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Mexico's 1976 Law of Inventions and Trademarks

by Alan L. Hyde*  
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I. INTRODUCTION

On December 2, 1975, as he entered the final year of a six-year term of office marked by a flood of new legislation designed to provide his government with the tools to exercise greater control over the country's economic development, President Luis Echeverría Álvarez introduced in the Mexican Senate a proposed "Law that Regulates the Rights of Inventors and the Use of Trademarks."1 In his accompanying message, President Echeverría stated that the proposed new law is concerned:

[W]ith the elimination of obstacles to our development which results from the inadequate traditional industrial property system, the broadening of the field for the exercise of the creative activity and capacity of Mexicans, and the opening of new avenues to free ourselves from dependence and servitude.2

Before the Senate on December 23, 1975, Industry and Commerce Secretary José Campillo Sainz enlarged upon this theme.3 He suggested that, under the "new international order" and Mexico's new development

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1 Message from President Luis Echeverría to Mexican Senate, Exposición de Motivos de la Ley que Regula los Derechos de los Inventores y el Uso de Signos Marcarios (Dec. 2, 1975). Also referred to in Iniciativa de Ley de Derechos de los Inventores, El Mercado de Valores, Dec. 15, 1975, at 1019-20. [Copy on file in the office of the Case Western Reserve Journal of International Law].
2 Id.
3 The complete text of Secretary Campillo Sainz' prepared remarks appears at Campillo Sainz, Fundamentación de la Nueva Ley de Invenciones y Marcas, 26 Comercio Exterior 962 (1976).
strategy, a new body of law regulating the rights of inventors and the use of trademarks in a manner consistent with public order and supportive of social interests was essential. He characterized as no longer acceptable the ideological precepts of the “bourgeois liberalism” of the past century, which treated patents as a natural property right and as a monopoly privilege that could be exercised without regard to the public interest. Now, he said, it was universally recognized that the exercise of inventors’ rights was circumscribed by the collective interest and right of nations to development and economic independence.

Further, he maintained that the industrial property system prevailing up to the present time had fundamentally favored the industrialized nations, frequently serving as a brake on the development of economically less fortunate countries. He cited a 1974 United Nations study which indicated that of the 3,500,000 patents issued up to that time, only 1% had been granted to nationals of developing countries and that 90% to 95% of patents registered in developing countries were not exploited. He stated that Mexico was no exception to the situation found by Third World countries: 92% of all Mexican patents had been obtained by foreigners and only 8% by Mexicans.

Secretary Campillo Sainz referred to the legislation regulating foreign investments and technology already enacted during the Echeverría administration—the Foreign Investment Law and Transfer of Technology Law—as measures designed to eliminate Mexico’s economic servitude to foreign interests in the industrialized countries, and said that the earlier legislation would be of little value if the existing Industrial Property Law, containing provisions constituting obstacles to the accomplishment of its purposes, were not also modified.

The proposed new law, subsequently enacted with rather minor modifications under the revised title of “Law of Inventions and Trademarks” (Ley de Invenciones y Marcas, hereinafter called the “LIM”), was pub-

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4 Id.
5 Id. at 963.
6 Id.
7 Id.
8 Ley para Promover la Inversión Mexicana y Regular la Inversión Extranjera, [1973] Diario Oficial [D.O.], May 9, 1973 (Mex.) [hereinafter cited as the Foreign Investment Law].
10 Campillo Sainz, supra note 3, at 964.
11 The name was changed as a result of the protest by Senator Rivera Pérez Campos at
lished in the *Diario Oficial* on February 10, 1976, and took effect the following day. The LIM superseded in its entirety the Industrial Property Law of December 31, 1942, as well as other inconsistent provisions.

The LIM contains 237 articles and 12 transitory articles. While approximately 200 articles are essentially the same as provisions of the 1942 Law, the LIM, as suggested by its legislative history, introduced many innovations. These changes relate not only to the substantive law of patents and trademarks but also to the nature and extent of government regulation.

