

SCHWEIZERISCHE VERTRETUNG
REPRÉSENTATION SUISSE*W. Griesmann*in/à SE O U L

an	<i>BY</i>	<i>CB</i>						a/a
Datum	<i>25.5</i>							
Visa	<i>in</i>	<i>g</i>						EVD - BAWI
EDA	<i>25.05.87</i>	<i>11</i>						B e r n
Ref.	<i>A. 73. 34. 814. Corée. S. 0</i>							

Ihr Zeichen
Votre référenceIhre Nachricht vom
Votre communication duUnser Zeichen
Notre référence

225.0-EH/GCH

Datum
Date

22.5.1987

Gegenstand/Objet Schutz des geistigen Eigentums1. Sitzung mit Pharma-Vertretern

Am 19. Mai 1987 empfangen mein 1. Mitarbeiter, Herr André Brandel und ich die Vertreter der drei grossen schweizerischen pharmazeutischen Firmen in Korea, nämlich die Herren

- Melvin Leddy, Han-Su Pharmaceutical Co. (Ciba-Geigy)
- Dr. Heinz Kestermann, Hoffmann-La Roche
- Charles Sabbah, Sandoz Korea Ltd.

zu einer Besprechung betreffend die von Herrn Botschafter S. Arioli im April und Mai dieses Jahres in Seoul geführten Gespräche mit hohen koreanischen Beamten. Zur Illustration der getätigten Demarchen wurde den drei Besuchern je eine Kopie des den Koreanern übergebenen Memorandums (siehe Beilage 1) ausgehändigt.

Die Herren Leddy, Kestermann und Sabbah bedankten sich für die Unterstützung durch die schweizerischen Behörden. Auch sie verfolgen die Entwicklung in Korea natürlich mit grossem Interesse. Amerikanischerseits sollen mittlerweile in Korea über viertausend Produkte zur retroaktiven Patentierung angemeldet worden sein. Darunter befinden sich auch einige schweizerische Produkte, die von den amerikanischen Niederlassungen angemeldet wurden. Diese grosse Anzahl von Anmeldungen soll die koreanischen Behörden sehr überrascht haben. Um diese Lawine etwas aufhalten und der koreanischen Pharmaindustrie auch noch für die nächsten Jahre "Freiraum" erhalten zu können, sei nun die Einführung einer langwierigen Produkteprüfung in Korea vorgesehen; bereits im Ausland vorgenommene Produkttests müssten also in Korea von eigenen Prüfungsorganen nochmals vorgenommen werden. Zeitliche Verzögerungen von bis zu fünf Jahren dürften bei der Einführung von neuen Produkten zu erwarten sein, falls es zu dieser Massnahme käme.

Herr Kestermann erwähnte noch, dass die EG mehrere Dumping-Klagen gegen koreanische Firmen hängig habe. Zur Zeit wer



nun abgeklärt, ob Korea bei Fallenlassen dieser Klagen eventuell bereit wäre, der EG die gleichen Privilegien einzuräumen wie den USA (retroaktives Produktpatent).

Herr Leddy hat mir noch einen interessanten Bericht überlassen, der in der "British Chamber of Commerce News" erschien und genau die von Herrn Botschafter Arioli in Korea behandelten Probleme erläutert. Interessant ist dabei für uns, dass auch Grossbritannien eine Art Investitionsschutzabkommen mit Korea hat (siehe Seite 18 von Beilage 2), das ebenfalls die Meistbegünstigungsklausel aufweist. Die koreanische Stellungnahme und die britische Reaktion finden sie auf Seite 18 im Abschnitt 3 bzw. 4.

2. Vortrag über "Schutz des geistigen Eigentums"

Am 14. und 15. Mai 1987 wohnte ich einem vom "Korean-American Business Institute" organisierten Seminar über diverse aktuelle Wirtschaftsprobleme in Korea bei. Dr. LEE Tae-Hee, Rechtsanwalt und Richter (siehe Beilage 3) hielt dabei einen wie folgt betitelten Vortrag: "Intellectual Property Rights-Patents & Trademarks", von dem Sie als Beilage 4 ebenfalls eine Kopie erhalten. Seine Ausführungen runden die Kenntnisse ab, die Sie anlässlich Ihres Besuches in Korea über diesen Themenkreis bereits gewinnen konnten.

3. Vorsprachen bei Ministern

Folgenden drei Ministern stattete ich Höflichkeitsbesuche ab und brachte bei dieser Gelegenheit die schweizerischen Anliegen betreffend Schutz des geistigen Eigentums vor:

22.4.1987 Handels- und Industrieminister RHA Woong-Bae
18.5.1987 Vize-Premierminister und Minister des
EPB (Economic Planning Board), KIM Mahn-Je
20.5.1987 Wissenschafts- und Technologieminister, LEE Tae-Sup.

Rha und Kim waren bestens über die bestehenden Probleme informiert und verwiesen auf die noch zu führenden Verhandlungen mit der EG. Lee dagegen hörte aus meinem Mund zum erstenmal über die Privilegierung der USA durch Korea, zeigte sich erstaunt darüber und gab mir deutlich zu verstehen, dass er für die Anliegen der Schweiz und der EG-Staaten in dieser Hinsicht volles Verständnis aufbringe.

Er äusserte den Wunsch für vermehrten Einsatz der grossen Chemie-Unternehmen aus der Schweiz in Korea. Darauf gab ich ihm ebenfalls zu verstehen, dass dies erleichtert würde, falls die Patente dieser Firmen in Korea besser geschützt würden. Lee nahm dies zur Kenntnis.

4. Demarche bei Assistant Minister für wirtschaftliche Angelenheiten im Aussenministerium, 21. Mai 1987

Grundsätzlich erklärte Hong dasselbe wie schon Dr. KIM Chul-Su am 8. Mai 1987 (siehe Beilage Nr. 5).

- a) Allfällige Ausdehnung des retroaktiven Patentschutzes auf EG- und andere Staaten, incl. Schweiz

Prinzipiell würde sich Hong dafür einsetzen, dass die Schweiz gleich wie die EG-Staaten behandelt würde. Ich legte Wert auf die Feststellung, dass bei einer positiven Entscheidung Koreas die Gleichstellung auch gleichzeitig zu erfolgen hätte. Hong meinte dazu aber, dass wir mit einer zeitlichen Verzögerung von mehreren Monaten rechnen müssten. Verhandlungen mit der Schweiz könnten erst nach erfolgten Verhandlungen mit der EG aufgenommen werden. Möglicherweise wäre auch die rechtzeitige Entsendung eines Experten von der Schweiz nach Korea in Betracht zu ziehen.

