

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1966/II a, 69th Year, page 49
26th Congress of Tokyo, April 11 - 16, 1966

Q45

Question Q45

Industrial property in the developing countries

Resolution

The Congress
adopts the following resolution:

1. It cannot be disputed that the protection of industrial property and, in particular, the protection of inventions by the grant of patent is apt to promote the technical and economic progress, especially of developing countries.

The experience of countries which have nowadays developed their industrialisation demonstrates that the protection of industrial property has been an important factor in the development and progress of these countries.

In fact, by the advantages it procures, the protection of industrial property stimulates the financial investments in the developing countries, and it is just through these means that techniques are introduced in these countries.

2. There is no doubt that certain adjustments of traditional legislation are necessary to take into account the particular situations in the developing countries.

These adjustments, however, should not interfere with the basic principles underlying the protection of industrial property.

3. The IAPIP confirms its will to cooperate, as far as it lies within its power, in the accomplishment of the contemplated work.

It has the means to do so through its actions, especially through the media of its national Groups and of its publications.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1971/I, page 128
Executive Committee of Madrid, October 18 - 23, 1970

Q45

Question Q45

Industrial property in the developing countries

Resolution

The Executive Committee,

after having heard the report submitted by Mr. O'FARRELL on behalf of the Committee for the study of the question of Industrial Property in developing countries,

1. decides to continue the study of the question;
2. charges the Committee to proceed with its study, primarily by collecting information from the UNO and the WIPO, and by consulting the National Groups in taking account of the report which has been presented by the Swiss Group;
3. charges the Committee to submit a preliminary report to one of the next meetings of the Council of Presidents.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1973/I, pages 162 - 163
28th Congress of Mexico, November 12 - 18, 1972

Q45

Question Q45

Value of Industrial Property for Technical Development and Economic Progress

Resolution

The International Association for the Protection of Industrial Property

recalling that, at its Congress of Tokyo in 1966, it considered the problem of the relation of Industrial Property to technical and economic progress, especially for developing countries, recognized the need of adjustment of legislation to meet the special situation of such countries and expressed its willingness to collaborate for the accomplishment of this object;

noting that all peoples of the world have the right to adequate food, housing, clothing, schooling and medical care;

noting that since the Congress of Tokyo the aspiration of a large part of the world to reach a sustained and satisfactory economic development, which is a condition for satisfying such needs, has become more intense and pressing;

noting that a decisive contribution to the attainment of this object is the creation or acquisition of appropriate technology and its application to such sectors of the economy as is best adapted to balanced growth in the particular circumstances of each country;

noting that at least in the early stages of development most of the needed modern technology suitable to the conditions of developing countries cannot be transferred except from developed countries;

noting that international cooperation between the holders of technology protected or not, by patents or by other means, and enterprises in developing countries is best achieved when the conditions are favourable to the recognition and protection of rights of Industrial Property, and as a counterpart of such recognition and protection, the owners of such rights may be subject to conditions preventing abuses in the exercise of the rights as a mean of sharing in the responsibility for the economic and technical progress of developing countries;

noting that this cooperation is favoured by the provisions of the International Convention for the Protection of Industrial Property, which is the best existing international arrangement for the recognition and satisfaction of the interests and demands of both developed and developing countries, as shown by the adherence of 79 countries belonging to both categories of countries;

noting that the Convention allows countries to adopt such national legal measures as may be deemed necessary or desirable by each country for the advancement of its technical and economic growth. Indeed each developing country in adhering the Paris Convention may:

- (a) require working of patents within a fixed period;
- (b) provide for compulsory license for such working after such period and also at any time for reasons of important public interest;
- (c) prohibit restrictive clauses in License Agreements, likely to unduly impede competition and domestic economic progress;
- (d) provide for appropriate government control and approval of Industrial Property License Agreements;

provided such legal and administrative measures should be applied flexible and do not reach such excessive limits that they affect the substance of the Industrial Property rights and destroy the inducement for economic cooperation;

concludes:

1. to decide to keep the present question on its agenda as an item of predominant importance and to continue the study under the broadest aspects;
2. to direct the appointment of a special committee for that purpose, to work in close cooperation with intergovernmental organizations, especially WIPO, and in private associations, in efforts directed towards the needs of developing countries;
3. to undertake such efforts as may persuade non-member-countries to adhere to the Paris Convention.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1975/III, pages 134 - 135
29th Congress of San Francisco, May 3 - 10, 1975