This article will describe the major innovations effected by the LIM and will, hopefully, constitute a useful addition to the as yet rather sparse treatment of the subject in U.S. legal literature. A more significant contribution could be made if it were possible to make a substantial assessment of the practical effects of the principal innovations. Unfortunately, however, the LIM is still very new. In many areas that it covers, deadlines for compliance have been extended, regulations have not yet been written, and administrative procedures have not been established or refined.

II. Significant Changes Regarding Inventions

A. Nonpatentable Inventions

The LIM expanded the area of nonpatentable inventions to include (a) vegetable plant varieties and animal breeds as well as biological processes for obtaining the same; (b) alloys; (c) chemical products, except new industrial processes for obtaining them and new industrial uses of them; (d) chemical-pharmaceutical products and their mixtures, medicines, beverages and foods for human or animal consumption, fertilizers, pesticides, herbicides, and fungicides; (e) processes for obtaining mixtures of chemical products, industrial processes for obtaining alloys, and industrial processes for obtaining, modifying, or applying the foregoing chemical-pharmaceutical products and mixtures; (f) inventions relating to nuclear energy and security; and (g) antipollution apparatus and equipment and processes for its manufacture, modification, or application.
Inventions referred to in (e), (f), and (g) may be protected through registration and the issuance of a certificate of invention.\textsuperscript{17}

B. Certificate of Invention

An interesting innovation introduced by the LIM is the certificate of invention. A certificate of invention, unlike a patent, does not represent an exclusive right to exploit an invention, but rather a nonexclusive right to do so coupled with the right to receive royalties from any other party desiring to utilize the invention.\textsuperscript{18} A certificate of invention is available as an optional alternative to a patent for any patentable invention, and also is available for certain classes of nonpatentable inventions, as noted above.\textsuperscript{19} The application procedure for a certificate of invention is much the same as for a patent, and the inventor may convert a patent application into one for a certificate of invention at any time before the patent is issued.\textsuperscript{20} The royalty and other terms under which an invention covered by a certificate of invention may be exploited by an interested party are to be the subject of an agreement between the inventor and the interested party approved and registered by the National Registry of the Transfer of Technology (hereinafter called the NRTT). If agreement cannot be reached, the NRTT is authorized to fix such terms.\textsuperscript{21}

The LIM would seem to encourage at least the individual inventor to seek a certificate of invention rather than a patent in several ways. First, a certificate of invention is not subject to the use requirements applicable to a patent.\textsuperscript{22} Second, at least to date, the annual registration fees applicable to maintain the existence of a patent have no counterpart as to certificates of invention.\textsuperscript{23} However, the LIM's provisions relating to certificates of invention impose an obligation upon the inventor to provide licensees the information necessary for the exploitation of the invention.\textsuperscript{24}

The amount and duration of any such technical assistance agreed upon is a factor that is considered by the NRTT in approving or fixing the

\textsuperscript{16} LIM, art. 10, [1976] D.O., Feb. 10, 1976 (Mex.). In considering the significance of these exclusions from patentability, it is well to bear in mind that patents in the chemical field constitute approximately 50% of all patents issued in Mexico, see Beltrán, Las invenciones químicas en la nueva Ley de Invenciones y Marcas frente a la antigua Ley de la Propiedad Industrial, 27-28 Revista 287, 268 (1976).

\textsuperscript{17} LIM, art. 65, [1976] D.O., Feb. 10, 1976 (Mex.).

\textsuperscript{18} Id. arts. 67 & 71.

\textsuperscript{19} Id. arts. 65 & 80; see text accompanying note 17 supra.


\textsuperscript{21} Id. arts. 68 & 69.

\textsuperscript{22} Sepúlveda, La Explotación de las Patentes en el Derecho Mexicano, 29-30 Revista 53, 60-61 (1977).

\textsuperscript{23} Id.