- b) Investitionsschutzabkommen Schweiz-Korea vom 7. April 1971

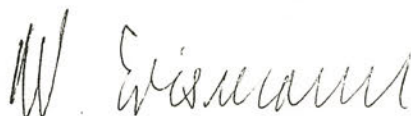
Ich ersuchte Hong um eine schriftliche Stellungnahme zu Punkten 3 und 4 unseres Memorandums (siehe Beilage 1). Dies ist jedoch ein Anliegen, auf das er nicht eintreten möchte. Er meinte, dass es manchmal besser sei, wenn gewisse Antworten nur mündlich gegeben würden. In diesem Falle könne er mir mitteilen, dass sich unser Abkommen nur auf früher getätigte Investitionen beziehe und dass die Anwendung der Meistbegünstigungsklausel nicht zwingend sei, weil einerseits das bilaterale Abkommen und andererseits die den USA gewährten Privilegien rechtlich verschiedener Natur seien.

Sie können der Antwort entnehmen, dass es den Koreanern offensichtlich nicht leicht fällt, die früher eingegangenen Verpflichtungen im Rahmen von Investitionsschutzabkommen (siehe auch die Antwort an Grossbritannien unter Absatz 3, Seite 18, Beilage Nr. 2) unter einen Hut mit den den USA gewährten Privilegien zu bringen. Hong hat mir denn auch ganz offen erklärt, dass ihnen dieses Problem grosse Sorgen bereite und man es theoretisch am liebsten mit der Rückgängigmachung der US-Privilegien lösen möchte, was in Anbetracht der generellen wirtschaftlichen Beziehungen mit den USA jedoch kaum durchführbar wäre.

5. EEC business group - intellectual property rights committee; Sitzung vom 21. Mai 1987

Mein erster Mitarbeiter, Herr André Brandel wurde eingeladen, an der erwähnten Sitzung teilzunehmen. Seine Aufzeichnungen dazu finden Sie in einer als Beilage 6 bezeichneten Aktennotiz.

Der Schweizerische Botschafter



H.P. Erismann

6 Beilagen erwähnt

Kopie

EDA, Politische Abteilung II
(incl. Beilagen 1,2,5 und 6)

225.0-BL/GCH

Seoul, den 22. Mai 1987

AKTENNOTIZ

"Breakfast Meeting", am 21. Mai 1987 von 08.30-10.00 Uhr, Hotel Hilton.

- Anwesende:
- Dr. D. Laudien, Interpat (International Patent Organisation) and head of the Central Patent Department of Boehringer Ingelheim
 - Mr. B. York, Interpat and head of the Central Patent Department of Sandoz
 - Dr. G. O. Jaschek, Hoechst Korea Ltd.
 - Mr. D. Bailey, President of EEC-Business Group, Korea
 - Mr. Ch. Sabbah, Sandoz Korea Ltd.
 - Embassy of Belgium: Mr. G. Vanhouche
 - Embassy of France: Mr. G. Dargnies
Mr. Ch. Doucerin
 - Embassy of Great Britain: Mr. R.M. Jackson
 - Embassy of Germany: Dr. C. Sommer
 - Embassy of Switzerland: Mr. A. Brandel

Die Vertreter der Botschaften sind entweder Botschaftsräte oder Botschaftssekretäre (Wirtschaftliche und kommerzielle Angelegenheiten).

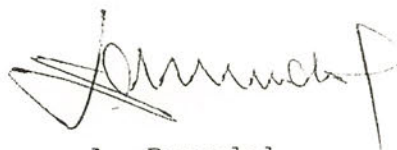
Herr Dr. Laudien erklärt kurz, dass er und Hr. York technische Gespräche mit dem Office of Patent Administration, Seoul (Herr PARK Hong Shik) geführt hätten und mit Herrn CHA Soo Myong, Administrator of the Office of Patents Administration bei einem Nachtessen zusammengetroffen seien.

Bald einmal wurde klar, dass diese Delegation ausschliesslich über technische Patentfragen nach dem 1. Juli 1987 vorgeschrieben hatte und auf das Problem der retroaktiven Vorzugsbehandlung ROK-USA nicht eingegangen ist.

Herr Dargnies kam dann auch kurzerhand auf das Problem der Vorzugsbehandlung zu sprechen und im weiteren Verlauf des Gesprächs wurde ausschliesslich über die gemeinsame (EG) Gangart von heute bis zum Treffen in Brüssel im Oktober 1987 gesprochen. Vor allem die Botschaftsvertreter von Frankreich und Deutschland befürchten, dass im Oktobertreffen in Brüssel keine Entscheidung getroffen werde, da man koreanischerseits zuwenig orientiert (motiviert oder gewillt) sei, zu einer raschen Entscheidung zu kommen und die Frage im Oktobertreffen abermals auf die lange Bank geschoben würde bzw. man erneut Expertenkonsultationen einberufen könnte. Die vorgenannten Botschaftsvertreter schlugen vor, dass die EG-Kommission in Brüssel angefragt werden sollte, baldmöglichst, aber vor Ende September 1987, Delegationen (bestehend aus Regierungsvertretern und Experten auf dem Gebiet des Patentschutzes) nach

Seoul zu senden. M.a.W. man solle Korea so viel und oft als möglich unter Druck setzen. Herr York und Herr Brandel gaben zu bedenken, dass wenigstens koreanischerseits der Eindruck entstehe, dass Korea vorwiegend mit der EG diesbezüglich verhandeln würde. Herr York stellte die Frage, wie sich Japan zur ganzen Situation stelle. Die Vertreter der EG-Staaten meinten, dass Japan durchwegs auch konsultiert werden solle, da die EG nicht nur für sich sondern alle interessierten Länder Gleichbehandlung anstrebte ! (Was noch abzuklären wäre). Herr Brandel gab zu bedenken, dass ausser den bilateralen Investitionsschutzabkommen der einzelnen Länder mit ROK wenig bis keine rechtlichen Aufhänger bestünden und deshalb die Frage nicht vorgängig von Experten, sondern vielmehr auf politischer Ebene gelöst werden sollte; Herr Brandel würde es begrüßen, wenn u.a. die schweizerische Botschaft über die nächsten Schritte rechtzeitig informiert würde, was man versprach (ein Treffen der EEC-Businessgroup, Seoul mit Herrn HONG Soon-Young, Assistant Minister of Foreign Affairs, MOFA ist für den 3. Juni 1987 anberaunt worden. Dazu werden auch die schweizerischen Pharmavertreter eingeladen werden).

