

become dependent on U.S. know-how. U.S. export controls are moreover often difficult to enforce outside the U.S. territory and their utility in this respect is therefore questionable. Be that as it may, the current U.S. government position will continue to give rise to conflicts with its allies, and will clearly be to the detriment of U.S. economic and business interests.

In summary, it is submitted that the United States government should as a matter of principle not attempt to regulate the export activities of foreign subsidiaries of U.S. companies, except:

- 1) when the subsidiary is simply a conduit through which a U.S.-origin commodity passes on its way to its intended destination in a third country, or
- 2) when the subsidiary is deliberately used to circumvent controls over exports from the United States, or
- 3) when the subsidiary is manufacturing high technology strategic products based on U.S. technology.

Such regulation, provided it is strictly defense-related, should normally be understood and accepted by the subsidiaries' host governments. U.S. export controls designed to "punish" countries (like Libya) whose activities may not be to the liking of the U.S. government, or designed to achieve some essentially domestic political goal (such as the boycott regulations), will seldom be palatable to foreign governments and should consequently not be applied to foreign subsidiaries of U.S. companies.

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## **Transferring U.S. Technology to the Soviets: Some Practical Legal Problems**

Since 1965 the Soviet leadership has undertaken an intense effort to modernize its country's economy. One aspect of this modernization program is importation of technology, patents and know-how from more advanced countries. By importing technology, rather than finished goods, the Soviets aim at avoiding duplication of Western research and becoming dependent on capitalist manufacturers.

At the Twenty-third Congress of the Communist Party of the U.S.S.R., for example, Prime Minister Kosygin observed that hundreds of millions of rubles could be saved annually by altering import priorities from finished goods and equipment to know-how and patents.<sup>1</sup> A directive of the Con-

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<sup>1</sup>M.L. GORODISKII, *LITSENZII V VNESHNEI TORGOVLE SSSR* (1972) 5.

gress instructed Soviet international trading organizations to "broaden significantly" their acquisition of advanced industrial property.<sup>2</sup> Moreover, Soviet trading firms have earnestly implemented this policy. One Soviet scholar notes that his country purchased five times more licenses of foreign technology during the Five Year Plan which ended in 1970 than during all preceding post-war years.<sup>3</sup> Now the gross volume of trade in licenses between all Eastern European and capitalist countries is \$500 million annually.<sup>4</sup>

Despite the eagerness of Soviet manufacturing firms and foreign trading organizations to acquire advanced technology, American companies which possess patents and know-how have not entered the market in large numbers. European purveyors of technology, like European sellers of finished goods, have developed much closer ties with the Soviets and have consummated deals of considerably greater number and value than American manufacturers.<sup>5</sup>

Because the complexity of United States regulations and the obscurity of Soviet laws and commercial practices may be factors which have inhibited American businessmen from entering technology transfers with the Soviets, this article addresses a few of the practical legal problems which may arise in the process of negotiating a deal with the Soviets and securing administrative clearance for the deal from American authorities.

### **I. Transferring Technology Protected by a U.S. Patent**

The vast majority of inventions which are protected by U.S. patents or for which patent applications have been filed probably require no special permission for export to the Soviet Union. In most cases the procedures of the Patent and Trademark Office for granting patents will incidentally authorize the inventor to apply for any foreign patent which he wishes to secure. Existing regulations require the Office to make available for inspection by defense agencies any application "containing subject matter the disclosure of which might be detrimental to national security."<sup>6</sup> If any chief officer of any defense agency determines that disclosure of the invention through publication of a patent would be detrimental to national security, he may request the Commissioner of Patents and Trademarks to issue an order requiring the invention to be kept secret.<sup>7</sup> If a secrecy order is in

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<sup>2</sup>M.M. Boguslavskii, *Pokupka i Prodazha Litsenzii v SSSR* 1969 SOVETSKOE GOSUDARSTVO I PRAVO 53.

<sup>3</sup>GORODISKII, *supra*, n.1, 18.

<sup>4</sup>S. Simanovsky, *Conditions and Prospects for License Exchanges of the CMEA Countries*, 1980 FOREIGN TRADE 2; 18.

<sup>5</sup>M. Seger, *Tightening up the High-Tech Trade*, FORTUNE, Dec. 28, 1981.

<sup>6</sup>37 C.F.R. § 5.1(b).

