

Forms and Agreements on Intellectual Property and International Licensing

L. W. Melville

Forms and Agreements on Intellectual Property and International Licensing

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Preface to the Third Edition

Since the mid-1960's when the first edition of this work was conceived and made manifest, the technological revolution, which, since the Second World War, inherited the task of the industrial revolution, has marched on with a quickening pace. Close behind, and trying to keep up with it, follows the law in all its glory.

The vision of a united Europe, bound by legally enforceable treaties, which was so ardently urged by far-seeing statesmen during and immediately following the end of that war, has been brought about with the formation of the Council of Europe, the European Communities and the European Convention of Human Rights: These are merely the major structures which have been fashioned—the total number of treaties among the European nations exceeds a hundred.

In the intellectual property field, the effect of these arrangements has been to subject agreements to the scrutiny of the competition rules and related provisions of the Treaty of Rome. Concurrently the European Patents Convention has been implemented and its offices in Munich opened their doors in mid-1978. In addition a European Trade Mark Convention is being studied in draft form.

In the United Kingdom a new Patents Act came into force in mid-1978 and consideration is being given to a new Trade Marks Act and a new Copyright Act following, respectively, the Mathys report and the Whitford report.

These changes are reflected in this Third Edition in so far as they affect the practitioner in this field; and since the majority of agreements relating to intellectual property are multinational in operation, account must be taken of the European rules on interstate trade. Both the Council of the European Communities and the European Economic Commission have power to issue regulations and these apply directly to the Member-States with the force of law; and they have equal power to issue directives and to make binding decisions (Art. 189, EEC).

Since the principles of law which govern the exploitation of intellectual property relate to subject matters which, speaking generally, enjoy universal recognition, it is not surprising that these principles are found

to be substantially the same in most jurisdictions. At the present time there are two sources of law in this field which are of major importance: decisions of the courts of the United States of America and the European institutions of the E.E.C., particularly the European Court of Justice and the European Communities Commission. Consequently, in this edition, preference is given to the decisions and laws of these institutions, alongside those of the United Kingdom so far as relevant. In so far as considerations of space may have squeezed out some of the material in earlier editions readers may be assured that more relevant material has taken its place.

Readers will not need reminding that side by side with these laws and decisions there are numerous international conventions administered by the World Intellectual Property Organisation, situated at Geneva, and that the nations that subscribe to those conventions extend throughout the world. Some of these conventions in some jurisdictions are self-operating; others require implementing legislation. The result is that the greater part of the principles and practices contained within these covers will be found useful either as a guide to the law, or for actual use, in most countries of the world.

What of the future in the field of intellectual property in Europe? So far as the grant of European patents is concerned it is expected that the new patent office in Munich is most likely to draw its patrons from the larger corporations with the financial strength to do their own marketing throughout Europe. The proposed Community patent has yet to be born, and there is an element of doubt whether it will prove a healthy offspring of the Common Market or a weakling. There are problems, too, in the attempts to build a European trade mark structure that will satisfy the needs of the small trader with a limited area of operation, as well as those of the multinational company.

In the antitrust field we have reached a point in European jurisprudence where a substantial number of rulings by the European Communities Commission has accumulated to yield a fairly comprehensive set of administrative decisions sufficient to cover most aspects of licensing and marketing practices. We are now entering on a period during which the Commission will be extending its control over these fields: It is in the process of amending the regulation giving block exemption to exclusive distributorships and of issuing a new regulation to give block exemption to patent licences provided that certain provisions are absent. The result of these extensions of control may prove a straightjacket which may not be too restrictive in some cases but in others it may result in strangulation. Every political group must have its rules, and where there are rules there must be a bureaucracy to spell them out and police them. One must acknowledge that the members of the Commission are

only doing their job, and it is a fair guess that the job is not to be envied. And if the rules and regulations coming from Brussels appear to be based on theoretical concepts applied to an idealised background resulting in hard cases, any criticism is to be directed at the structure, not the individuals.

Underlying all this there exists an undercurrent of concern at the success of the European experiment. There is a suggestion of an air of hesitancy on the part of the leaders of the Member-States to throw their countries' lot into the pool wholeheartedly—without any reservations designed to preserve national vainglory. But it must be recognised that the European experiment is unique in history: Here we have a group of nations, almost every one of which speaks a different language, each of which has necessarily an individual political history in which at least one of the other nations was an enemy, and all this is combined with not insignificant differences in culture and cultural tradition; for such a group to unite, even to the limited extent of a customs union and common policies confined to the fields of coal, steel, atomic energy and marketing, is an act requiring a considerable degree of courage, faith and magnanimity—and a lot of expertise, both political and administrative.

It will not succeed unless those in effective control, encouraged by a sufficient number of men of influence, tackle the many problems with an unbiased, objective judgment in a spirit of optimism and with an eye on the long-term goal, recognising what the far-seeing founders of the European Movement believed: that success is vital to a harmonious development of the European peoples. The rewards of success will more than make up for any sacrifices. Failure is to be avoided at all costs.