Zusammenfassend: Es entstand der Eindruck bei diesem Gespräch, dass die EG-Staaten Korea die Zähne zeigen wollten (obwohl nach den eigenen Worten von Dr. Sommer es nur wenige Zähne zu zeigen gäbe). Der Druck solle vor allem von den interessierten Firmen kommen, wobei auf den Schutz der bestehenden und zukünftigen Investitionen in diesem Zusammenhang hingewiesen werden müsse. Die Vertreter der EG-Staaten bei diesem Gespräch drängen auf entsprechende Treffen mit Korea vor dem Oktobertreffen in Brüssel (ob es dazu kommt, ist allerdings eine offene Frage). Der Vertreter der schweizerischen Botschaft hat grundsätzliches grosses Interesse der schweizerischen Pharmaindustrie bekanntgegeben und bekräftigt, dass versucht werden müsse, die gleichen Präferenzen wie die USA zu erhalten.



A. Brandel

Beilage 1

Memorandum

1. Recently the Korean Patent Law has been amended so as to permit from July 1st, 1987 the filing of patent applications with substance claims. The Swiss Government applauds this important step forward in the protection of intellectual property. It is convinced that such improved protection of inventions will be beneficial to the people of the Republic of Korea. The amendment has attracted significant attention from Swiss industry and will greatly enhance the already strong relationship between the two countries.
2. In connection with this amendment bilateral arrangements have been concluded between the Governments of the Republic of Korea and the United States of America in order to give US persons and entities privileges at least in two respects. Applications for process patents pending on July 1st, 1987 may be amended to include product claims. Furthermore, certain chemical products subject to pre-marketing regulatory review such as pharmaceuticals and agrochemicals which are patented in the United States between January 1st, 1980 and July 1st, 1987, but not yet marketed neither in the Republic of Korea nor in the United States may be protected for 10 years from the 1st of July, 1987.
3. Under the terms of the Swiss-Korean Agreement concerning the Encouragement and Reciprocal Protection of Investments of April 7, 1971 such treatment should be extended to Swiss citizens and entities. This Agreement covers also intellectual property rights (Art. 7 let. c), and it requires most favoured nation treatment (Art. 2). Depending on the treatment of Korean nationals the exchange of letters of December 12th, 1977 providing the national treatment for patents and trade marks as well as Art. 2 of the Paris Convention for the Protection of Industrial Property have also to be considered.

4. Consequently, the treatment granted to US persons and entities has to be extended to Swiss persons and entities in order to avoid a discrimination which would be legally unacceptable and economically unjustifiable. The Swiss Government recognizes the strength of the Korean-US alliance and the problem of the bilateral trade balance. Privileges in the field of the protection of intellectual property, however, are not an appropriate solution and are not asked for by the United States.

Switzerland has always offered the Republic of Korea undiscriminatory access to the Swiss market. Fairness and reciprocity, therefore, clearly dictate an equal and evenhanded treatment of Swiss citizens and entities under Korean legislation on the protection of intellectual property.

-
- sent to Mr. HONG Soon-young, Assistant Minister for Economic Affairs MOFA, 22nd April, 1987
 - handed personally by Ambassador S. Arioli to Assistant Minister of Trade and Industry (for the Minister), Mr. KIM Chul Soo, on 14th April, 1987
 - handed personally by Ambassador S. Arioli to Deputy Administrator, Office of Patent Administration, PARK Hong Shik, on 15th April, 1987

SPECIAL REPORTIntellectual Property Rights in Korea

For many years now, the question of protection for intellectual property rights has been a major bone of contention between Korea and the West. In this article we analyse this controversial issue, outlining the new Korean government legislation on patents and, in particular, Britain's reaction to the disparity in the agreements drawn up with the USA and other countries.

The Situation Today

Of all the various forms of intellectual property rights, it is the question of chemical compound product patents that most concerns British and European Community businesses, particularly those involved in the pharmaceutical industry.

At present, foreign firms working in Korea have little or no protection against the tactics of local firms who absorb their techniques and know-how, only to copy their products and manufacture them blatantly at a maximum profit.

Under the current Patent Act of Korea, the manufacturing processes, whereby products are created, are eligible for patent protection, but the final products are not. As a result, local firms are able to alter the manufacturing process slightly to obtain exactly the same end product, without any infringement of the law, and without having to pay royalties to the Western firm which introduced the product in the first place.

Under increasing pressure from the EEC and the USA, however, the Korean Government, which becomes a signatory to the Universal Copyright Convention later this year, will introduce new legislation, enacting certain amendments to the Patent Law, to take effect from July 1, 1987.

The new bill, which was passed by the National Assembly on December 18, 1986, covers a wide range of issues, expanding and tightening controls on copyrights, patent rights, trademarks and their general enforcement.

The National Assembly also ratified a bilateral Accord of Understanding between the USA and Korea last year, which not only confirmed its position with regard to the new legislation, but also incorporated two clauses of specific relevance to American firms.

The New Legislations

Under the new system, inventions relating to chemical substances per se, including pharmaceuticals and agrochemicals, and inventions relating to the use of chemicals, will be patentable subject matters for the first time.

This is a definite step in the right direction, but, for British and European firms, the main cause for concern is the lack of retroactive safeguards in the new arrangements. The South Koreans maintain that it is against their constitution to outlaw current business operations, thus making it legally impossible to apply the new codes on a retroactive basis. Due to the length of time it takes to develop, test, and obtain marketing approval for pharmaceuticals, therefore, the new law will only protect products due for launch in Korea in the mid 1990's.

The USA, on the other hand, through the Record of Understanding, has managed to secure:-

- i) the right to convert a process patent application pending on July 1, 1987, into a product application, and
- ii) agreement by way of "administrative guidance" that a product patented in the U.S. after Jan. 1, 1980 by a U.S. national, will be protected from competition in Korea, provided that it is not on the market in either the USA or Korea by July 1, 1987.

American companies, therefore, can take advantage of the protection offered by the new system from the late 1980's, whereas the products of their European counterparts will remain vulnerable until the mid 1990's.

British and European Reaction

On the 28th January 1987, the Belgian Embassy presented a Verbal Note to Koreans on behalf of the Embassies of the European Community Member States. In it was registered:

"... The strongly held position that there should be no discrimination between States in the application of new laws on the Protection of Intellectual Property, and in particular with respect to the transitional arrangements for protection of intellectual property as a result of the Record of Understanding between the Republic of Korea and the United States of America."

Other E.C. Embassies have since followed up this move, with bilateral notes reiterating the same sentiments.