<sup>7</sup>37 C.F.R. § 5.2.

effect, no U.S. patent may be issued and the inventor may not apply for foreign patents.<sup>8</sup>

The holder of a United States patent which is not subject to a secrecy order may freely apply for patents abroad.<sup>9</sup> Moreover, no export license is required if the inventor has applied for a U.S. patent and received notice that the patent has been scheduled for printing and publication or if six months have elapsed since the inventor filed his application.<sup>10</sup> If the inventor wishes to apply for foreign patents before the six month period has elapsed, he must request a special license from the commissioner.<sup>11</sup> Finally, the holder of a patent or applicant needs no special permission to export his technology if the information contained in the foreign patent application is generally available to the public in any form through media such as publications, trade shows or conferences.<sup>12</sup> Governmental clearance is not required in these cases because the Office recognizes that public availability of technical information, either through publication of a patent or general availability of the data, would allow any foreign national to circumvent any screening process for the export of technology.

The holder of a United States patent who wishes to register his invention in the Soviet Union enjoys the advantage which the Paris Convention affords to innovators throughout the world. The Convention provides the inventor with a grace period, allowing him to maintain his priority in the invention in any signatory country if he applies for a patent there within one year of the date on which his American application is accepted for review.<sup>13</sup> The Convention also requires member countries to guarantee to the citizens of other signatory countries the same rights which they provide to their own nationals.<sup>14</sup> In fact, however, the American inventor enjoys significantly greater opportunities for compensation in the U.S.S.R. than the typical Soviet inventor.

Foreign applicants for Soviet patents file their applications with the U.S.S.R. State Committee for Inventions and Discoveries. The applicant must employ the Patent Bureau of the U.S.S.R. Chamber of Commerce as his agent in the transaction. In addition to this formal agent, the applicant may discover that Soviet enterprises which are potential licensees of the patent will assist the inventor to collect the necessary supporting documents and persuade the State Committee to issue the patent.<sup>15</sup>

The Soviet government issues special regulations describing the type of information, drawings and specifications which a foreigner wishing to pat-

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<sup>8</sup>37 C.F.R. § 5.11(c).

<sup>9</sup>37 C.F.R. § 5.11.

<sup>10</sup>37 C.F.R. § 5.19(c)(2) and § 5.11(a)(2).

<sup>11</sup>37 C.F.R. § 5.11.

<sup>12</sup>37 C.F.R. § 5.19(c)(1).

<sup>13</sup>*Convention of the Union of Paris*, 38 Stat. 1645 § 4(A)(1).

<sup>14</sup>*Id.*, § 2.

<sup>15</sup>GORODISKII, *supra*, n.1, 99.

ent his invention in the U.S.S.R. must supply.<sup>16</sup> Soviet regulations, like American administrative rules, change frequently, however, and publications in the U.S.S.R. which discuss problems of innovation keep the public abreast of current guidelines. Regulations presently in effect require the State Committee to inform the applicant of its decision on the patentability of his invention within six months after it accepts the application. The laws of the U.S.S.R. afford the patentee protection from infringement of his patent, including the right to recover all damages which result from the infringing conduct.<sup>17</sup>

## II. Transferring Technology Not Protected by a United States Patent

The Office of Export Administration has structured its regulations in such a way that all exports of unpatented American technology to the Soviet Union require some type of license. In many cases, however, the exporter obtains his license by simply meeting the necessary qualifications and without the necessity of filing any application or receiving any government documents. A license for which the exporter need not apply is called a "general license."<sup>18</sup> The general export license is available to a manufacturer who wishes to transmit technical information if the know-how is not "directly and significantly related to design, production or utilization in an industrial process."<sup>19</sup> In addition, the U.S. manufacturer may export technical data to the U.S.S.R. without any governmental permission if the information is of a type which is customarily part of a bid, offer or quotation.<sup>20</sup> Finally, a United States firm which has received government permission to sell equipment or facilities to the Soviets may for a period of one year transmit technical data which is necessary for the assembly or repair of the commodity without seeking special permission.<sup>21</sup> The federal regulations exclude a number of categories of technical data, many of which have military uses, from the ambit of this general license, however.<sup>22</sup>

The American manufacturer who wishes to license a Soviet firm to use its unpatented industrial know-how must ordinarily secure a validated export license. These manufacturers will employ the U.S. Office of Export Administration as their liaison with governmental defense agencies, several of which must concur in giving permission to export any unpatented industrial technology. In contrast to general export licenses, validated licenses are

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<sup>16</sup>An example of such regulations may be found at 1974 VOPROSY IZOBRETATEL'STVA 5; 22-64, *Ukazaniia po sostavleniiu zaiavki na izobretenie*.

