LES CENTRAL REGIONAL MEETING

MAY 26, 1978

OAKBROOK, ILLINOIS

CURRENT ACTIVITIES AND PROSPECTS ON THE INTERNATIONAL PATENT SCENE

BY

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I. THE UN AGENCIES WHICH APPEAR TO HAVE ACTIVITIES RELATING TO PATENTS.

A. WIPO - GENEVA,

LEGAL EXPERTISE,

PARIS CONVENTION,

MADRID ARRANGEMENT,

BERNE CONVENTION,

PCT

MODEL LAW FOR DEVELOPING COUNTRIES ON INVENTIONS & KNOWHOW,

B. UNIDO - VIENNA,

EDUCATIONAL ASSISTANCE TO DEVELOPING COUNTRIES,

EXPERTS TO HELP DRAFT PATENT LEGISLATION,

HOLD MEETINGS AND SEMINARS.

HAVE CO-SPONSORED MEETINGS WITH LES.

C. UNCTAD - GENEVA.

MORE THEORETICAL, MORE POLITICAL.

"ECONOMIC, COMMERCIAL AND DEVELOPMENTAL ASPECTS" OF PATENTS, TRADEMARKS, AND TRANSFER OF TECHNOLOGY.

VERY MUCH INVOLVED IN CODE OF CONDUCT FOR TECHNOLOGY TRANSFER.

UNCTAD MEETING - GENEVA - SEPTEMBER 1975.

"ROLE OF THE PATENT SYSTEM IN THE TRANSFER OF TECHNOLOGY".

SECOND MEETING - GENEVA - SEPTEMBER 1977.

"ROLE OF THE INTELLECTUAL PATENT SYSTEM IN THE TRANSFER OF TECHNOLOGY".

II. ROLE OF INTELLECTUAL PROPERTY SYSTEM IN TRANSFER OF TECHNOLOGY.

A. POSITION OF LESS DEVELOPED COUNTRIES (LDC'S) - PATENTS.

1. MAJORITY OF PATENTS IN DEVELOPING COUNTRIES ARE NOT USED.
2. PARIS CONVENTION DOES NOT TAKE INTO CONSIDERATION THE NEEDS OF DEVELOPING COUNTRIES.
3. WHAT LDC'S WANT:

a. NATIONAL TREATMENT - DISCRIMINATION IN FAVOR OF LDC'S.

b. ACTUAL WORKING OF PATENTS IN COUNTRY WHERE PATENT IS ISSUED.

c. DURATION OF PATENTS SHOULD BE SHORTER.

CUBA - "UNLIKELY THAT A NEW TECHNOLOGY COULD LAST MORE THAN 7 YEARS.

D. PATENTS SHOULD NOT INCLUDE THE EXCLUSIVE RIGHT OF IMPORTATION.

E. PATENTS SHOULD NOT BE USED TO LIMIT EXPORTATION OF PRODUCTS FROM ONE COUNTRY TO ANOTHER.

F. DISCLOSURE IN PATENTS IS INADEQUATE.

G. PRINCIPLE OF INDEPENDENCE OF PATENTS (IN EACH COUNTRY) MUST BE CHANGED.

H. IMPORTATION OF PATENTED ITEM SHOULD NOT CONSTITUTE WORKING OF PATENTS.

III. WIPO AD HOC GROUP OF GOVERNMENTAL EXPERTS PROPOSED DISCUSSIONS IN POSSIBLE REVISION OF THE PARIS CONVENTION SHOULD CONSIDER THE FOLLOWING 14 POINTS:

1. NATIONAL TREATMENT.
2. INDEPENDENCE OF PATENTS.
3. TO 5. NON-WORKING AND DELAYS IN WORKING OF THE PATENTED INVENTION; COMPULSORY LICENSES; LICENSES OF RIGHT.
6. PREFERENTIAL TREATMENT WITHOUT RECIPROCITY.
7. TECHNICAL ASSISTANCE.
8. TYPES OF PROTECTION OTHER THAN PATENTS (INVENTORS' CERTIFICATES, ETC.).
9. MARKS; INDUSTRIAL DESIGNS; APPELLATIONS OF ORIGIN.
10. RESERVATIONS.
11. DELETION OF ARTICLE 24 (RE: COUNTRY STATING PARIS CONVENTION ONLY APPLICABLE TO PART OF TERRITORIES WHOSE FOREIGN RELATIONS IT HANDLES).

12. SCOPE OF PROTECTION OF PROCESS PATENTS.

13. RIGHT OF PRIORITY.

14. UNANIMITY RULE.

IV. CURRENT STATUS OF 14 POINTS

1. NATIONAL TREATMENT.

   A. PROPOSED "ARTICLE A".

      ALL COUNTRIES WOULD CHARGE LDC NATIONALS 50% OF FEES FOR OBTAINING AND MAINTAINING TRADEMARK PROTECTION.

   B. PROPOSED "ARTICLE B".

      LDC NATIONALS WOULD HAVE 50% LONGER PRIORITY PERIODS IN WHICH TO FILE THEIR PATENT AND TRADEMARK APPLICATIONS.

   C. LDC COULD CHARGE FOREIGN NATIONALS 50% HIGHER FEES THAN THE LDC'S CHARGE THEIR OWN NATIONALS.

   D. STILL BEING CONSIDERED AND WILL BE TAKEN UP AT WORKING GROUP MEETING ON JUNE 19-23, 1978 IN GENEVA AND PREPARATORY INTERGOVERNMENTAL COMMITTEE MEETING ON JUNE 26-30, 1978 IN GENEVA.