\textsuperscript{24} LIM, art. 73, [1976] D.O., Feb. 10, 1976 (Mex.).
amount of royalties for use of the invention.\textsuperscript{25}

The certificate of invention found its origins in Soviet law, but as one commentator has noted, the Soviet and Mexican concepts are substantially different. Under the Soviet system, on the one hand, the inventor assigns his invention to the State which, in turn, certifies that the inventor has an equitable interest and a right to compensation. The State retains exclusive and perpetual ownership of the invention, so that all may benefit from the licenses granted to exploit it. Under this concept of the certificate of invention, State control of industry is required to assure the adequate exploitation and commercialization of inventions, which might not occur as spontaneously as it would in market economy countries. The Mexican concept, on the other hand, does not involve any assignment of the inventor's rights to the State, but only establishes the right of any interested person to exploit such rights under preestablished conditions, without excluding the inventor from the same rights.\textsuperscript{26}

C. Reduction of Term

The LIM reduced the term of patents from 15 years under the existing 1942 Industrial Property Law to 10 years.\textsuperscript{27} The term of a certificate of invention is likewise 10 years.\textsuperscript{28} In the form in which the proposed new law was introduced in the Senate, the term would have commenced on the date of filing of the application, as was the case under the 1942 Law,\textsuperscript{29} but in the final version the commencement date was changed to the date of issuance of the patent or certificate of invention.\textsuperscript{30} Taking into account the time period that was normally required to process a patent application under the 1942 Law, the LIM effectively reduced the life of a Mexican patent by about two years.

The reason offered for this reduction of term is that the evolution of technology has become so rapid that even a ten-year period exceeds the time within which most articles begin to become obsolete.\textsuperscript{31} It should also be noted that 10 years is the maximum permissible term of an agreement for the transfer of technology under the Transfer of Technology Law.\textsuperscript{32}

\textsuperscript{25} Id. art. 72.
\textsuperscript{26} Morfin Garcia, Necessidad de reformar el Convenio de Paris para la protecci6n de la Propiedad Industrial, 29-30 Revista 185, 189 (1977).
\textsuperscript{27} LIM, art. 40, [1976] D.O., Feb. 10, 1976 (Mex.).
\textsuperscript{28} Id. art. 67.
\textsuperscript{29} Campillo Sainz, supra note 3, at 964.
\textsuperscript{31} Figueroa Brito, supra note 11, at 260.
\textsuperscript{32} Transfer of Technology Law, art. 7, [1972] D.O., Dec. 30, 1972 (Mex.).
D. Exploitation Requirements

The LIM provides that the grant of a patent implies the obligation to exploit it within Mexico. Exploitation must begin within three years from the date of issuance. The owner must demonstrate the initiation of exploitation within two months following such initiation. Exploitation is defined as the permanent use of the patented process or the manufacture of the patented product by its owner or a licensee "in volumes that constitute an effective industrial exploitation and under suitable conditions as to quality and price." Importation of the patented product or of the product manufactured with the patented process does not constitute exploitation.

Broadly speaking, the LIM provides two sanctions for nonexploitation or insufficient exploitation of a patent. The first is lapse, which ensues automatically if exploitation is not undertaken within the required three-year period and one additional year passes during which no one applies for a compulsory license. The second is compulsory licensing. The LIM provides that after three years from the issuance of a patent anyone may apply to the Bureau of Inventions and Trademarks (hereinafter called the BIT) for a compulsory license to exploit the patent if (a) the patented invention has not been exploited, (b) exploitation has been suspended for more than six consecutive months, (c) exploitation is insufficient to satisfy the national market, or (d) there are export markets not covered by exploitation of the patent and someone manifests an interest in using the patent for export purposes. An applicant for a compulsory license must submit a manufacturing program and demonstrate his technical and economic capacity to carry out an efficient exploitation of the patented invention. After a hearing including the applicant, the patent holder, and the holder of any existing

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34 Id.
35 Id. art. 42.
36 Id. art. 43.
37 Id.
38 Id. art. 48.
39 Id. arts. 41 & 50.
40 Id. art. 50.
41 Id.
42 Id. art. 51.
compulsory license, the BIT is to determine whether a compulsory license should be granted.\textsuperscript{43} If the decision is in the affirmative, the BIT is to consult the NRTT as to the duration, field of application, royalties, and other terms.\textsuperscript{44} The terms of a compulsory license may be modified at any time upon the petition of the patent owner or the licensee in order to adjust to changed circumstances, particularly the grant of a subsequent license upon more favorable terms.\textsuperscript{45}