The United Kingdom has an Investment, Promotion, and Protection Agreement (IPPA) with South Korea (as do several other EC Nations) in which Article 3 (1, a) requires Korea to accord British nationals or companies no less favourable treatment than that given to its own or to any third State. The Agreement covers patents and copyrights as a result of the definition of "investment" in Article 1(a) which includes intellectual property rights.

Successive British Ministers visiting Korea (including Geoffrey Pattie, Minister of Trade; Tim Renton, Minister of State to the F.C.O., and Michael Howard, Parliamentary Undersecretary to the DTI who were here most recently) have sought to bring the IPPA to the attention of the Koreans, and to secure the same advantages as those given to the Americans.

The Koreans, however, maintain that as their agreement with the USA is a "Record of Understanding", the IPPA with the U.K. is irrelevant, for the transitional measures favouring the U.S. would be enforced by "administrative guidance", which, they claim, is not a legal instrument.

The British response to this is clear. They are seeking just such an agreement, be it a 'legal instrument' or not, and take strong exception to the fact that the benefits the Americans enjoy are not available to them and to their EEC colleagues.

In the words of Michael Jackson, the new Economic and Commercial Counsellor at the British Embassy,

"We are not asking for special favours, but for fair treatment. Britain has an IPPA with Korea, under which each guarantees the other most favoured nation treatment.

It is just not acceptable to discriminate between countries in the way that the Korean Government appears to be doing."

Future Prospects

What happens next is largely up to the Koreans, and much importance is being placed upon the EC/Korea High Level talks to be held on the 28th April, led by Foreign Minister Choi for the Koreans, and Commissioner de Clerg for the Community and in which the Europeans will be pushing for an early and positive decision.

* * * * *

LEE TAE-HEE

SENIOR PARTNER
LAW OFFICES LEE & KO

EDUCATION

J.D. Harvard Law School (1971-74)
LL.M. Harvard Law School (1979-71)
LL.M. Seoul National university Law School (1962-63)
LL.B. Seoul National University Law School (1958-62)

BAR ADMISSION AND PROFESSIONAL MEMBERSHIP

Korea: Admitted to Korean Bar, 1962

U.S.: Admitted to California Bar, 1976

Membership: Korean Federal Bar Association
Seoul Bar Association
The State Bar of California
American Bar Association
International Bar Association
Korean-Japan Lawyers Association
International Law Association
International Fiscal Association
Licensing Executives Society
U.S. Trademark Association
Korean Patent Attorneys Association
Asian Patent Attorneys Association
International Association for the Protection of
Industrial Property

EXPERIENCE

1977 - Present Senior Partner, Law Offices Lee & Ko
1978 - Present General Counsel, Korean Air Lines and Hanjin
Group Companies
1978 - Present Arbitrator, Korean Arbitration Association

- 1980 - Present Conciliator, International Centre for
Settlement of Investment Disputes
- 1981 - Present Lecturer, Judicial Training and Research
Institute of Supreme Court
- 1981 - Present Director, Korean Legal Center
- 1983 - Present Commissioner, Policy Advisory Committee, Ministry
of Justice
- 1985 - Present Director, Seoul Bar Association
- 1986 - Present Member, Trade Policy Advisory Committee,
Ministry of Commerce and Industry
- 1981 - 1982 Commissioner, Special Consideration
Committee for Amendment of Civil and
Commercial Code, Ministry of Justice
- 1974 - 1977 Practising Attorney, Graham & James L.A. Office
- 1968 - 1970 Judge, Seoul Criminal District Court
- 1966 - 1968 Judge, Seoul Civil District Court

MAJOR ARTICLES

"Some Aspects of United States - Korean Trade Relations," Dickinson
Journal of International Law, 1984

"The U.S. Antidumping Regulations and Its Defense," The Law Times,
Nov. 1984

"Warranty by Uniform Commercial Code of U.S.A.," Korean Bar Association
Journal, Vol. 15, Jan. 1985

"The U.S. Trade Agreements Act Amendments of 1984," Journal of Commercial
Arbitration, April 1985

"Koreans and the Euro Bond Market," International Financial Law Review,
Oct. 1985

"Legal Principles on Unconscionability of Anglo-American Law, Collection
of Essays on the Commercial Law in Commemoration of Professor Don Gak
Seo's Retirement, 1986

BOOK

International Contract Law - Theories and Practices, Hackyun Sa, 1985

SESSION X

Intellectual Property Rights- Patents & Trademarks

by

LEE TAE-HEE, J. D.

SENIOR PARTNER

LAW OFFICES LEE & KO



PRESENTED AT

KOREAN-AMERICAN BUSINESS INSTITUTE

SPECIAL SEMINAR

ON

CURRENT BUSINESS ISSUES IN KOREA

SEOUL, KOREA, MAY 14-15, 1987



Korean-American Business Institute

PATENT AND TRADEMARK LAWS IN KOREA

Last year I presented a paper for the Korean American Business Institute that gave a broad overview of the intellectual property laws of Korea. When I was approached by KABI to speak at this Special Session, I thought an appropriate topic would be a detailed and practical look at what may be considered the two most important parts of those laws: The Patent Act and the Trademark Act. Not only are these two Acts of particular significance to an international audience such as this but the timing of a specific review seems especially appropriate given the recent and substantial amendments to both of these Acts. Amendments to the Patent Act will go into effect on July 1 of this year and an entirely new Trademark Act went into effect on December 31, 1986.

The amendments make a number of needed changes to the substantive provisions of the Patent Act and the Trademark Act but leave the procedural aspects largely untouched. Thus, my remarks today will concentrate on the fundamental principles and procedural aspects of patent and trademark protection in Korea and will incorporate the more important amendments to the Patent Act and the Trademark Act as well.

1. PATENT

A. History

The first invention patented in Korea under the initial intellectual property law of Korea, the Tae-Han Patent Decree (Royal Ordinance No. 196) of August 12, 1908, was a horsehair "kat" (or traditional Korean top hat). Since that time the patent laws of Korea have undergone a number of changes, reflecting both continental European and American influences. Today, there exists not only the Patent Act as well as a number of other related specific statutes, but the Constitution itself in Article 21 (2) declares: "the rights of authors, inventors and artists shall be protected by law." This constitutional protection, however, is of course for the benefit of the Korean people, and the lack of similar protection for foreign inventors has led to a great deal of pressure for change being exerted on Korea by the United States and other advanced countries. It is this pressure together with the increasing maturity of Korea's own technological inventiveness that has led to the changes in the Patent Act.