<sup>17</sup>I.E. MAMIOFA, PATENTOVEDENIE (1976) 72.

<sup>18</sup>15 C.F.R. § 371.1.

<sup>19</sup>15 C.F.R. § 379.3(b).

<sup>20</sup>15 C.F.R. § 379.4(b)(2).

<sup>21</sup>15 C.F.R. § 379.4(b)(1).

<sup>22</sup>For example 15 C.F.R. § 379.4(c).

issued only after special application and case by case review by the Office.<sup>23</sup> The Office considers the identity of the end user of the technology, the type of data being exported, the uses of which the know-how may be employed and the availability abroad of technology of comparable quality.

United States policy restricts the transmission of many types of technical information to the U.S.S.R. for national security and foreign policy reasons. The Commodity Control List, compiled by several defense agencies in collaboration and published in the regulations of the Office of Export Administration, provides a broad sample of the types of technology which the government wishes to control.<sup>24</sup> On the other hand, Congress has recognized that excessive prohibition of technology transfers may place American businessmen at a competitive disadvantage. Our laws reflect an awareness that no public purpose is served by prohibiting American businessmen from selling technology which is generally available elsewhere in the world market. Congress has instructed the President, for example, to refrain from controlling exports for foreign policy reasons if he determines that the commodity in question is available without restriction from sources outside the United States in significant quantities and in comparable quality to those produced in the United States.<sup>25</sup> Moreover, the Department of Commerce regulations state that the policy of the administration

is to approve applications or requests to export or reexport such commodities and technical data to [the U.S.S.R., etc.] when the Department determines on a case-by-case basis that the commodities or technical data are for civilian use or would not otherwise make a significant contribution to the military potential of the country of destination that would prove detrimental to the national security of the United States.<sup>26</sup>

### III. Dealing with the Soviets

The American manufacturer who hopes to export technology which is protected by United States and Soviet patents has, without being aware of it, already advertised his industrial property in the U.S.S.R. Officials of Soviet governmental ministries, managers of major enterprises and others in the U.S.S.R. who are professionally concerned with innovation keep abreast of the latest entries in the patent register. Moreover, recently the Soviet government has been experimenting with new methods of disseminating information about inventions to managers who might find particular developments useful.

If an American manufacturer possesses unpatented know-how which he believes may be of interest to Soviet industrial managers, he may communi-

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<sup>23</sup> 15 C.F.R. § 379.5. The Commerce Department has issued new regulations, effective December 30, 1981, suspending all processing of validated licenses for export of technology to the U.S.S.R.

<sup>24</sup> 15 C.F.R. § 399.

<sup>25</sup> 50 U.S.C. app. § 2404(f).

<sup>26</sup> 15 C.F.R. § 385.2.

cate directly with them before obtaining an export license so long as he does not disclose the technical process itself or more information than he would customarily include in a bid. Soviet trade fairs, industrial publications and symposia provide other means for informing the interested audience of new technical developments.

Negotiations with Soviet businessmen always involve representatives of various sectors of the government. Because the Soviet government has a monopoly on the country's foreign trade, any purchase of the American technology must be approved by a ministry of the government. In addition, U.S.S.R. law has given all authority to negotiate international transactions to a group of specialized foreign trade organizations. Finally, the Soviet enterprise which will ultimately employ the imported technology will also be a party to the negotiations. If the object of the transaction is a pure technology license and no equipment or hardware is involved, the lead Soviet negotiator will be the Foreign Trade Organization *Litsenzintorg*.<sup>27</sup> Representatives of governmental ministries and agencies, who will take part in preliminary negotiations, authorize *Litsenzintorg* to enter the licensing agreement.<sup>28</sup> Frequently the agreement will name a particular Soviet manufacturing enterprise as a third party beneficiary of the transaction and recipient of the purchased know-how.<sup>29</sup>

*Litsenzintorg* has developed standard operating procedures for negotiating with foreign parties. At different stages in the process, it may propose to enter a consultation contract, a confidentiality agreement or an option contract as a means of learning the attributes of the western know-how and determining its utility to the Soviet client.<sup>30</sup> During this period the prospective licensor furnishes the Soviets with the result of laboratory tests, the types of raw materials and fuels used in the technical process.<sup>31</sup> The Soviets may expect the licensor to conduct some performance tests using raw materials from the licensee's locale.<sup>32</sup> Soviet practitioners report that engineers employed by the prospective licensor and licensee will usually visit one another's facilities at the expense of the licensee.<sup>33</sup> These practitioners state that foreign engineers visiting the U.S.S.R. for such consultations are paid 125 percent of their customary salary for the period of their stay, in addition to an allowance for "reasonable maintenance."