I must acknowledge my indebtedness to the members, both past and present, of the intellectual property section of a City of London firm, whose afternoon "know-how" tea-breaks I have been privileged to enjoy and take part in for some twenty years and more: In between the light-hearted humour there is usually some serious discussion of pertinent problems, whether simple, knotty or insoluble. In an atmosphere where each is free to pose any argument, and there is always someone to put the opposite point of view (whether he believes it or not), miniature debates on almost every conceivable aspect of this interesting branch of the law have been hammered out. The selection of conclusions, however, is my own, and if there are any faults in this work, it is a fault of selection of the ideas of many whose company I have enjoyed. I have also received assistance from those who are or have been on the staff of overseas branch offices of the firm, and, indirectly, from those local lawyers with whom they work in close liaison. I have also, over the years, had the benefit of more than one patent secretary. Nor must I fail to mention the firm's librarians—a wonderful team whose ability to

Preface

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find anything, usually immediately and almost always within the hour, has been invaluable. To name everyone would make too long a list; to name some would pose too great a problem of selection. No work of this character is truly the work of one man.

Leslie W. Melville
December, 1978

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Abbreviations

A.(2d)	Atlantic Reporter (2d Series)
A.C.	Law Reports, Appeal Cases (House of Lords and Privy Council cases)
Acct.	The Accountant
Ad. & El.	Adolphus and Ellis
All E.R.	All England Reports
Anst.	Anstruther's Reports
Asp. M.C.	Espinall's Maritime Law Cases
A.T.C.	Annotated Tax Cases
B. & Ad.	Barnewall and Adolphus, King's Bench
B & Ald.	Barnewall and Alderson, King's Bench
B.T.R.	Brewer's Trade Review
Beav.	Beavan, Rolls Court
Bos. & Pul.	Bosanquet & Puller, Common Pleas
C.B.N.S.	Common Bench New Series Law Reports
C.C.H. C.M.R.	Commerce Clearing House Common Market Reports
C.M.L.R.	Common Market Law Reports
Cal. App.(2d) (3d)	California Appellate Reports (2d Series) (3d Series)
Cal. Rep.	California Reporter
Camp.	Campbell's Report, Nisi Prius
Ch.D.	Law Reports Chancery Division
Co. Rep.	Coke's Reports, King's Bench
Com. Cas.	Commercial Cases
De G.M. & G.	De Gex, M'Naghen and Gordon, Vice Chancellor's Courts
Dowl.	Dowling & Ryland, Nisi Prius
E.C.R.	Reports of the European Court of Justice
E.R.	English Reports
East	East, Kings Bench
Eq. Cas. Abr.	Abridgement of Cases in Equity
Eq. Rep.	Equity Reports

Abbreviations

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Ex.D.	Law Reports Exchequer Division
Fed.	Federal Reporter
F. 2d	Federal Reporter, 2d Series
F. Supp.	Federal Supplement
F.S.R.	Fleet Street Patent Law Reports
H. & W.	Hurlstone and Walmsley's Reports, Exchequer
H.K.L.R.	Hong Kong Law Reports
H.L.C.	House of Lords Cases
Hare	Hare, Vice Chancellors' Courts
I.Ch.R.	Irish Chancery Reports
I.C.L.Q.	The International and Comparative Law Quarterly
J. & W.	Jacob & Walker, Chancery
J.O.	Journal Official (French)
J.P.	Justice of the Peace
Jur.(N.S.)	Jurist Reports, New Series
L.G.R.	Local Government Reports
L.J.	Law Journal Reports
L.J.C.P.	Law Journal Common Pleas
Ll.L.Rep.	Lloyd's List Law Reports
L.P.A.	Law of Property Act, 1925
L.R.Ch.	Law Reports Chancery
L.R.Ch.App.	Law Reports Chancery Appeals
L.R.Eq.	Law Reports Equity
L.T.	Law Times Reports
L.T.O.S.	Law Times Reports Old Series
M. & W.	Meeson and Welsby
Manson	Manson's Bankruptcy and Company Cases
Mer.	Merivale, Chancery
Morr.	Morrell's Reports in Bankruptcy
N. & M.	Nevile and Manning's Reports, King's Bench
N.E.(2d)	North Eastern Reporter (2d Series)
N.J.L.	New Jersey Law Reports
N.W.(2d)	North Western Reporter (2d Series)
N.Y.S.(2d)	New York Supplement (2d Series)
New Rep.	New Reports
Noy	Noy, King's Bench
O.J.	Official Journal of the European Communities
O.J.(L.)	Official Journal (Legislation)
P.(2d)	Pacific Reporter (2d Series)
Q.B.D.	Law Reports Queen's Bench Division
R. & I.T.	Rating and Income Tax Reports
R.P.C.	Reports of Patent Cases

R.R.	Revised Reports
Receuil	Official Record of the Court of the European Communities
Russ.	Russell's Reports, Chancery
S. & S.	Simmons & Stuart, Vice Chancellors' Courts
S.E.(2d)	South Eastern Reporter (2d Series)
S.J.	Solicitors' Journal
S.L.T.	Scots Law Times
S.W.(2d)	South Western Reporter (2d Series)
So.(2d)	Southern Reporter (2d Series)
T.C.	Tax Cases
T.L.R.	Times Law Reports
U.S.	Reports of the Supreme Court of the United States
U.S.P.Q.	United States Patents Quarterly
V. & B.	Vesey & Beames, Chancery
Vaugh.	Vaughan, Common Pleas
Ves.Sen.	Vesey Senior Reports
W.L.R.	Weekly Law Reports
W.N.	Weekly Notes
W.R.	Weekly Reporter
Web. P.C.	Webster's Patent Cases
Y. & C.Ex	Yonge and Collyer, Exchequer

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