B. Definition

The object of a patent right is stated in the Patent Act of Korea to be an "invention", which is defined as a new and highly advanced industrially utilizable creation of technical ideas using the laws of nature. You will note that the concept of discovery is not included in this definition of invention, though in some other countries, including the United States, it is. The reason for this is that in Korea there is the notion that natural phenomena per se, as objects of discovery, are the common property of mankind, and therefore ought not be patentable by any individual.

Inventions or devices which do not meet the strict prerequisite for patentability which I have just stated may nevertheless be entitled to protection under the Utility Model Act. It is beyond the scope of this presentation to deal with this additional topic, but you may note at least that the Utility Model Act defines a "device" as the creation of a shape or construction of an article or a combination of articles by which a law of nature is utilized.

It is important to note that the scope of patentable inventions has been expanded by the recent amendments through the elimination of Article 4, Items 2, 3 and 5 of the current Patent Act. International practitioners and patent holders are well acquainted with Korea's long-standing policy of not granting substance patents. In a long-awaited relaxation of this policy, the amendments implement a substance patent system enabling the patent of chemical substances, inventions of use for chemical substances, agricultural chemicals, medicines and medicine preparation methods. Regarding medicine preparation methods, the amendments will not extend to preparation activities of doctors, dentists and herb doctors nor will they extend to medicines prepared by prescription of doctors, dentists or herb doctors.

Patents will still not be granted to foods, beverages and other gustatory articles nor will they be granted to inventions relating to substances which can be manufactured by transforming atomic nuclei or inventions which are likely to injure public order, morality or public health.

C. Capacity

As noted, the procedural elements of the Patent Act were not affected by the amendments. As such, the concept of capacity remains unchanged. Capacity, which generally speaking in Korean law is the ability to enjoy rights and incur obligations, is specifically dealt with in the Patent Act only insofar as non-Koreans are concerned. On the other hand, the general principles of Korean civil law in regard to

capacity apply to all persons who have Korean nationality. Such persons, regardless of domicile, have the requisite capacity to own patents during their lifetimes. This applies to natural as well as juridical persons and, to a limited extent, to non-juridical associations or foundations as well, subject of course to certain qualifications regarding minors, mental incompetents, and so on.

Non-Koreans without domicile or place of business in Korea cannot own patents. However, non-Koreans who are nationals of a country which by treaty or other law allows Koreans to enjoy patent rights without place of business or domicile there, or who are nationals of a country which is not a party to a treaty but have a domicile or business in a member country of the treaty, can enjoy patent rights in Korea.

Non-Koreans without domicile or place of business in Korea are not entitled to take actions relating to patents on their own behalf. They must act through a qualified patent administrator who possesses a place of business in Korea and who must be given a power of attorney or other written authority to act as an agent. A non-resident must appoint and register his patent administrator (usually patent attorneys or attorneys-at-law) at the time the patent right is registered in his name and must maintain the registration of an administrator during the life of the patent.

D. Registration Procedure

The procedures to be followed in seeking to obtain a patent right begin of course with the filing of an application with the Korea Patent Office ("KPO"). In addition to applications which are filed first in Korea, since Korea is a member of the Paris Convention concerning intellectual property, foreigners may claim priority for patents which have first been filed elsewhere, provided they complete such filing within one year of an original filing. Applications, as with any other document submitted, come into force on the day received by the KPO when submitted in person, and if submitted by mail, on the day received by the post office, as indicated by its date stamp.

The application is laid open in the Laying Open Patent Gazette eighteen months after the date of filing the application, or if a priority is being claimed, then eighteen months from the priority date.

A request for examination can be made by the applicant or any third party at any time within five years of filing. As a practical point, if the applicant's wish is to have his patent registered, he should request the examination simultaneously with the filing of his application so as to expedite the process. However, if he wishes to apply for a patent for primarily defensive purposes, then there may be no need to seek examination at any point during the five year time period.

If no request for examination is made, an application will become void upon the expiration of the five year time period. However, where such examination is requested, the examiner will make a decision in due course to publish the application or reject it. Publication will be in the Publication Patent Gazette, and if it remains unopposed for two months, the examiner will make a decision to register the patent.

Under current law, the patent right would then last for twelve years from the date of publication in the Publication Patent Gazette. The new law however, makes significant changes regarding the term of a patent right, as the duration of a patent right has been extended from 12 to 15 years from the date of publication or registration. The term of a patent which was calculated from the filing date of a patent application has been eliminated altogether in the new Act.

Within two months of the publication in the Publication Patent Gazette, an Opposition may be filed. If such Opposition is unsuccessful, there is no further recourse available for the party challenging the patent but to commence a trial for cancellation or invalidation after registration of the patent. Such trial is commenced in the Trial Board of the KPO, and its decision may be appealed to the Appeal Board of the KPO and ultimately to the Supreme Court of Korea. On the other hand, if the Opposition to publication is successful, the applicant may also seek such appellate review.

Assuming that the examiner, following the examination, decides to preliminarily reject rather than publish the application, recourse is then by way of Argument and Re-examination by the KPO examiner. A decision to Finally Reject or Publish will follow. A decision of Final Rejection, however, is reviewable initially by the Appeal Board of the KPO and then, upon appeal, by the Supreme Court of Korea.

E.. Transfer of Patent Right

Once a patent right has been obtained (i.e. registered) for the invention of a product or a process, it confers on its owner the exclusive right to manufacture, use, sell, import or distribute the patented invention as a business. This right may in turn be transferred to another owner, but such transfer does not take effect unless registered, except in the case of transfer by inheritance or other general succession upon the death of the individual owner or upon the extinction of the juridical owner. If the patent is jointly owned, one of the joint owners cannot assign or pledge his share except with the consent of the other joint owners.

F. Licenses

A license of a patent right means that a person other than the patentee works the patent by agreement, by operation of law or by administrative disposition. A license can be of two types, non-exclusive and exclusive. A license by operation of law and by administrative disposition can only be nonexclusive, while a license by agreement can be of either type. The licensing system has advantages and disadvantages. A licensor may enter into a foreign market without direct investment but a licensee may become a competitor after termination of the license. Despite these factors, licensing of patent into Korea has substantially increased in recent years.

The most important type of license for our purposes is a license created by agreement or contract. The two most important legal distinctions between an exclusive and non-exclusive license by agreement are first that the exclusive license must be registered to be effective while the non-exclusive license need not be. Second, only an exclusive licensee has the same rights as the patentee to protect himself in the event of a patent infringement.

