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Patent And License Issue Splits Nations At Geneva Meeting

THE SPREAD of technological information — developments which are key to the progress of a nation — has become the focus of a diplomatic battle between many of the industrialized nations, led by the United States, and the rest of the world.

Representatives of more than 100 nations are meeting in Geneva this week to try to resolve a patent-license issue that is pitting the developing nations and the Eastern Bloc countries against the United States and many — but not all — of its industrial allies.

The scene is the redrafting of the Paris Convention for the Protection of Industrial Properties — the periodically reviewed, international agreement setting patent and licensing provisions throughout most of the world. It involves rights — the right to allow someone to learn of and utilize the latest technological developments; and the right to profit from having sole possession of something that everyone else wants.

Not All Are Anti-American

And in this case, the majority of the world wants a change in the U.S.-backed process which allows firms to tie up all rights to an invention or process and then sit on it — preventing its benefits from reaching the people of a nation. And not all of these countries are impoverished or historically anti-American.

Canada, Portugal and Spain are opposing the American position; the support of the Scandinavian countries is, according to U.S. officials, soft; Japan and a majority of Common Market countries are siding with the United States; India, Ecuador, Chile and oil-rich Venezuela are non-signatories to the existing agreement, but are participating in the redrafting and espousing the majority cause. At this point — even though the United States needs only 12 votes out of 89 to ensure continuation of the status quo — it is not certain that U.S. efforts will succeed.

An explanation is in order.

Patents are, essentially, monopolies given to an inventor in exchange for the widespread dissemination of new knowledge.

According to Lee Schroeder, international industrial properties specialist in the legal section of the U.S. Patent Office, "In this country, the grant of a patent is the right to exclude others from making or selling a product or using a process. Whether you work the patent or not is immaterial, and this has led to many classical cases of people sitting on inventions.

The Point: To Prevent Exploitation

"Our feeling is that if you have a practical invention and sit on it, others will invent around you at some point in time. That is why part of our law involves the public exposure of the invention, so you don't have to use your invention, but the knowledge is there for all to see.

"The whole point is to prevent exploitation, but to spread knowledge contributing to the inventive art. Once the technology is known, others will be able to build on it."

But there are problems. "Developing countries," Schroeder continued, "don't have the resources to develop the patents themselves, and so they have working requirements. You are required to use the patent and work the invention in a given period of time."

A firm with a patent may decide to develop the product itself, or it may grant a license to one or more indigenous firms for a fee. If it does nothing for three or four years, a country may simply empower an indigenous firm to develop the product, and work out royalty arrangements later.

"Mexico has such a requirement," said Harold Marquis, a professor of patent law at the Emory University Law School in Atlanta, "and the main effect has been a negative one in that foreign companies are not inclined to want to bother with Mexico.

"One of the things which has not been recognized by those who feel the Western world is taking advantage of the developing world is that Western firms do not have to go to the developing world at all — and if the terms are too unfavorable, they won't."

Feeling They've Been Had

But the developing countries feel they have been had. There used to be a provision in the international agreements that governments could not only grant licenses for unworked patents, but they could be *exclusive*, and the original inventor could not come in at a later date and compete with the domestic firm. That provision was deleted during the revisions of 1958, at a time when most of the developing nations were still in, or just leaving, a colonial state.

And now, at a time when those fledgling countries are exploring their mineral wealth, and amassing enough reserves to utilize seriously some of the technological innovations of the industrialized countries, they find the door to many forms of development are controlled in foreign corporate boardrooms. And they would like a change.

It is not as if this is a new phenomenon, a licensing and information exchange system which the world has never seen. It is a system which was used by all of the major, industrialized countries *until* the time came when there was competition from other quarters.

It would seem there is no legitimate justification for maintaining a practice which deprives so many of so much, when returns could be had by all.