees to the detriment of the economy of under-developed countries may be prevented by compulsory working and licensing, the limitation of patentability in certain spheres of production vital to national interest, and the screening and control of licence agreements (see pp. 21 and 22 of the U. N. Report).

It should be noted that the model patent law established by BIRPI includes provisions to the effects mentioned above.

(c) According to the U. N. Report, the special interests of under-developed countries could be better served "through the adoption at national level of appropriate legislative and administrative measures" (p. 23 of the U. N. Report) along the lines indicated above than by an international conference.

It should be noted once again that the technical assistance offered by BIRPI is primarily an assistance for measures that each country would take *on the national level.*

(d) Finally, the U. N. Report refers to the question raised in General Assembly Resolution (1713 [XVI]) as to the "advisability of holding an international conference in order to examine the problems regarding the granting, protection and use of patents". The U. N. Report adds that no views on this question have been exprcssed in the replies of Governments to the Secretary-General's enquiry and that such a conference "could only deal with part of the issues" (U. N. Report, pp. 22 and 23).

It should be noted that, in these circumstances, an international conference on the subject would not seem to serve any useful purpose. If the convocation of such a conference would nevertheless be considered, it should be borne in mind that, as stated in the last

paragraph of Resolution 1713 (XVI), such conference should utilize "the existing machinery of the International Union for the Protection of Industrial Property" (Paris Union).

On the whole, it would seem to follow from the U. N. Report that the problems that under-developed countries may have in connection with patents for inventions are mainly problems which can be solved by appropriate legislative and administrative measures. Since these measures are of a rather special technical nature, it seems to be the natural solution that under-developed countries should draw on the experience of BIRPI, the only intergovernmental body specialized in patent questions, which, for eighty years, has served Governments in this field.

(A. B.)

NEWS ITEMS

Calendar of BIRPI Meetings

Place	Date	Title	Object	Invitations to participate	Observers
Geneva	May 20 to 26, 1964	Administrative Agreement, Working Party	Preparation of the Diplomatic Conference of Stockholm	Czechoslovakia, France, Germany (Fed. Rep.), Hungary, Italy, Japan, Mexico, Sweden, Switzerland, Tunisia, United Kingdom of Great Britain and Northern Ireland, United States of America	—
Bogotá	July 6 to 11, 1964	Latin American Industrial Property Congress	Discussion of industrial property questions of interest to Latin American States	All the States of Latin America	All Memher States of the Paris Union outside Latin America
Geneva	September 28 to Octoher 2, 1964	Interunion Coordination Committee	Program and hudget of BIRPI	Belgium, Brazil, Czechoslovakia, Denmark, France, Germany (Fed. Rep.), Hungary, India, Italy, Japan, Morocco, Netherlands, Portugal, Rumania, Spain, Sweden, Switzerland, United Kingdom of Great Britain and Northern Ireland, United States of America, Yugoslavia	All other Memher States of the Paris Union or of the Berne Union
Geneva	September 30 and Octoher 1, 1964	Consultative Committee and Conference of Representatives (Paris Union)	Triennial budget of the Paris Union	All Memher States of the Paris Union	—
Geneva	Octohre 12 to 16, 1964	Committee of Experts concerning the international classification of industrial designs	Study of an international classification of industrial designs	All Memher States of the Paris Union	—

STATISTICS

General Statistics of Industrial Property for the year 1962

Corrigenda

IRELAND

In the January 1964 issue of *Industrial Property*, the statistics, on page 19, regarding patent applications and patents granted were inverted; the figures should read as follows:

Principal patents applied for	1,089
Additional patents applied for	26
Total	1,115
Principal patents granted	443
Additional patents granted	4
Total	447

SOUTH AFRICA

In the December 1963 issue of *Industrial Property*, the statistics on page 274 under the heading "Utility Models" should be deleted and inserted under the heading "Designs", on page 275.