The amendments to the Patent Act impose a new requirement in the procedure by which the holder of a dependent patent obtains a compulsory license from the holder of a dominant patent. Under prior law, the dependent patent holder only had to request trial of the matter before the Korean Patent Office ("KPO"). Such requests were granted when the dominant patent holder refused to grant a license without due cause or it was otherwise impossible to obtain a license. The new amendments dramatically alter this procedure by imposing the requirement that the dependent patent holder prove that the dependent patent has a "relative" inventive step before a compulsory license would be granted.

There are also other new wrinkles regarding compulsory licenses. Under prior law, an interested party could apply to the KPO for a non-exclusive compulsory license in the event the patent owner had not worked his invention during the prescribed statutory period. Under the new law, the procedural burdens of such an interested party are increased by requiring him to negotiate directly with the patent owner prior to application to the KPO. Upon application, the KPO will hold an administrative arbitration in which the patent owner will be given a period of time in which to respond, and the KPO must obtain and take into consideration the opinion of the Industrial Property Rights Deliberation Committee ("IPRDC").

It is incumbent upon the KPO to specify such details as the scope of license, royalty amount and method of payment in the event a compulsory non-exclusive license is granted to the interested party. Such an award will lose its effect whenever the licensee fails to pay royalties on the payment date specified. However, in certain instances the licensee may be entitled to deposit the royalty amount with a court.

As an aside on the IPRDC, this new committee will be established within the KPO for the purpose of consulting the Commissioner of the KPO on matters relating to the cancellation and full or partial expropriation of a patent right as well as matters relating to administrative arbitration to establish a non-exclusive license of a patent right.

G. Infringement

There are four ways for a patentee whose rights have been infringed to seek protection. First, a patentee or his exclusive licensee may demand that a person who has infringed or is likely to infringe upon his rights, cease and desist from doing so. A court injunction may be obtained to enforce this demand as well as an order that the infringer take whatever steps are required to protect the patentee or exclusive licensee, including attachment of the patent infringing goods. Under current law, patent infringing goods enjoy an exemption from attachment if they are bound for export and have already become the subject of an application for customs clearance. This exemption will be abolished under the new amendments.

The second alternative is to make a claim for damages. Unlike the first approach, however, here the infringement must have been done intentionally or negligently for the patentee or his exclusive licensee to be entitled to compensation for loss and damage suffered. Although at first blush it may seem to present a rather difficult burden of proof for the victim of the infringement, practically speaking, for such intent or negligence to be shown, the Patent Act makes things easier for the patentee by creating a presumption of negligence against anyone who in fact infringes another's patents. Likewise, there is a presumption that novel and identical products were produced by the same process, to protect the patentee of a process.

Where the infringer is found to have done so in good faith and without negligence, the patentee is not entitled to any compensation nor may he demand reimbursement of the profits made by the infringer through his infringement of the patent. He may demand the cessation of further acts of infringement, however.

The third alternative available is to seek an order of the court that the infringing party be compelled to take measures to restore the damaged credit of the patentee or his exclusive licensee. This applies only where intentional or negligent is shown and where such infringement has injured the business credit of the patent right holder. This remedy may be sought in conjunction with compensation for damages, the second alternative just mentioned.

The fourth remedy is that of criminal sanctions. The Patent Act itself has both penal and non-penal provisions, and the general provisions of the Criminal Code apply as well. The Patent Act allows for maximum penalties of 5 years imprisonment or, under the new amendments, an increased fine of up to 20,000,000 won for patent infringement.

H. Extinction of Patent Right

Next briefly considering the extinction of a patent right, this most commonly occurs, quite expectedly, upon the expiration of the term of such right, in other words, 15 years from the effective date, as noted earlier. Extinction can also occur for non-payment of annuities. Therefore the appointment of an administrator is useful for monitoring annuity payments.

I. Other Recent Developments

In other recent developments in the patent area, Korea is scheduled to accede to the Budapest Treaty sometime in 1987. The primary significance of this move will manifest itself in the effects it has on the patent protection available here for new microorganisms. Under current Korean law, in the event that a microorganism is deposited with the International Deposit Organization, it must also be redeposited in Korea with either the Korea Advanced Institute of Science and Technology or the Korea Federation of Culture's Collection of Microorganisms prior to the laying open of the application. Accession to the Treaty will eliminate this requirement to redeposit in Korea.

2. TRADEMARK

A. Introduction

Turning now to trademark law, a new Trademark Act became effective as of December 31, 1986. As in the patent area, this is a reflection of both foreign pressures and the growing sophistication of Korea's domestic industries and consumers. I will comment on some practical considerations of interest to anyone who may have the intention to register a foreign trademark in Korea.

B. Definition

The term "trademark" is defined under Korean law as the characters, figures or signs or any combination thereof which are used on goods by a person who manufactures, produces, processes, certifies or sells such goods in the course of trade to distinguish his goods from those of another. Color is not an acknowledged element in trademarks under Korea law and is therefore not registerable. Thus, the owner of a trademark has the right to use any color on his trademark, and a registered mark is deemed to have been registered with all colors. This is quite different from a "design" which is defined by the Design Act as the specific shape, pattern or produces an aesthetic impression on the sense of sight.

C. Purpose of Protection

The reason for granting protection to trademarks is primarily to protect the trademark owner's reputation and the consumer's interest. The reputation of a business using a particular trademark to identify its goods can thus be protected by registration as well as protecting its investment in developing and advertising its goods. So too, the consumer can come to rely on a trademark as a guarantee of a particular level of quality. Trademark infringement is therefore a special kind of unfair competition which gives rise to confusion in the minds of consumers about the quality of the product bearing a similar mark to one with which they are familiar and regarding which they expect a particular level of quality. It also takes unfair advantage of the investment of the lawful trademark owner in producing and marketing its products.

D. Types of Trademarks

Korean law recognizes four categories of trademarks which are registerable. First is the one that everyone naturally thinks of as a trademark, that is, the principal symbol or mark associated with a particular company or product. The second is the "collective mark", which is defined as a mark or marks adopted by an association or legal entity and established by traders in the same or a closely related business for use by members under its direction on goods or services used in the business of such members. The third category is that of the "service mark," which is used by a person carrying on a service business to distinguish such business from others. Examples of such services are advertising, finance, insurance, entertainment, transportation and so on. The fourth category is the "business emblem", which is defined as an emblem adopted for use by a non-profit organization or enterprise.

E. Prerequisites for Registration

Anyone who is using or intends to use a trademark has the right to apply for registration. In other words, prior use is not a prerequisite in Korea, but the trademark must be used within a year of registration or it may be subject to cancellation by trial brought by an interested third party.