The holder of a compulsory license must commence exploitation within two years from the date of grant and may not suspend it for more than six consecutive months.\textsuperscript{46} Compulsory licenses are nonexclusive, and they may not be assigned, nor may sublicenses thereunder be granted without the consent of the patent owner.\textsuperscript{47}

E. Public Benefit Licenses

Another innovation introduced by the LIM is the public benefit license, which may be granted by the Ministry of Patrimony and Industrial Development (hereinafter called the Ministry) for public health, national defense, or other public interest purposes following publication in the Diario Oficial and an opportunity for a hearing.\textsuperscript{48} Public benefit licenses are nontransferable.\textsuperscript{49}

III. Significant Changes Regarding Trademarks

A. Service Marks

The LIM expressly extended trademark protection to service marks,\textsuperscript{50} curing a deficiency in the 1942 Industrial Property Law, which had expressly provided protection only for product marks.\textsuperscript{51} After years of litigation, the Supreme Court of Justice had held that service marks could be registered under the 1942 Law,\textsuperscript{52} but the confirming legislative resolution of the issue is definitive.

\textsuperscript{43} Id. art. 52.  
\textsuperscript{44} Id.  
\textsuperscript{45} Id. art. 53.  
\textsuperscript{46} Id. art. 54.  
\textsuperscript{47} Id. art. 55.  
\textsuperscript{48} Id. arts. 52 & 56.  
\textsuperscript{49} Id. art. 56.  
\textsuperscript{50} Id. art. 57.  
\textsuperscript{51} See García Moreno & Sánchez Rodríguez, Los signos marcarios extranjeros en la Ley de Invenaciones y Marcas, 27-28 Revista 123, 126 (1976).  
\textsuperscript{52} Id. at 127.
B. Reduction of Term; Use Requirements

The LIM reduced the duration of the registration of a trademark to five years\(^5\) from the ten-year life accorded by the 1942 Law.\(^4\) Registration may be renewed for successive five-year periods, but only upon proof of effective and uninterrupted use during the preceding five-year period.\(^5\) The owner of a registered trademark must demonstrate to the satisfaction of the Ministry the effective use of the same in at least one of the classes for which registration has been obtained within three years following registration.\(^5\) If use is not proven, the registration will be automatically cancelled.\(^5\) The proof of use of a trademark may take various forms, such as the acquisition in the marketplace of products protected by the mark through a person or official authorized to administer oaths, by the presentation to the BIT of invoices bearing continuous dates throughout the relevant period, or through an inspection by the administrative agency, initiated at the request of the owner of the trademark, to verify that the products protected by the mark are present in the marketplace.\(^5\) The 1942 Law provisions for special renewal for nonuse have been eliminated.\(^5\)

C. Regulation of Use of Trademarks

The LIM contains a number of rather novel provisions regulating or limiting the use of trademarks, the more noteworthy of which include the following:

1. The Ministry may by order require a person manufacturing substantially similar products or rendering substantially similar services for the same end use to identify them with a single mark.\(^6\)

2. The Ministry may, by order, make mandatory the registration and use of trademarks for any goods and services and, conversely, may for reasons of public interest prohibit the use of trademarks, whether registered or not, on certain products in any

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\(^4\) Garcia Moreno & Sánchez Rodríguez, supra note 51, at 127.
\(^5\) Id. art. 117. "Effective use" is defined as the commercialization of the product or service that the mark protects in volumes and under conditions that represent an effective commercial exploitation in the opinion of the Ministry. Id. art. 118.
\(^5\) Id. art. 117.
\(^6\) Garcia Moreno & Sánchez Rodríguez, supra note 51, at 135.
field of economic activity.\textsuperscript{61}

3. For reasons of public interest, the Ministry may grant compulsory licenses for the use of registered trademarks, in which case the Ministry shall fix the royalties payable to the trademark owner.\textsuperscript{62}