After the parties have decided to negotiate a licensing contract, their attention turns to such matters as field of use restrictions on the acquired

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<sup>27</sup>V.A. RIAZENTSEV, *Patentovedenie* (1976) 202. The charter of the All-Union Combine *Litsenzintorg* is published at 1979 FOREIGN TRADE 10; 53.

<sup>28</sup>RIAZENTSEV, *supra*, n.27, 205.

<sup>29</sup>GORODISKII, *supra*, n.1, 186.

<sup>30</sup>L.N. Abramova, *Ob Opyte podgotovki i zakliuchenii litsenzionnykh sdelok*, 1980 VOPROSY IZOBRETATEL'STVA 6, 39; 41.

<sup>31</sup>*Id.*

<sup>32</sup>*Id.*, 42.

<sup>33</sup>I.D. IVANOV AND I.U. A. SERGEEV, *PATENTY I LITSENZII V MEZH DUNARODNYKH OTNOSHENIYAKH* (1966) 98.

technology, grant-back and improvements sharing clauses, methods of compensation for the licensor, terms for defending any patents which are included in the proposed transaction, etc. The U.S.S.R.'s comments on the United Nations' proposed International Code of Conduct on the Transfer of Technology provide some indication of the government's policy on these issues.<sup>34</sup> The comments reveal that the Soviets favor broad cooperation between the parties during the term of the agreement and minimal restrictions on the licensee's use of acquired unpatented technology after the expiration of the contract. Moreover, as a developing country which is anxious to avoid dependence on more advanced foreign economies, the Soviets consider as very important the right to manufacture component parts of any licensed technique on their home soil. As one Soviet practitioner observes, contract clauses requiring the licensee to purchase parts and raw materials from the licensor "are fraught with the danger of dependency" and should be avoided.<sup>35</sup>

Frequently Soviet firms acquire advanced technology in order to produce goods for export to the West.<sup>36</sup> Acquisition of technology is often a stage of the U.S.S.R.'s program for securing foreign exchange. Where the Soviets plan to export goods produced under the licensed process, clauses in the agreement which affect international competition between the licensor and licensee become important. The official policy of the U.S.S.R. opposes territorial or quantitative restrictions on the licensee's international market.<sup>37</sup> The Soviets also frown upon provisions which fix minimum prices for the sale of the licensed commodity.<sup>38</sup> They may bargain for rights to sell the article in all countries where the licensor does not hold a patent.

The Soviets will also be very interested in securing a commitment from the American licensor to share any improvements in the licensed technology.<sup>39</sup> They will not necessarily expect to receive such information without charge, however. One Soviet specialist observes that the licensee will be intensely interested in acquiring all of the licensor's innovations in the technology during the term of the agreement.<sup>40</sup> The parties may also bargain for a mutual obligation to share improvements without cost.<sup>41</sup> A leading authority on international licensing states that, from the Soviet standpoint, the entire duration of the license is ideally a period of "continual scientific-technical cooperation."<sup>42</sup>

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<sup>34</sup>U.N. Doc, TD/B/C.6/AC.1/3 (1975).

<sup>35</sup>GORODISKII, *supra* n.1, 77.

<sup>36</sup>*Id.*, 59.

<sup>37</sup>*Supra*, n.34, 4.2.20.

<sup>38</sup>*Id.*

<sup>39</sup>*Id.*, 5.1.7.

<sup>40</sup>E. VOLYNETS-RUSSET, PLANIROVANIE I RASCHET EFFEKTIVNOSTI PRIOBRETENIIA LITSENZII (1973) 19.

<sup>41</sup>GORODISKII, *supra*, n.1, 86.

<sup>42</sup>*Id.*, 6.

