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INTELLIGENCE BRIEF

SOVIET AGREEMENT
TO JOIN INTERNATIONAL PATENT ORGANIZATION
IS PROBABLY TO THE USSR'S ADVANTAGE

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SOVIET AGREEMENT
TO JOIN INTERNATIONAL PATENT ORGANIZATION
IS PROBABLY TO THE USSR'S ADVANTAGE

The Soviet announcement of 16 March 1965 that the USSR is ready to join the world patent association known as the Paris Union for the Protection of Industrial Property is the latest in a series of steps that have been taken by Moscow to give its patenting system the appearance of conforming to Western standards for the protection of discoveries and inventions.* Although there may be some political gain to the West from the USSR's participation in a long-established international treaty organization, the move provides little guarantee for Western inventors and businessmen desiring to protect their inventions in the USSR. Now, as before, they must depend on their bargaining position or the good will of the Soviet government to protect their rights. Essentially, all the USSR agrees to in becoming a member of the Union is to give all member countries equal treatment under Soviet patent laws; however, the Union has no regulatory apparatus to insure that even this in fact takes place. On the whole, it is likely that more economic benefits from the Soviet membership will accrue to the USSR than to Western firms.

The Soviet leaders undoubtedly hope that this move will facilitate the acquisition of badly needed Western technology as businessmen become persuaded that the USSR desires to be a normal trading partner in the Western sense and is willing to honor the rights of foreign patent holders. In addition, Moscow apparently expects to be able to sell more inventions abroad. Soviet leaders have expressed growing concern that Soviet research of value to the industrial West is not adequately protected under the present system. Since the vast bulk of Soviet industrial technology continues to lag behind that of the West, however, it is doubtful that Moscow could realistically hope for more than marginal returns from this source in the near future.

1. Background

The USSR traditionally has had a notorious disregard for the niceties of international patent practices. Under Stalin, as Soviet industry appropriated foreign technology to its own use with inadequate or no compensation, the official viewpoint was that patents were "bourgeois

* The Paris Union does not pertain to international copyright activities.

tricks to promote the interest of world monopoly." Within the USSR there existed a system of sorts to record domestic inventions and to provide a basis for rewarding the inventor, a system characterized by a Western patent expert as "little more than a company-type suggestion award activity" that operated to stimulate the solution of technological problems at a plant-by-plant level but did not undertake to determine the essential uniqueness of the "invention" in question on a national or international level.*

In the post-Stalin era this attitude has gradually changed to give greater recognition to the importance of setting up a more adequate governmental system for registering inventions to protect Soviet interests abroad, to encourage inventive efforts at home, and to insure against duplication of research. This change has become especially apparent in recent years and appears to coincide with the program for technological improvement launched under the Seven Year Plan (1959-65) and the increase in Free World trade in industrial products.

The change was signaled initially in 1958 by the announcement of Soviet agreements to exchange patent specifications with several countries of Western Europe. A similar arrangement was made with the US in 1959. In 1961 A. N. Kosygin, who was then Deputy Chairman of the Council of Ministers, told a group of scientists that Soviet industry was badly neglecting the possibilities of "mutually advantageous exchanges of inventions with capitalist countries." That same year an All-Union Institute of State Patent Research was created to augment the work of the Soviet Patent Office. The latter organization, hitherto fairly subordinate in the Soviet administrative hierarchy, was given new power to require the immediate and compulsory filing of patent applications. The state compensation for inventions had in the past been so slight that many Soviet managers had fallen into the practice of rewarding inventors with promotions, vacations, or bonus payments. Under such conditions, registering of the invention in Moscow was often neglected.

* Now, as in the past, the Soviet government issues two forms of patents: "patents" and "author's certificates." The former, issued mainly to foreigners, recognizes the inventor's rights to the invention. The latter, covering the vast bulk of Soviet inventions, recognizes the inventor's accomplishment but transfers the right of exploiting the invention to the government. In this publication the term patent is used to cover both forms unless it is stated otherwise.

In the international sphere the USSR created in 1962 a state agency, Litsenzintorg, which was charged with finding a market for Soviet patents and licenses abroad as well as with negotiating for the purchase of Soviet rights to Western inventions.