4. A trademark registration may be cancelled if the Ministry determines that the owner is speculating or making improper use of the mark as to the price or quality of the product or service protected thereby to the detriment of the public or the national economy.\textsuperscript{63}

D. "Linking"

The provisions of the LIM that have unquestionably given rise to the most controversy, both in Mexico and abroad, are those requiring the use of "linking"\textsuperscript{64} trademarks. Article 127 of the LIM provides that every foreign mark owned by a foreign natural or juridical person\textsuperscript{65} intended to be used in connection with products manufactured or produced in Mexico must be linked to a mark originally registered in Mexico.\textsuperscript{66} Both marks must be used in an equally prominent manner.\textsuperscript{67} Agreements for the transfer of technology entered into for the use of a trademark originally registered abroad or owned by a foreigner must contain a requirement that such mark be linked to a mark originally registered in Mexico or owned by the licensee.\textsuperscript{68} If this requirement is not satisfied, the NRTT is to deny registration of the agreement.\textsuperscript{69} The linking requirement is to be

\textsuperscript{61} Id. art. 125.
\textsuperscript{62} Id. art. 132.
\textsuperscript{63} Id. art. 150.
\textsuperscript{64} Unfortunately, the Spanish verb vincular, translated as "to link" as it is used in the LIM, does not have any precise English equivalent. It appears to be used in the sense of the tertiary meaning assigned to it in the official dictionary of the Spanish Language, of "to tie one thing to, or to base one thing upon, another." \textit{Real Academia Española, Diccionario de la Lengua Española} 1344 (18th ed. 1956).
\textsuperscript{65} Article 131 of the LIM provides that, for purposes of Articles 127 and 128, the determination of Mexican or foreign character shall be in accordance with the provisions of the Foreign Investment Law. Article 2 of that law defines "foreign investment" as that affected by foreign juridical persons, foreign natural persons, foreign economic units without juridical personality, and Mexican enterprises in which foreigners have, through any means, the ability to control the management of the enterprise.
\textsuperscript{67} Id.
\textsuperscript{68} Id. art. 128.
\textsuperscript{69} Id. Article 2 of the Transfer of Technology Law established the obligation to register with the NRTT contracts, agreements, and any other documents that are entered into for the purpose of licensing the use of trademarks, patents, improvements, models, or blueprints; providing technical knowledge by means of plans, diagrams, models, instruction
fulfilled within one year after registration of the technology transfer agreement, or upon commencement of use of the foreign mark if there is no technology transfer agreement that authorizes it. The Ministry may, for just cause, postpone the date for linking by not more than one year. It should be noted that the linking requirement applies only to product marks and not to service marks.

The objectives of these requirements, as described by various high government officials, was to lessen the dependence of the Mexican economy on foreign trademarks. As stated by Lic. Jaime Alvarez Soberanis, Director of the NRTT, at a symposium sponsored by the Mexican Bar Association:

The intention of the provisions of Article 127 is that the Mexican licensee obtain good will for one of its own trademarks together with the foreign trademark, so that it might continue to market the products with its own trademark, both in the local and foreign markets, in the event the owner of the foreign trademark attempts to establish an excessive royalty or to establish unacceptable conditions harmful for its interests or in the event it simply does not wish to renew the license.

Likewise, the intention is that in the future the Mexican enterprise would not have to depend on the foreign trademark, but rather that its products are identified by its own trademarks. In this sense, such provision is an incentive to use national trademarks.

The foregoing will allow it to save on the payment of royalties for the use of a foreign trademark and to be in a position of greater autonomy in regard to investments in promotion and publicity of the products upon which it shall freely decide, taking into account the conditions of the market.

Critics of the trademark linking requirements have voiced a number of concerns. A prominent Mexico City corporate lawyer has pointed out that, while Mexican government officials involved in drafting the LIM have denied any intention that the linking requirements constitute a first step toward the ultimate prohibition of the use of trademarks that are books, instructions, formulae, specifications, the recruitment and training of personnel, or any other means; furnishing engineering for the installation of facilities or the fabrication of products; providing technical assistance in any form; or rendering services relating to the administration and operation of businesses. See Hyde & Ramirez de la Corte, 10 INT'L LAW. 231, supra note 9.