When filing a fresh application for the registration of a trademark, a power of attorney, 10 specimens and an electrotpe of the trademark are required. A certificate of incorporation is no longer a compulsory requirement but its submission may help substantiate the application.

A trademark application must designate the goods on which it is to be used and specify in which of the 53 available classes it is to be registered. When designating goods, the name of the goods must be specifically designated, e.g., 'organ, guitar, violin, piano' instead of designating simply as 'musical instruments' or in terms of 'all items of goods belonging to this class.' However, it is allowed to designate the goods in terms of 'all items of goods specifically listed in this class' as long as the prescribed official fee is paid. Finally, the trademark itself must of course be distinctive.

F. Registration Procedure

Korea's adherence to the Paris Convention also has the effect, insofar as trademarks concerned, of enabling foreigners to claim a priority in filing their applications, provided they do so within six months of an earlier filing elsewhere. Each application for registration, whether for priority or otherwise, must relate to a single trademark and must designate one or more items of goods on which the trademark is to be used. There is no limit on the number of separate applications which can be filed, however.

Trademark application examinations are processed in the order of filing. Following application, in most cases a preliminary decision of the Patent Office is made within ten months. If the preliminary decision gives rise to no objection to registration, the trademark examiner issues a ruling that the application is to be published in the Trademark Gazette. Within 30 days from the date of publication, any person may file an opposition to the grant of the registration, irrespective of whether the opponent has an interest or not. If no opposition is made against the published trademark application or no grounds for refusing the registration are established, the examiner shall render a decision that registration is to be granted. Upon payment of the registration fee, the registration will become effective in approximately 3 days.

If, conversely, the examiner determines that the mark is not distinctive or is similar to a mark previously registered concerning the designated goods, or for some other reason it is not registerable, he must notify the applicant of the reason. The applicant then has an opportunity to present an argument as to why the application should not be rejected. If the examiner nevertheless rejects the application, the applicant can appeal to the Appeal Board of the KPO and in some situations, ultimately to the Supreme Court.

Where an opposition to the publication is filed, the examiner may require the applicant to amend his application if he considers it necessary. Upon appraising the respective merits of the application and the opposition, the examiner will then decide whether to register or reject the application.

Enjoyment of the trademark right commences with registration and remains valid for a period of ten years. It is renewable for further ten year periods upon application provides certain requirements are satisfied.

The filing of a renewal application of a registered trademark should be supported by the Power of Attorney, notarized Certificate of Corporation, 5 specimens of the trademark and the Description of Use together with evidence thereof. Although a certificate of incorporation is not a compulsory requirement for a fresh filing, its submission is compulsory for a renewal application to prove the existence of the trademark owner's commercial business.

Major alterations in use of the registered trademark may not be acknowledged as a use of the registered one.

Renewal applications will be rejected where the owner of a trademark right has not, without justifiable reasons, used the registered trademark within 3 years prior to filing for the renewal.

At the time of filing a renewal application along with the Description of Use of the registered trademark, the owner shall submit some evidence attesting to actual uses of the trademark (e.g. samples of goods, photos of goods, catalogs, commercial papers, etc.). When the non-use of a trademark has been caused by a legitimate reason, such reason and documents attesting it should be filed. Statutory restrictions on imports may constitute a legitimate reason for non-use.

In case a trademark well-known overseas is not registered in Korea, registration of that trademark by a third party in Korea would be rejected if the trademark is also recognized as well-known in Korea. However, its registration by a third party in Korea would be allowed if it is not recognized as well-known in Korea. The judgement of whether

a trademark well-known overseas is also well-known domestically is determined ex-officio by the examiner. Such a judgement is always somewhat delicate.

When a trademark well-known overseas is registered in Korea by a third party, any interested party may request a trial for invalidation of the registration at the KPO.

When a trademark well-known overseas but unregistered in Korea is infringed by a third party, the owner can request the court to take measures to cease or prevent such infringement under the Unfair Competition Prevention Act. Such a request may include prohibition of the use, compensation for the damage to and restoration of business reputation. To lawfully make such a request, the trademark owner must prove that said trademark is well-known in Korea. Otherwise the request may be rejected.

G. Transfer of Trademark

The law regarding transfers of trademark rights was not amended by the new Trademark Act and as such still restricts transfers between Korean and foreign parties. If a foreign business operating in Korea wishes to transfer a trademark right to another foreign entity in Korea, proper registration of the transfer with the KPO is achieved simply by submitting documentary evidence containing the language, "We hereby assign and/or transfer the trademark right along with the business applicable thereto." However, if a foreign entity wishes to transfer a trademark right to a Korean entity, then not only is the above documentary evidence required, but actual transfer of all of the physical assets applicable to the production and sale of the designated goods must be made. Foreign parties have continually raised objections to this treatment and while at the present time it remains the law of the land, most observers feel that it will be changed within the next two to three years.

H. Infringement

Using a trademark identical with or similar to the registered trademark of another on goods identical with or similar to the designated goods, or delivering, selling, counterfeiting, imitating or possessing a trademark identical with or similar to the registered trademark of another for the purpose of using or causing a third party to do so, are all considered acts of infringement. Possessing, manufacturing, delivering or selling instruments for the purpose of counterfeiting or imitating the registered trademark of another also amount to trademark infringement.

The owner of a registered trademark may demand that the infringer cease the infringement without having to show intention or negligence on the part of the infringer. He may also take such preventative measures as destroying articles or removing facilities used for the infringement or any other measures necessary to prevent the infringement. A preliminary injunction can be obtained under the Code of Civil Procedure where it is essential to stop the infringement promptly.

The trademark owner can also claim compensation for damages from any person who intentionally or negligently infringes his trademark. A court can also order the intentional or negligent infringer to take whatever steps are needed to restore the damaged credit of the trademark owner. Anyone who has infringed another's trademark is also liable for criminal sanctions of imprisonment for a term of up to five years, or, under the amendments, an increased fine of up to 20,000,000 won.

I. Extinction of the Trademark Right

A trademark right can be terminated upon the expiration of its term where no renewal application is made, or by an invalidation or cancellation trial. An invalidation trial may be brought by an interested third party or an examiner if there was some defect in the registration of the trademark in question. If the invalidation trial is successful, the trademark right concerned is retroactively deemed not to have existed. A cancellation trial may also be commenced by an interested third party where the registered owner of a trademark has tolerated another's unauthorized use of it in certain circumstances, where the trademark has not been used for a specified period of time, where a transfer of ownership is not properly registered, or where confusion might arise because the owner intentionally uses a trademark similar to his registered trademark on goods similar to the designated goods. In the case of a cancellation trial, the trademark right is deemed to be extinguished from the time when the trial decision becomes final and conclusive.