At about the same time the USSR began to make overtures to the Paris Union for the Protection of Industrial Property. This Union, created by a multilateral treaty signed in Paris in 1884, is made up of most of the countries in the industrial West and all of the Eastern European Bloc countries with the exception of East Germany. The latter countries joined before being brought into the Soviet sphere of influence after World War II. The USSR on 16 March filed formal notice of its ratification of the treaty with the Swiss government as required under the pact. As a result, on 1 July of this year the USSR will become the 68th member of the Union. The Union, which operates an international bureau in Geneva, provides a clearinghouse for patent information on the member countries and administers the provisions of the treaty. There is a provision in the treaty against "unfair competition" that is taken to cover any abuse of an individual's patent rights by a member country, but the Union has no apparatus by which to levy sanctions.

2. Advantages to the USSR

The Soviet leadership undoubtedly hopes that membership in the Union will carry with it a greater degree of international commercial respectability for the USSR. While the importance of this should not be overplayed, it does seem likely that many Western businessmen will be encouraged by this greater display of orthodoxy to expand their relations with the USSR. Another advantage concerns the right of member countries, following the initial disclosure of an invention, to a year's grace period within which to file for a patent in any other member countries. As a nonmember of the Union the USSR faced a dilemma. The government felt compelled to publish descriptions of new inventions registered at the Soviet Patent Office as a means of informing the Soviet public -- a step necessary to minimize duplication of inventive effort. At the same time, once the invention had been publicly disclosed, it was no longer eligible to be patented in most Western countries -- in effect, it had become a part of the public domain.

Another advantageous feature is the increased flow of patent information which the USSR may expect to receive from other members of the Union. Knowledge of what has been patented in a particular

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country is important as protection against violation of what is known as "patent purity." For example, the USSR in recent years has become involved in litigation resulting from exporting goods without a license that employed inventions patented in the recipient country. Under the patent laws of most countries, it is illegal to sell foreign-made articles which directly infringe patents held domestically. The USSR, understandably, is worried about this problem, for it obviously could result in trade disruptions, at the very least. More thorough information on foreign patents would permit the Soviet agencies to avoid this pitfall.

Soviet membership in the Union will not necessarily result in a large spurt in patent applications abroad, although under official encouragement such applications have been increasing fairly rapidly in recent years. Under present conditions the USSR can apply for patents in the industrial West, and has done so many times. For example, the following tabulation indicates the present status of Soviet applications and patents granted in the US:

<u>Year</u>	<u>Application</u>	<u>Patents</u>
1960	34	0
1961	14	0
1962	14	3
1963	134	15
1964	268	12

The vast bulk of inventions patented in the USSR by Soviet citizens and agencies will never be patented in the West, and in this there seems to be little difference between the nonmember USSR and the member Communist countries of Eastern Europe. For example, in 1961 the USSR issued 9,098 patents domestically but applied for only 14 in the US; Czechoslovakia issued 3,809 patents to its citizens, and only 80 of these apparently were considered worthy to be forwarded to the US Patent Office. No special significance should be drawn from the slightly higher ratio of Czechoslovak to Soviet patent applications in the US, unless it would be that the technological level of Czechoslovak industrial research in certain areas is relatively more advanced.

The Soviet action does not appear to signal a large outpouring of useful Soviet technology for the West in the near future. As indicated earlier, the USSR already has sought patent protection in Western

countries on numerous occasions, and the continued low level of such applications bespeaks more the relatively low level of Soviet industrial technology in relation to the West than of any administrative restrictions. Of the \$1.4 billion of Soviet industrial machinery and equipment exported in 1963, only \$21 million was purchased by countries of the industrial West.

3. Advantages to the West

It is difficult to argue convincingly that the West will benefit in a major way by the Soviet action although, as a member of the Union, the USSR will be under a greater restraint to respect the rights of foreign inventors. Under the present Soviet system a Western inventor can seek and be granted a Soviet patent, although few do so. The patent itself, however, merely acknowledges that the Soviet government recognizes the inventor's ownership right. It is up to the inventor to negotiate with the Soviet government to determine the amount and conditions of payment. In the past many Western firms have found it more satisfactory to bargain for large initial license payments from the USSR and not be concerned with obtaining Soviet patents to protect the product, relying on the Soviet desire for repeat business to prevent abuses from occurring.