If a technical improvement is patentable, the license may permit the innovating party to obtain the patent. In anticipation of such cases, the Soviets may bargain for terms in the agreement requiring the party which obtains the patent to license the other party to use it.<sup>43</sup> The Soviets oppose, however, provisions which require the licensee to grant-back all improvements to the licensor without any reciprocal rights in the licensee to utilize the innovation.<sup>44</sup> *Litsenzintorg* will probably also negotiate for the right to continue using all unpatented know-how following the expiration of the license and to cease payment for the use of patented technology after the patents expire.<sup>45</sup>

Soviet procedure for compensating the licensor differs from the standard international practice of paying royalties. Rather than paying the licensor a percentage of the value of each unit of the licensed goods which are produced or sold, they prefer to pay a lump sum price. The U.S.S.R.'s system of central planning explains this idiosyncratic behavior. Because extraordinary expenditures of Soviet firms are centrally controlled, the enterprise which acquire the imported technology must ordinarily secure either a bank loan or a sum of money from a government ministry to finance its innovation. The firm may not incur an obligation, such as the payment of royalties, the scope of which is unpredictable at the outset of the transaction, because it has insufficient control over its own finances. Moreover, Soviet managers might be reluctant to allow American accountants to audit the records of their firms, thereby hindering the licensor from enforcing the terms of the royalty obligation.

Several aspects of the contract may pertain to patent protection for the licensed technology. If the technology is licensed patent-pending, the agreement may state that the amount of the licensor's remuneration is reduced if the application is denied.<sup>46</sup> The agreement may also require the parties to share the costs of defending the patent against claims of infringement and to protect the patented article or process jointly from those who might infringe upon it.<sup>47</sup> Sometimes the license specifies that infringement upon the patent by a third party will be settled outside court by granting the infringer a license.<sup>48</sup> In such a case the agreement will ordinarily allow the original licensee to diminish the amount of compensation it is paying.

Finally, the license agreement will generally contain a clause specifying the forum in which any dispute between the parties will be adjudicated. Some foreign trade contracts to which a Soviet organization is a party provide for arbitration by the Foreign Trade Arbitration Commission in Mos-

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<sup>43</sup>Boguslavskii, *supra*, n.2, 60.

<sup>44</sup>*Supra*, n.34, 4.2.3.

<sup>45</sup>*Id.*, 4.2.1; 4.2.2.

<sup>46</sup>V.S. POZDNIAKOV, *EKSPORTNO-IMPORTNYE OPERATSII* (1970) 266.

<sup>47</sup>GORODISKII, *supra*, n.1, 86.

<sup>48</sup>POZDNIAKOV, *supra*, n.46, 267.

cow.<sup>49</sup> Others require arbitration in the country of the defendant party. The majority of Soviet technology licenses specify, however, that all disputes will be resolved by arbitration in Stockholm. Ordinarily, the parties leave the question of choice of law open.

#### **IV. Protection of the Industrial Property of Americans under Soviet Law**

An American manufacturer who has licensed the right to use his unpatented know-how may be concerned about the protection which laws of the U.S.S.R. will afford against publication of trade secrets and misappropriation of confidential know-how. The licensor's capacity to safeguard the secrecy of unpatented know-how depends in part upon the terms of the license agreement. Ordinarily, the agreement will refer to *Litsenzintorg* as the licensee. Provisions are included, however, which permit *Litsenzintorg* to convey the know-how to Soviet manufacturing enterprises. If the contract permits the licensee to share the technology only with an enterprise identified by name, the licensor has a legal right to prevent other firms from using the know-how.<sup>50</sup> If, on the other hand, the contract allows *Litsenzintorg* to convey the know-how to "all Soviet enterprises producing the particular goods," then the licensor has permitted virtually unrestricted use of his technology. "An unlimited circle of interested enterprises" may use the technology.<sup>51</sup>

The licensor who discovers that his licensee has breached a covenant of confidentiality may choose one of several courses of action. The licensor may declare a breach of contract and compel the licensee to return all technical data.<sup>52</sup> He may also recover from the licensee any damages which he has suffered because of the breach of confidentiality.<sup>53</sup> Inasmuch as there are no reported judicial decisions dealing with breach of confidentiality, however, the method of Soviet courts would employ to compute these damages is not clear.

The Soviet Civil Code also allows the aggrieved licensor to recover damages from the enterprise which has improperly received the know-how.<sup>54</sup> The only legal precondition to recovery by the licensor is proof that the third party knew or should have known that the know-how was confidential. A Soviet commentator on civil practice states that the licensor may secure return of his improperly acquired property from the third party. "The defendant is also obligated to turn over income which was or might have been acquired by him from the use of the property from the moment he knew or should have known about his improper acquisition or

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<sup>49</sup>Boguslavskii, *supra*, n.2, 61.