J. Licenses

The most important amendments to the Trademark Act deal with the licensing of trademarks. Again, the impact of these amendments is largely to allow foreign interests greater access to as well as increased protection in Korea.

The old law attempted to ensure identity of quality between the goods of a licensor and licensee by requiring that the parties' relationship fall into any of five enumerated categories. Under the new

law, the registration of a trademark license is now possible even in the absence of any relationship such as technical assistance agreement, joint venture, equity investment, etc., between the parties. Further, if the trademark license agreement does not provide for royalty payments, no government approval is required. Only royalty-bearing trademark licenses must be approved by the government authorities in accordance with the Foreign Capital Inducement Act.

Under prior law, trademark licenses were required to be "non-exclusive". The amendment deleted this language, thus at least theoretically opening the door for both exclusive and non-exclusive trademark licenses.

A licensor must control the nature and quality of the goods sold or services rendered under the licensed trademark or service mark.

The new law takes a flexible approach in penalizing a licensee's of a trademark on goods of inferior quality. When a trademark licensee used a trademark on inferior goods, thereby causing confusion regarding the quality or the source of the goods, not only the trademark license but the trademark itself are subject to cancellation. This measure in effect penalizes both the licensor and licensee. However, if the licensor can show that he has exercised appropriate care to ensure the maintenance of proper quality control, then only the license and not the trademark itself may be cancelled.

Under prior law the transfer or assignment of a trademark license was not allowed except by personal inheritance or corporate merger. The new law permits full transferability of a trademark license upon the consent of its owner.

3. Conclusion

Unfortunately, time does not permit me to touch upon all of the issues within the patent and trademark areas that I would like to. Thus, by way of conclusion, I simply wish to restate what no doubt is already abundantly clear to you. Substantial changes to Korea's intellectual property laws have already been made or are scheduled to become effective on July 1 of this year. Although they will not be as far-reaching as many foreigners wish, they signify a developing sophistication and internationalization in Korea that can only lead to further trade and business opportunities for all participants in this seminar.

551.55-BL/GCH

Seoul, 14. Mai 1987

USA
Investitionsschutzabkommen
gleichgest. AKTENNOTIZ

Besuch von Botschafter Arioli bei
Dr. KIM Chul-Su
Assistant Minister of Trade and Industry,
Seoul, 8. Mai 1987

Teilnehmer auf schweizerischer Seite:

- Botschafter H.P. Erismann
- A. Brandel, Botschaft Seoul

Teilnehmer auf koreanischer Seite:

- Mr. LEE Ki-Sung, Deputy Director General,
Bureau of International Trade Promotion

Hauptzweck dieser Unterredung war herauszufinden, was die Gespräche zwischen Korea und den EG-Staaten in Brüssel Ende April 1987 bzgl. allfälliger Ausdehnung des retroaktiven Patentschutzes auch auf EG Staaten ergeben haben. Herr Lee (L) wurde beigezogen, da dieser an den Gesprächen teilgenommen hatte. L. zieht den Schluss, das Korea im Prinzip den EG-Staaten gleiche Präferenzen wie den USA zu gewähren bereit sei; allerdings wolle man das Resultat der Konsultationstreffen ROK-USA vom Juli-September 87 abwarten, welche hauptsächlich zum Zwecke hätten, herauszufinden, wieviele sogenannte "pipeline products" es gäbe, um schliesslich entscheiden zu können, bis zu welchem Grad eine Gleichstellung erfolgen könne oder nicht. Auf Botschafter Ariolis (A) Frage, wie man denn hier differenzieren könne, erwiderte L, dass es 2 Kategorien von Fragen gäbe: 1. die "pipeline products" und 2. die Aenderung bzw. die Erweiterung der Präferenzbehandlung. Bei letztem Punkt muss man mit Sicherheit mit grosser Opposition in der Nationalversammlung rechnen.

Dr. Kim (K) ist sich des schweizerischen Interesses an einer Gleichstellung bewusst und weist auf ein Treffen auf Minister-ebene EG-Staaten-ROK vom Oktober 87 hin. Bis dahin würde man in der Lage sein, abzuschätzen, bis zu welchem Grad die EG-Staaten den USA gleichgestellt werden könnten (oder nicht). A betont, dass die Schweiz den USA gleichgestellt werden wolle. Die Schweiz suche diesbezügliche Unterredungen mit ROK, gleichzeitig mit EG-Gesprächen im Oktober. K nimmt dies zur Kenntnis. A verweist auf das bilaterale Investitionsschutzabkommen vom 7. April 1971 (Art. 7, Abs. c und Art. 2). Herr HONG Soon-Young, Assistant Minister Economic Affairs im Aussenministerium habe versprochen, diesen Aspekt zu studieren. L verspricht seinerseits, zu diesem Punkt ebenfalls noch Stellung zu nehmen. A lässt durchblicken, dass die Schweiz Korea handelsmässig bevorzugt behandle, was doch mit einem Entgegenkommen in vorliegender Angelegenheit quittiert werden sollte, andernfalls müsste die Korea eingeräumte Vorzugsstellung überdacht werden. K verweist auf die Aenderung ab 1.7.1987, wodurch die Schweiz ebenfalls profitiere und Korea sich in keiner Weise verpflichtet fühle, anderen Ländern die gleiche

Behandlung wie den USA zukommen zu lassen. Würde dies trotzdem geschehen, wäre dies höchstens als eine Geste des "goodwill" zu deuten. A anerkennt diesen Standpunkt, stützt sich aber nochmals auf vorgenanntes Investitionsschutzabkommen, auf Grund dessen die Schweiz den USA gleichgestellt werden sollte.

K. erwidert, dass das GATT in diesem Zusammenhang keine Rolle spiele, man aber trotzdem erwäge, ob die Meistbegünstigungsklausel hier nicht doch angewendet werden sollte, jedoch solle man sich bewusst sein, dass seitens der Nationalversammlung, Industrie und vor allem wegen Japan die Behörden grösstem Druck unterworfen seien.

K bestätigt A's Feststellung, dass betreffend Versicherungen von Fall zu Fall entschieden würde und weist diesbezüglich auf Japan hin, welches ein grosses Interesse hat, auf diesem Sektor aktiver zu werden.

K weist am Ende des Gespräches auf Koreas Vorschläge im Zusammenhang mit dem "MTN code" hin, welche es in Bälde in Genf vorbringen wolle und hofft auf Unterstützung schweizerischerseits. A nimmt dies wohlwollend zur Kenntnis.

A. Brandel