As a Union member the USSR may now concentrate on avoiding sending goods containing patented Western inventions outside its borders; however, the incidence of this has never been large enough to be a serious threat to Western firms doing business on an international scale. Likewise, the 1-year grace period will be a convenience to Western inventors desiring Soviet patents, but the number in this category undoubtedly will continue to be quite small.

4. Obstacles

There will be important deterrents to smooth working relations with the USSR and other countries under the aegis of the Union. The traditional Soviet patent system has issued only a few patents and these mainly to foreigners. The vast bulk of Soviet inventions are assigned "author's certificates," which differ conceptually from Western-style patents in that they convey all rights of ownership to the state -- in contrast to a patent whose purpose is to protect the ownership rights of the inventor or his assignees. Author's certificates have been issued by the Soviet government on some categories of inventions -- such as medical treatments -- which are not included in the US definition of invention.

Furthermore, since there is no possibility of infringement within the Soviet system, the government has had little interest in making an exhaustive search to insure that an application for an author's certificate does in fact represent a unique contribution. A Soviet survey taken in 1961 showed that nearly 80 percent of all author's certificates approved by the state in 1960 duplicated inventions already disclosed either in the USSR or abroad. Therefore, the question of the compatibility of the loosely defined accomplishments represented by many Soviet author's certificates with patents in the Western sense is a difficult one and may well pose continuing problems. This is especially true of prospective Soviet relations with the US under the treaty.* US experts generally agree that the US patent code does not permit the US to recognize the Soviet author's certificates. Until such time as the US code is amended, it would appear that these certificates could not be granted the 1-year priority right by the US government. In other words, if the USSR desired a US patent on a Soviet invention, the Soviet government would have to avoid issuing an author's certificate (thus disclosing the invention) prior to filing a US patent application.

Second, there is nothing in the membership agreement that requires the USSR to make full disclosure of its inventions -- a potential intelligence gain for the industrial West if the USSR were required to do so. All data provided to the Union come from a circular letter and blank form filled out by member countries each year. Some countries supply no data to the Union, and others have done so only irregularly.

While the Soviets will probably provide more protection to Western inventors than previously, individual Western businessmen are likely to continue to find a variety of obstacles in the USSR. Inasmuch as there is no private enterprise in the USSR, the patentee is left with sole responsibility for negotiating use arrangements with the interested government agency. Should he need to have recourse to Soviet courts he would find himself in a "decidedly alien legal environment," an apt

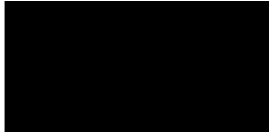
* Experts of the Union have generally agreed that the Soviet "author's certificate" can be equated to a patent for the purpose of Union recognition. A formal amendment to the treaty will not be accomplished, however, until 1967, when a Union convention is scheduled to take place in Stockholm. In the meantime, member countries presumably are free to determine individually whether or not "author's certificates" can be considered valid representations, patentable under their own laws. It appears that many member countries, in contrast to the US, can now recognize Soviet author's certificates without any amendment to their own patent codes.

phrase coined by a US dean of law after visiting the USSR a few years ago. There is no assurance that a case processed in Soviet courts -- in which the state is both party and judge -- will not be countered by previously undisclosed Soviet law or simply dismissed by government fiat. The only pertinent legal restriction agreed to by the USSR in becoming a member of the Union is to treat all member countries equally. Although patent abuses could and probably would be called to the attention of the Union, particularly in extreme cases, there is no action short of a threat of expulsion which the Union can take.

Sources:

1. New York Times, 17 Mar 65. U.
2. CIA. CIA/RR EM 64-32, The Soviet Patent Reform, Oct 64. C.
3. Journal of the Patent Office Society, Feb 64. U.

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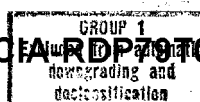
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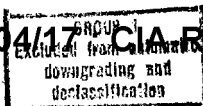
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