Id.

See Son!, Consideraciones en torno a los articulos 127, 128 y 131 de la Ley de Inversiones y Marcas, 27-28 REVISTA 211, 220 (1976).


Alvarez Soberanis, supra note 73.
not of Mexican origin, the requirements clearly open the possibility that at a future date, once trademarks originated in Mexico have gained acceptance, the use of foreign marks could be discontinued, perhaps under a "fade-out" formula.\footnote{Lic. Juan G. Mijares, (unpublished paper presented at United States-Mexico Chamber of Commerce Forum) (July 27, 1976). Several commentators, in discussing the antecedents of the linking provisions, have made primary mention of Argentine Law 20.794 of September 27, 1974 (since superseded by Argentine Law 21.617 of August 12, 1977), which contemplated the phasing out of foreign trademarks over a period of five years, see Soni, supra note 72, at 212-14. See also Alvarez Soberanis, supra note 73, at 80-81.}

Others have suggested that application of the requirements will lead to the destruction of foreign licensors' established brand names in Mexico and will have an adverse effect on Mexican exports.\footnote{For some excellent practical suggestions as to the use of linking marks in ways calculated to mitigate these risks, see Gomez Vega, La vinculación de marcas mexicanas a las marcas extranjeras, 29-30 Revista 137, 144-50 (1977). Peters, The New Industrial Property Laws in Mexico and Brazil—Implications for MNCs, 11 Colum. J. World Bus. 70, 75 (1977).} They fear that products bearing the linked marks will not have the same acceptance in Mexico and will not be accepted in export markets if, indeed, foreign licensors will permit the sale of dual-marked products in third-country markets in which they control the foreign mark.\footnote{Conchello, Confusión de Marcas, Visión, July 1-15, 1977, at 34, col. 2. Mexican pesos have been translated into U.S. dollars at the approximate current rate of exchange.}

Of immediate practical concern are the rather substantial costs that will be involved in the replacement of returnable bottles and other containers and in the preparation of new containers, designs, and advertising material. It has been estimated, for example, that these costs will exceed $100 million for the bottling industry, $25 million for the pharmaceutical industry, and $10 million for the food industry.\footnote{Delgado Reyes, Como afecta a los empresarios la nueva Ley de Inversiones y Marcas mexicana, 27-28 Revista 155, 168-61 (1976); Soni, supra note 72, at 214.}

To some, the draftsmanship of Articles 127 and 128 has, in some respects, appeared to be unclear and to leave a number of unanswered questions.\footnote{See note 65 supra.} Some have read these articles and related Article 131\footnote{See note 65 supra.} to require that the owner of the linking mark be of Mexican nationality.\footnote{Garcia Moreno & Sánchez Rodríguez, supra note 51, at 132. See Campillo Sains, supra note 3, at 966-67. See also Alvarez Soberanis, supra note 73, at 83-86; Soni, supra note 72, at 216-20.} A close reading of these articles indicates fairly clearly, however, that the sole requirement is that the linking marks have been originally registered in Mexico, with the result that the owner need not necessarily be of Mexican nationality. This interpretation appears to be accepted by the Ministry and the Mexican commentators.\footnote{See note 65 supra.}
On October 14, 1976, "Regulations of the [LIM] in the matter of Technology and Linking of Trademarks" were published.83 They contained a number of clarifying and other helpful provisions, which may be summarized as follows:

1. Trademarks originally registered in Mexico that are intended to cover articles manufactured or produced within the national territory, irrespective of the nationality of the owner, may be used by the owner without the necessity of linking.84

2. Marks originally registered abroad and to be used in Mexico by the owner, whatever his nationality, are to be linked with a mark originally registered in Mexico.85 This requirement, in the case of trademarks already registered on the effective date of the LIM, was to be complied with within one year of the effective date of the Regulations, or by October 17, 1977. The Ministry was given authority to extend this date for up to one year for just cause.