Q45

Question Q45

Value of Industrial Property for Technical Development and Economic Progress

Resolution

Whereas, notwithstanding that the existing industrial property system based upon the Paris Union is, when properly implemented, conducive to technological development in both developed and developing countries, nevertheless the developing countries require additional stimuli to national development and introduction of technology; and

whereas, the level of technological development in at least some developing countries is such that the know-how required by such countries is at a technological level different from that reflected by current patents and patent applications; and

whereas, there is a need on the one hand for effective introduction and implementation of transferred know-how in the developing country with attendant continuity and stability of the national enterprise to which the know-how is transferred, and on the other hand for effective incentives to those in possession of the know-how to transfer it for the mutual benefit of the developing country and the transferor; and

whereas, consideration of recently proposed model laws and juridical systems relating to alternative new types of industrial property rights should be undertaken not in isolation but as part of a comprehensive study of the optimum means for promoting national development and transfer of technology to developing countries;

now therefore be it resolved that IAPIP welcomes the initiatives and studies heretofore undertaken by WIPO, and recommends that the emphasis of further study and activity by IAPIP be shifted in the direction of the creation of positive proposals for international

cooperation leading to national development and introduction of technology into developing countries, to meet the individual needs of developing countries at different stages of technological development, and that for this purpose the IAPIP Working Committee continue to study the relevant problems and expeditiously make recommendations for positive solutions; such study and activity to include

1. consideration of the necessity for the transferred know-how within the developing country, and of the means effectively to implement it with attendant continuity and utility of the technology in the hands of the domestic enterprise to which the know-how is transferred, whilst at the same time providing sufficient incentives to those originally in the possession of know-how to induce them to transfer the know-how to developing countries;

2. continued study of possible novel forms of industrial property right as one means of promoting national development and transfer of technology;

3. consideration of means whereby developing countries can make positive use of the present industrial property system including the Paris Convention to promote transfer and absorption of foreign technology and development of national technology at levels appropriate to the stage of development of individual countries, and the harmonization of the juridical system for transferring know-how with the present industrial property system.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1977/I, pages 138 - 142
Executive Committee and Council of Presidents of Montreux,
September 26 - October 2, 1976

Q45

Question Q45

Value of Industrial Property for Technical Development and Economic Progress

Resolution

The IAPIP

is convinced of the value of industrial property in assisting the transfer of technology through the protection it provides to the owners of the technology;

it fully supports WIPO's work on a Model Law for Patents. The Model Law should be based on the established patent system on which there has been very many years of experience, possibly supplemented by other types of known industrial property, i.e. inventors' certificates and patents of confirmation.

It accepts that these types of industrial property may not be fully suitable for conditions in some countries and fully supports WIPO's further study of new types of industrial property, particularly the Transfer of Technology Patent (TTP), but with the important proviso that some years of practical experience of its use will be necessary before a detailed Model Law can be established with confidence in its workability. Important factors in favour of TTP's are (i) that they can fulfil a need not met by the established patent system, i.e. they provide a possibility for late filing at a time when technology is to be transferred, and (ii) that they involve national enterprises which may thereby become convinced of the value of industrial property generally.

With the above background in mind, the IAPIP offers the following comments on details of WIPO's proposals for a Model Law on Patents and for WIPO's consideration in its further investigation of TTP's.

Comments on WIPO Document WG/ML/INV/IV/I and V/I

Chapter I: Patentability

The need for some of the exclusions from patentability was questioned. Taking into account that each particular country is free to amend this Model Law, it was accepted by the majority. The Director General explained that in providing for exclusions from patentability by the "Council of Ministers" it was intended to limit this power of decision to correspondingly high-level national authorities.

Chapter II: Right to Patent

No comments.

Chapter III: Application, Grant and Refusal of Patents

A majority recommended that claims should be "fairly based" instead of "fully supported" by the description, as the draft now requires. While it is accepted that regulations should simplify procedures and minimize costs by taking account of the results in examining countries, such regulations should be carefully studied in order to ensure a systematic approach to the problems arising from the wide variety of corresponding foreign filings.