<sup>50</sup>POZDNIKOV, *supra*, n.46, 256.

<sup>51</sup>GORODISKII, *supra* n.1, 58.

<sup>52</sup>*Id.*, 67.

<sup>53</sup>Belov, 1978 *Foreign Trade* 3; 38, 44 R.S.F.S.F. Civil Code § 444.

<sup>54</sup>Belov, *supra*, n.53, 44 R.S.F.S.R. Civil Code § 473.

conversion.”<sup>55</sup>

## V. Soviet Licensing Law

The American licensor and his Soviet partner may decide that their agreement will be governed by the laws of the U.S.S.R. in the event a dispute arises. Like other European countries whose commercial law is embodied in a civil code, Soviet legislation lists various types of contracts, such as agreements of sale, lease, subcontract and construction, and provides rules which are specifically applicable to each type of transaction. In the event the contracting parties neglect to provide for a particular problem, such as the period for payment, the Soviet judge may then employ an article of the civil code to fill the gap in the contract.

The Soviet Civil Code does not include licensing agreements among its types of contracts, however, and this legislation is not, in general, available as a gap filler to the judge. As a consequence, “every term of the license agreement,” a leading Soviet commentator notes, “should be clearly and fully formulated in the text of the contract because in the event of a dispute between the parties, *arbitrazh* [Soviet arbitration], in resolving the matter, will proceed from the terms of the contract and interpret them according to their own meaning.”<sup>56</sup>

From the foregoing, it is apparent that there are few Soviet rules of law regulating disputes which may arise between licensor and licensee. Soviet commentators have, however, discussed the circumstances under which one party may seek judicial rescission of the agreement. Either party may terminate performance, commentators agree, if the other party does not fulfill a material term of the contract.<sup>57</sup> Terms which are material include specific deadlines and agreements to preserve the confidentiality of know-how.

In some cases a Soviet judge may permit rescission even though the event which aggrieves one party is not the fault of the other. The U.S. licensor may be confronted, for example, with a suit for rescission if the patent which he has licensed to the Soviet firm is declared invalid. If the contract is a simple patent license and there is no transfer of accompanying know-how, a Soviet judge may determine that a declaration of invalidity of the patent makes the contract voidable by the aggrieved party.<sup>58</sup> A commentator observes that in such cases the patent is the object of the contract. If it is invalid the contract fails for want of consideration. The court would probably reach a different result if the patent is transferred with unpatented know-how or as part of a deal which included both industrial property and tangible goods.<sup>59</sup> If the contract is a simple license of a patent for which the

<sup>55</sup>Krasavchikov, *SOVETSKOE GRAZHDANSKOE PRAVO*, vol. II (1973) 379.

<sup>56</sup>GORODISKII, *supra*, n.1, 36.

<sup>57</sup>M.M. Boguslavskii, 1968 *Sovetskoe Gosudarstvo i Pravo* 5; 59. GORODISKII, *supra*, n.1, 68.

<sup>58</sup>POZDNIAKOV, *supra*, n. 46, 258.

<sup>59</sup>*Id.*, 257.

application is pending at the time of negotiations, the court may rule that the licensee assumed the risk that the invention would be unpatentable if the authorities subsequently refuse to issue the certificate.<sup>60</sup>

These observations on Soviet law of licensing reveal the importance of careful negotiation of the agreement, with consideration of all contingencies. The Soviets are anxious to develop their business relations with the West and they realize that they must have a reputation for commercial probity in order to cultivate the confidence of American firms. They will, therefore, generally abide strictly by the letter of any agreement which they enter. The American businessman should not, however, expect largesse from his Soviet contracting partner or from the U.S.S.R.'s courts if he omits to bargain for and include in the agreement terms which become critical at a later stage in the transaction.

The Soviet party will welcome the opportunity to negotiate terms providing for all exigencies which may arise. Being performance minded, they will subsequently use the contract as a road map of their rights and obligations. Indeed, the historical record of the Soviets as reliable trading partners is one of the brightest aspects of any East-West trade transaction.

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<sup>60</sup>IVANOV AND SERGEEV, *supra*, n. 33, 100.