3. Inbond assembly industries (maquiladoras)87 and those operating in a similar form in Free Zones are exempted from the linking requirement with respect to trademarks that apply to articles manufactured, produced, or assembled for concerns domiciled outside of Mexico and intended for export. The Ministry may also grant exemptions from the linking requirements to similar enterprises when, in its opinion, circumstances justify it.

4. When several trademarks subject to the linking requirement are used on the same article, the linking obligation as to all of them will be satisfied if a single mark originally registered in Mexico is added. The latter should be used in a form at least as prominent as the most visible of the trademarks subject to linking.

5. The linking trademark must be used in an equally visible manner with the mark subject to linking on the articles themselves, on the containers, wrappings, and labels, and in all advertising materials.89

84 Id. art. 1, first para.
85 Id. art. 1, second para.
86 Id. First & Second Transitory Provisions.
89 Id. art. 5.
90 Id. art. 6.
As of the date of this article, it is unclear as to how the Ministry will ultimately administer the linking requirements if, indeed, they ever become effective in accordance with their present terms. While many applications for the registration of linking marks have been filed, relatively few have been put into use.

In an address delivered at a United States-Mexico Chamber of Commerce Forum on the Patent and Trademark Law held in New York City on October 20, 1977, Dr. Natan Warman, Undersecretary for Industrial Development of the Ministry, seemed to rule out effectively the possibility of any amendment of the LIM or any general extension of the deadlines for compliance with the linking requirements. He expressed his belief that most of the problems could be resolved through a flexible and pragmatic administrative application of the requirements. Dr. Warman said that the Ministry was considering a “series of options” to linking, to be developed on an industry sector basis. Among the options to linking that might be granted to particular industry sectors were (1) an undertaking to export a specified volume or percentage of production, as Dr. Warman acknowledged that the use of linking marks would be harmful on products intended for export markets, (2) an undertaking to develop new product lines with Mexican trademarks for sale in domestic markets, and (3) an undertaking to expand operations in less-developed areas of the country, thereby contributing to the national objectives of providing increased employment and achieving greater economic decentralization. It is interesting to note that the LIM does not seem to provide the Ministry with any statutory authority to grant permanent relief from the linking requirements through this “series of options” approach.

Despite semiofficial pronouncements of this kind, as the February 11, 1978, deadline approached for compliance with the linking requirements in the case of technology transfer agreements already registered in the NRTT, rumors spread that a general extension would be granted. By an eleventh-hour decree published on February 6, 1978, President López Portillo, citing “numerous factors of a fundamentally technical and economic nature” that had prevented various industrial sectors from meeting the deadline, granted a further extension of one year, to February 11, 1979.

In an address delivered at a Council of the Americas Workshop on the Implementation of Mexico’s Foreign Investment, Technology Trans-
fer, and Patent/Trademark Legislation held in Cleveland on July 10, 1978, Dr. Warman stated that the Ministry had now concluded that the LIM did not provide for sufficient administrative flexibility, and that amendments were being drafted and were expected to be enacted before February 11, 1979. No amendments have yet been adopted. By Presidential Decree published on December 29, 1978, the deadline was extended for one year from the date of its publication, to December 29, 1979, and by Presidential Decree published on December 13, 1979, the deadline was further extended to December 29, 1980. By Ministerial Decree published December 30, 1980, the deadline was again extended to December 29, 1981. It would now appear that the López Portillo administration desires to avoid any amendments to the LIM for political reasons and that the deadline will be extended for the balance of the current Presidential term, which expires December 1, 1982.

IV. EXPANDED REGULATORY POWERS

The foregoing description of the major innovations introduced by the LIM may have already conveyed the impression that the LIM grants broad discretionary powers (particularly to the NRTT) to regulate the terms of usage of patents, certificates of invention, and trademarks. Such an impression would be well founded, and a few further comments on the extent of these regulatory powers are appropriate if this article is to provide a comprehensive view of the more significant changes in Mexican industrial property law introduced by the LIM.