Chapter IV: Rights and Obligations of Applicants and Patentees

The developing countries' wish to remove the exclusive rights of the patentee to prevent imports would produce a serious erosion of the patent system.

Chapter V: Duration of Patent and Fees

There should be provision for summary administrative procedure for the restoration of patents lapsed through unintentional nonpayment of fees, without prejudice to intervening third-party rights acquired "bona fide" in the interim.

Chapter VI: Change in Ownership and Joint Ownership of Patent Applications and Patents

No comment.

Chapter VII: Contractual Licenses

The law should be more specific on the consequences of withdrawal or rejection of an application or cancellation of a patent. Regulations should establish rules assuring equitable treatment in such cases. For example in the case of a license granted "bona fide" from which the licensee derived actual benefits, there should be no refund of royalties.

Chapter VIII: Exploitation of Patented Inventions without Authorization of Owner of Patent

It is felt that in all administrative decisions related to compulsory licenses and the remuneration in respect thereof, there should be provision for appeal to a Court of Law.

Chapter IX: Surrender and Invalidation

No comment.

Chapter X: Infringement

The essential starting point of any action for infringement of a patent is the establishment of the facts. A Model Law should include specific procedural provisions covering this essential point, especially in the case of process patents for which discovery including inspection by the patentee or an independent inspector should be provided for.

Doubts were expressed as to the wisdom of including provisions on know-how in a Patent Model Law, because fundamentally different principles of law are involved. The transfer of technological know-how should be covered by a contract and so be subject to the normal consequences of contractual default. In principle, the provisions of Part III of this chapter relating to know-how are acceptable, subject to the know-how contracts having to "identify" the know-how, rather than "describe" it.

WIPO should be urged to continue its studies with a view to developing separate guidelines for the protection of know-how through national law.

UNCTAD - Code of Conduct on Transfer of Technology

Whatever the final wording of this document be, when finally issued, it should be considered only as a recommendation, and not as a legally binding instrument.

Annex

To the questionnaire sent out to the National Groups, many replies were received, and these were the base for the discussion of our Committee of Reporters. The following are the questions and the conclusions.

On the basis of the questions listed below and of the replies received, discussions took place at our Reporter's Committee, and these were the conclusions reached:

Question a: Should there be an international treaty stipulating a mandatory code of ethics for the transfer of industrial property (1), or should this be a matter for national law (2) ?

Answer: (1): No.
(2): Yes.

Question b: Should the Paris Convention be amended so that its acceptance by developing countries may be made without fear of being doomed thereby to an endless position of dependence of technological centres, or should it remain as it is ?

Answer: Some minor amendments might be helpful as long as they do not affect the basic principles of the Paris Convention. This matter is being dealt with by the group-in charge of Question 67 (Revision of the Paris Convention).

Question c: Should there be a Paris Convention for the more developed countries and no Union or a separate Union for the developing countries?

Answer: This is also a matter for Question 67, but most groups said no.

Question d: Should a Model Law for developing countries be drafted, the adoption of which would enable developing countries to adhere without fear to the Paris Convention "telle quelle" ?

Answer: Yes. It should be drafted, and it is believed that it could be useful provided that it remains within the framework of the Paris Convention and is based on the established patent system.

Question e: Should the tenets of such a Model Law be made reference to, approved by or made a party of, the Paris Convention or be the subject of a separate Convention?

Answer: No. The Model Law should not be subject to any convention. It should be of a recommendatory nature and its adoption by developing countries not having an appropriate system would enable them to join the Paris Convention.

Question f: Whether such a Model Law should cover the various types of new patents, monopolies, TTP, confirmation or importation type patents, etc. ?

Answer: It is felt that the Model Law should cover only established titles, of which there is considerable experience, e.g. patents, inventors' certificates, utility models and patents of confirmation. However, WIPO should be urged to consider guidelines for a TTP for the assistance of countries who might wish to adopt such a new form of Industrial Property. There was no support for industrial development patents or for patents of importation.

Question g: Should new types of protection be encouraged to facilitate the rapid industrialization of developing countries ?

Answer: See (f) with a recommendation to WIPO that when it issues guidelines for TTP, it exercises great caution in view of the need to build up a body of experience.

Note: Committee 45 has not dealt with trademarks, as these fall within Question 68 (Economic Significance, Functions and Purpose of the Trademark).

