

The Economics of the International Patent Systemby **Edith T. Penrose**

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G. Hyland

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Prof. Penrose, an American born British economist and protégé of Fritz Machlup (MA & PhD supervisor) is best known for her second book “The Theory of the Growth of the Firm” 1959. She was a Fellow of the Royal Commonwealth Society, ending her career as Prof. of Political Economy at INSEAD Fontainebleau. This is her first book published just after working for the American Embassy in London.

First published in 1951 by Johns Hopkins Press it was the first economic analysis applied to the International Union/Convention for the Protection of Industrial Property (Intl. Convention/Union). An eleven chapter book with bibliography and extensive primary and secondary source references, e.g. USPTO Hearings before the Temporary National Economic Committee Part3 p1152, M. Frumkin “The Origin of Patents” Journal of the Patent Office Society v27 (1945), Select Committee on Letters Patent “House of Commons Sessional Papers” v10 (1871) p135.

A monopoly privilege since 14th century Venice patents only serious attack was during the 19th century “Great Debate” from the Free Trade movement. Their origins are economic and “natural” property rights; being used to encourage inventors to make & introduce inventions, and disclose secrets. The International Union (IU) is driven by theories of natural property rights, idealistic visions of the world drawn together in unity, and pressures from manufacturers. Key provisions are priority rights and equal treatment. It is insufficient for a patentee to obtain monopoly in only one country, it ought to be worldwide. However the social cost of extending the system globally exceeds economic gain. Almost all foreign patenting done by already industrialized countries – does this stimulate more invention? Industrial exporting countries obtain monopoly profits. Most countries realize social costs of granting unrestricted patents on inventions primarily worked abroad exceed any benefit. The “promotes technological progress” argument is unconvincing. Existence of national patent law creates an economic problem solvable only by international extension of the patent system. If such abolished, if patent allowed in only one country (e.g. that of production) one would locate in larger industrial countries where profit greatest. R&D would also tend to co-locate. Incentive then for other firms to set-up outside that territory covered and produce/sell to rest of world. Thus export industries in countries with large number of patents would suffer, i.e. domestic producers are disadvantaged versus competitors elsewhere not bound by patents. If patentee is not required to produce in country-of-patent then countries with large markets adversely affected as incentive to have more patents there restricting industry there. i.e. Unless patentee can patent everywhere it will discriminate amongst competitors – justification for internationalizing the system. This international agreement should 1) prevent exploitation of weaker countries, 2) reduce influence of patents on location of industrial activity, 3) reduce social cost to each country of granting patents on inventions developed and primarily worked abroad. This last point remains an issue under the IU. Solutions to 3) include compulsory working; a clumsy way of obtaining access to foreign inventions by domestic firms which disturbs 2) as influences location of industry. Compulsory licensing also tackles 3), and is the most effective/flexible method which can be used to break up monopolistic abuses. IU is not good in that regard, but does not condone/lead to cartels. Difficulty lies in national patent laws/policies which need to be more coordinated. The process of patenting should be made more uniform, easier and cheaper. An international patent is desirable if a technique can be used by all at reasonable royalty rates. Non-industrial countries have little to gain from granting patents to foreign firms as such restrict domestic industry, and so those countries should be exempt. IU has not been to any important extent incompatible with the best interests of the global economy; but increase in social costs has been neglected.

Points raised that should be drilled into include – No-one seriously asserts that invention/innovation, industry & arts made no progress before the patent system was developed, and would have made none without it. Unconditional compulsory licensing (License-of-Right) eliminates all social costs of patents but may destroy invention incentive. Patent reciprocity in the 1903 Commercial Treaty between US & China did not confer much benefit to Chinese! LatAm mostly outside IU! Should one allow the 3rd World use foreign inventions freely for their domestic market?

Overall – recommended: a basic primer on the subject considered a classic.