In the area of patents, the Transfer of Technology Law established the requirement that license agreements be registered with the NRTT and established 14 criteria to be applied in determining whether registration should be granted or denied. The LIM contains a specific cross-reference to these Transfer of Technology Law requirements.

The LIM also requires that patent assignments not only be registered in the BIT in order to be effective against third parties, but also that they be approved by and registered with the NRTT. This provision in effect fills a gap in the Transfer of Technology Law, which by its terms was

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[98] [1978] D.O., Dec. 29, 1978 (Mex.). The Decree amended the Twelfth Transitory Provision of the LIM to provide not only for the one-year extension, but to authorize the Ministry to grant further annual extensions applicable generally or to certain sectors.


[97] Id. art. 7. For a discussion of the 14 criteria, see Hyde & Ramirez de la Corte, 10 INT'L L. 231, supra note 9.


[99] Id. art. 46.
applicable to agreements for the use or exploitation of patents and trademarks, but not to their assignment.\textsuperscript{100} The role of the NRTT in fixing the terms of compulsory licenses has already been discussed.\textsuperscript{101} The same procedures and role of the NRTT apply to the establishment of the terms of public benefit licenses.\textsuperscript{102}

The involvement of the NRTT in the regulation of the terms of usage of certificates of invention has already been noted in several respects. Agreements between the owner and the party interested in using the covered invention are to be approved and registered by the NRTT. If the owner and such party cannot agree on the royalty and other terms, the NRTT is authorized to fix them.\textsuperscript{103}

The LIM provides that an agreement for the use of an invention covered by a certificate of invention is nontransferable unless such agreement otherwise provides or unless the NRTT authorizes an assignment.\textsuperscript{104} If the NRTT authorizes a transfer it is also empowered to fix the terms and conditions upon which the transferee may exploit the invention.\textsuperscript{105}

With respect to the usage of registered trademarks, the LIM requires that trademark assignments must be registered with the NRTT, but does not expressly require approval by the NRTT. The Director of the NRTT has taken the position that approval, as a condition to registration, is required, arguing that it was intended that patents and trademarks be similarly treated insofar as NRTT approval of the terms of licensing and assignment is concerned.\textsuperscript{106} A Mexican commentator, by applying general principles of statutory construction, has reached the contrary conclusion.\textsuperscript{107}

V. CONCLUSION

The innovations in Mexican industrial property law introduced by the LIM clearly provide the necessary tools to enable the government to regulate the exercise of traditional industrial property rights so as to subordinate them and the incentives to technological innovation and industrial expansion that they represent to social and broader economic

\textsuperscript{100} Transfer of Technology Law, art. 2, [1972] D.O., Dec. 30, 1972 (Mex.).
\textsuperscript{101} See Alvarez Soberanis, supra note 73, at 90-92; Briseño Sierra, El arbitraje en las contiendas de transferencia de tecnología, 29-30 REVISTA 205, 213 (1977); García Moreno & Sánchez Rodríguez, supra note 51, at 134.
\textsuperscript{102} See text accompanying notes 39-47 supra.
\textsuperscript{103} LIM, art. 56, [1976] D.O., Feb. 10, 1976 (Mex.).
\textsuperscript{104} See note 21 and accompanying text supra.
\textsuperscript{105} LIM, art. 70, [1976] D.O., Feb. 10, 1976 (Mex.).
\textsuperscript{106} Id. arts. 69 & 70.
\textsuperscript{107} Id. art. 141.
\textsuperscript{108} Alvarez Soberanis, supra note 73, at 92.
\textsuperscript{109} Delgado Reyes, supra note 79, at 161-62.
objectives that may be perceived to be overriding. Further, they exemplify the same approach taken in the Foreign Investment Law and Transfer of Technology Law of providing an ample measure of administrative flexibility in their application, easily accommodating the traditional pragmatic Mexican approach to regulation of the economy.

Whether, on balance, the LIM will serve to stimulate or hinder Mexican technological creativity and industrial progress remains to be seen. In large measure, the answers will depend upon the manner in which the broad regulatory powers created by the LIM are exercised. Students of the Mexican economic scene will be following developments with interest.