2. INDEPENDENCE OF PATENTS (4 BIS).

   A. LDC HAVE BACKED OFF ORIGINAL POSITION.

   B. NEW ARTICLE 12 BIS INCLUDES PROVISIONS FOR FURNISHING INFORMATION RE: CORRES. PAT. IN OTHER COUNTRIES, EITHER FROM APPLICANT OR FROM OTHER PATENT OFFICE.

c. SEEMS TO BE ACCEPTABLE.

3-5. NON-WORKING & COMPULSORY LICENSES (5-A).

A. REVISED 5A AGREED TO PROVIDING:

1. WORKING CAN BE REQUIRED.
2. IMPORTATION IS NOT WORKING UNLESS COUNTRY WISHES TO REGARD IT SO.
3. NON-VOLUNTARY (COMPULSORY) LICENSES MAY BE REQUIRED FOR NON-WORKING UNLESS PATENTEE JUSTIFIES HIS NON-WORKING.
4. USUALLY NON-VOLUNTARY LICENSE IS NON-EXCLUSIVE EXCEPT IN SPECIAL CASES, WHEN IT MAY BE EXCLUSIVE.

B. U.S. HAS ASKED THAT THIS LATTER PROVISION BE REOPENED DURING THE JUNE MEETING.

6. PREFERENTIAL TREATMENT WITHOUT RECIPROCITY.
SEE #1 ABOVE.

7. TECHNICAL ASSISTANCE (12 TER).

A. NEW ARTICLE 12 TER PROVIDES FOR ASSISTANCE TO LDC IN MATTERS OF INDUSTRIAL PROPERTY.

B. AGREED TO.

8. TYPES OF PROTECTION OTHER THAN PATENTS (INVENTOR'S CERTIFICATES, ETC.).

A. NEGOTIATIONS STILL GOING ON ABOUT HOW TO HANDLE INVENTOR'S CERTIFICATES IN PARIS CONVENTION.

TO 3RD PARTY WHO BEINGS COMMERCIALIZATION OF AN INVENTION DURING PRIORITY PERIOD, WHERE APPLICANT HAS NOT EXPLOITED OR PUBLISHED THE INVENTION.

B. 4 BIS. DELETE PARAGRAPH 5 SO THAT CONVENTION COUNTRIES COULD START PATENT TERM FROM PRIORITY DATE.

5. FIX AGENDA FOR NOVEMBER 6-21, 1978 PREP. GOVT. COMMITTEE

B. DIPLOMATIC CONFERENCE WILL PROBABLY BE IN 1979.

C. PREDICTION.

1. PARIS CONVENTION WILL BE REVISED.
2. CHANGES WILL NOT MAKE ANY DIFFERENCE RE: ACTUAL DEVELOPMENT OF LDC'S.

B. PROBLEMS.

1. IF A COUNTRY HAS INVENTOR'S CERTIFICATES, IT MUST GRANT PATENTS AND INVENTOR'S CERTIFICATES IN SAME FIELDS.
   a. USSR AGREES UNLESS REQUIRED BY REASON OF PUBLIC INTEREST.
2. GROUNDS & TIME LIMITS FOR CHALLENGING PATENTS AND INVENTOR'S CERTIFICATES MUST BE THE SAME.
   a. USSR WANTS TO INCLUDE UTILITY MODELS AND HAVE IT IN RESOLUTION OF THE DIPLOMATIC CONFERENCE, NOT IN REVISED PARIS CONVENTION ITSELF.
3. TERM OF PAT. AND INVENTOR'S CERTIFICATE MUST BE SAME.
   a. USSR NOT YET AGREED.
4. WILL BE TREATED IN 6/78 MEETING.

9. TRADEMARKS; INDUSTRIAL DESIGNS; APELLATIONS OF ORIGIN.

10. RESERVATIONS.
    A. QUESTION OF WHETHER LDC SHOULD BE PERMITTED TO TAKE RESERVATIONS TO VARIOUS PROVISIONS OF THE PARIS CONVENTION HAS BEEN DROPPED.

11. DELETION OF ARTICLE 24 (TERRITORIAL CLAUSE). PRESENTLY IN ABEYANCE. MAY BE DISCUSSED AT DIPLOMATIC CONFERENCE.

12. SCOPE OF PROTECTION OF PROCESS PATENTS (5 QUATER)

A. B COUNTRIES SAY LDC COULD NOT GIVE PROCESS PATENT PROTECTION TO PRODUCTS PRODUCED BY THE PATENTED PROCESS AND NO PROTECTION FOR IMPORTED PRODUCTS PRODUCED BY THE PATENTED PROCESS.

B. LDC FEELS 5 QUATER IMPLIES SUCH PROTECTION IS REQUIRED & 5 QUATER SHOULD BE CHANGED.

C. WILL BE TREATED IN 6/78 MEETING.

13. RIGHT OF PRIORITY.

SEE 6 ABOVE.

14. UNANIMITY RULE OR QUALIFIED MAJORITY (SUCH AS 3/4, 7/8, 9/10).

A. WILL BE DISCUSSED AT LAST P.G. COMMITTEE MEETING BEFORE THE DIPLOMATIC CONFERENCE.

V. WHAT'S NEXT?

A. NEXT PREPARATORY GOVERNMENT COMMITTEE JUNE 26-30, 1978 - GENEVA.

DISCUSS:

1. PREF. TREATMENT WITHOUT RECIPROCITY.
2. 5 QUATER (PROCESS PATENTS).
3. INVENTOR'S CERTIFICATE.
4. SHOULD CANADIAN PROPOSALS BE CONSIDERED?
   a. 4B AMEND. TO GIVE INTERVENING RIGHTS