Further Comments on TTP

(a) TTP should be capable to be based on patents, inventors' certificates and utility models.

(b) The right to apply as far as the local party is concerned should only require that he shows capability to work the invention on the basis of the TTP. This could be conducive to the establishment and/or development of new enterprises.

(c) Since the Transfer of Technology agreement is a prerequisite to the TTP, there is a danger that the TTP may be blocked by other Governmental Departments having to approve the terms of the TT agreement. Countries adopting the TTP must make practical regulations concerning the approval of the TT agreement.

(d) We hope that the countries adopting TTP will through involvement of national enterprises with industrial property rights come to realize the importance of industrial property in general.

Conclusions

In closing, it can be said that it is not patent laws based on the Paris Convention nor Model Law that is an obstacle to technology transfer to developing countries. Rather, many other factors are responsible, e.g.:

(a) too strict and one-sided conditions for approval imposed by the Government authority concerned;

(b) difficulty in raising sufficient funds in these countries and high interest or spiraling inflation, obstacles often encountered when it is planned to establish a joint venture in developing countries;

(c) the lack of sufficient industrial background and infrastructure, and non-development of subcontracting and related industries;

(d) shortage of qualified engineers and lack of educational and research facilities;

(e) difficulty in maintaining a suitable labour force.

These are problems that have to be solved independently before smooth transfer of technology can be achieved.

Committee 45 feels that WIPO is making good progress in its task and that the IAPIP should work closely with it and with other United-Nations-specialized agencies in emphasizing the importance of industrial property in the transfer of technology.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1978/II, page 145
30th Congress of Munich, May 15 - 19, 1978

Q45

Question Q45

Value of Industrial Property for Technical Development and Economic Progress

Resolution

The IAPIP,

having taken note of the report presented by the Working Committee to the Congress at Munich,

adopts this report and

decides to continue the study of the question on the basis of the statements made during the debate.

* * * * *

QUESTION 45

Q45: Value of industrial property for technical development and economic progress in developing countries

Q45 A: The role of patents and know-how in the transfer of technology and in stimulating indigenous technology

Q45 B: The role of trade marks, trade names and geographical indications

Yearbook 1981, pages 143 - 144
31st Congress of Buenos Aires, November 16 - 21, 1980

Q45

Question 45 - Value of Industrial Property for Technical Development and Economic Progress in Developing Countries

The Role of Patents and Know-How in the Transfer of Technology and in Stimulating Indigenous Technology (Q 45 A)

Resolution

The IAPIP

1. *takes note* of the various plans to regulate the transfer of technology from developed to developing countries which have been presented by a number of organizations of the United Nations and by several nations, and

resolves to carry out thorough studies of these plans.

2. in applying its resolution on the erosion of the patent system, *decides* to devise an appropriate strategy to counterbalance any measures within such plans which directly or indirectly would erode the patent system as such.

3. *favours* also the adoption by developing countries of systems of protection of industrial property which encourage the transfer of technology.

The Role of Trademarks, Trade Names and Geographical Indications (Q 45 B)

I. *Bearing in mind,*

that the question of the significance of trademark protection in developing countries has been recognized with increasing attention by these countries and the different international organizations, and

in view of the existing tendencies in certain countries to alter the traditional principles of trademark protection,

the IAPIP,

after a first examination of the question *affirms* the following principles:

1. Trademark protection is of great economic importance not only for industrialized countries but also for developing countries. By insuring protection to its proprietor, the trademark insures at the same time fair trade and the protection of consumers.

2. The interest of the consumer requires that the trademark:

a) identifies the commercial origin of the products and services in an unequivocal manner;

b) and consequently guarantees to the consumer a constant quality of goods and services;

c) protects the consumer against any imitation which is susceptible to deceive him.

3. Trademark protection has an equally economic importance for international trade. The trademark is especially for developing countries an indispensable instrument for introducing national products into the world market and thereby creating new outlets.

4. Furthermore, the trademark may be of assistance in the transfer of technology and commercial know-how to developing countries. For instance, the licensor is obliged to transfer on a permanent basis to the trademark licensee his technical experience and know-how in order to assure that the trademark is only used for products and services having the required quality.

II. The IAPIP

decides to further study the question as to the role of trademarks as well as of commercial designations and geographical indications.

* * * * *

Continuation see under Q 67