

Applying a Liberal Interpretation on the Prohibitive and Mandatory Provisions of Licensing Agreements under the Intellectual Property Code

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Introduction

The 1987 Philippine Constitution enjoins the state to protect and secure the exclusive rights of scientists, inventors, artists and other gifted citizens to their intellectual property and creation¹ and in keeping with said constitutional mandate, the 10th Congress of the Philippines enacted the Intellectual Property Code or Republic Act No. 8293 seeking to provide protection to all forms of intellectual property creation.

Attendant thereto, there is also the constitutional provision mandating the state to regulate the transfer and promote the adaptation of technology from all sources for the national benefit.²

It is interesting to note that these two constitutional mandates are to be found side by side with each other – being found in the same Article. Hence, the need to protect intellectual property needs to be balanced with the necessity of promoting the national benefit.

This paper then seeks to revisit certain provisions of the Intellectual Property Code particularly Sections 87 and 88 on prohibitive and mandatory provisions concerning licensing agreements with the end in view of evaluating the viability of introducing a more liberal interpretation towards the same.

In said re-examination, this Paper will also take into consideration applicable national laws and jurisprudence as well as international agreements.

Definition and Coverage under the Intellectual Property Code

The Intellectual Property Code defines technology transfer agreements as: *“contracts or agreements involving the transfer of systematic knowledge for the manufacture of a product, the application of a process, or rendering of a*

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¹. Section 13, Article XIV, 1987 Constitution.

². Section 12, Article XIV, Id.

service including management contracts; and the transfer, assignment or licensing of all forms of intellectual property rights, including licensing of computer software developed for mass market.”

Although the definition covers all forms of intellectual property rights, the Rules on Voluntary Licensing clarifies that the licensing of copyright will only be considered a technology transfer arrangement if it involves the transfer of systematic knowledge.

The same principle applies to the phrase “*rendering of a service*”. Therefore, not all service agreements will fall under the definition of a technology transfer arrangement.

Taking into consideration the digital age we are in, computer software, considered as a growing area for intellectual property concern and developed for the mass market was defined under the Rules as computer software that:

- 1. Is produced, made and marketed for a broad range of purposes and users including end-users and commercial users;*
- 2. Is sold over the country or via standard delivery mechanisms;*
- 3. Involves payments that are not based on royalty;*
- 4. Generally provides for an indefinite term for the use of the software; and*
- 5. Does not need any customization by the supplier or distributor.*

Thus, whether a computer software was developed for the mass market or not, the Rules provide that the conditions enumerated above be established.

Upon determining that an agreement is covered, the next step is to check its compliance with Sections 87 and 88.

As far as Sections 87 and 88 of the IP Code are concerned, agreements are examined and evaluated in its entirety including all attachment or annexes as to its compliance. We should also bear in mind that the rationale for which the Chapter on Voluntary Licensing was enacted is for technology to contribute to the industrial and economic development objectives of the country.

Prohibited Provisions

Section 87 of the Intellectual Property Code enumerates fifteen (15) prohibited provisions that are deemed *prima facie* to have an adverse effect on competition and trade. The first paragraph of Section 87 states very clearly that except in cases under Section 91, the provisions under said section shall be deemed *prima facie* to have an adverse effect on competition and trade

Some of these provisions are as follows:

Tie-in provision

“87.1. Those which impose on the licensee the obligation to acquire from a specific source capital goods, intermediate products, raw materials, and other technologies, or of permanently employing personnel indicated by the licensor;”

An example of such a provision are those that deal with the purchase of ingredients, supplies and other necessary materials wherein the franchisee is obligated to purchase all specific food items, ingredients, equipment, promotional materials including napkins, party favors, place mats, chopstick covers, boxes, containers, posters, giveaways, exclusively from the Franchisor’s source.

Such a provision is a classic example of a tie-in requirement where the Franchisor’s generic materials have to be bought by the franchisee despite the fact that the same can be sourced elsewhere.

This is also common in the sale of materials where the franchisor shall sell to the franchisee all of the franchise’s requirements of products and materials needed.

The requirement, however, to purchase from a source specified by the Licensor may not be considered objectionable if the following conditions are met:

- a. The restriction is necessary to maintain the quality and performance of the Products in compliance with the standards and specification of the Licensor;
- b. The selling price is based on international market price or the price is charged by the technology supplier to their parties; and
- c. There are no cheaper sources of supply.

Thus, such a tie-in provision would not be violative if its principal purpose is to ensure that the quality and performance comply with the standards and specifications provided to the Licensee by Licensor and thereby maintain the goodwill and good reputation of the Trademarks covered by the licensing agreement.

Price fixing

“87.2. Those pursuant to which the licensor reserves the right to fix the sale or resale prices of the products manufactured on the basis of the license;”

To enforce a provision that the franchisor will provide standard price list of all items for the consumption of all franchised outlets and that any price change shall be effected on the date specified by the Franchisor to the Franchisee is violative of this Section.

Restriction on volume and structure of production

“87.3. Those that contain restrictions regarding the volume and structure of production;”

Below are examples of provisions considered compliant with the above Section:

“If the licensing agreement involves the manufacture of a product with critical quality such that restriction on product volume and structure may be imposed by licensor in order to protect his trademarks, which the licensed product carries.”

“If the licensor imposed upon the licensee the production of maximum quantity of the licensed product.”

Prohibition to use competitive technologies in a non-exclusive technology transfer arrangement

“87.4. Those that prohibit the use of competitive technologies in a non-exclusive technology transfer agreement;”

Samples of clauses or provisions violative of Section 87.4 are given below:

“The Licensee acknowledges that the Licensor at substantial cost has developed the Technology and that the Licensee has access to valuable and confidential information regarding the Technology. The Licensee agrees that:

- 1. the Licensee shall not procure that its related corporations, its and their respective shareholders and ultimate shareholders and officers do not during the continuance of his Agreement, without the consent in writing of the Licensor, in any capacity whatsoever, either directly or indirectly, individually or through any entity engaged therein; and*
- 2. the Licensee shall not during the term of this Agreement, without the consent in writing of the Licensor, utilize or accept from any person other than the Licensor any technology which is similar to the Technology or which relates to fabrication of products similar to the Products.”³*

and

“Non-compete During Term. During the term of this Agreement, Franchisor shall not engage in any business which involves another U.S. panel system that competes directly with “Home factory” and/or the “Quick Build” system as franchised by this Agreement.”⁴

Full or partial purchase option

“87.5. Those that establish a full or partial purchase option in favor of the licensor;”

When the purchase option covers the option to purchase the inventory on hand of the licensee at the time of termination of the Agreement, this provision

³ Article 15.1 (a) & (b) of the Licensee Agreement between Eastern Steel Fabricators Phils., Inc and Eastern Steel Services Pte. Ltd. COR No. 5-1999-00001

⁴ Article 4.06 of the Franchise Agreement between Jose Orlando B. Ruiz & Oscar Tan Home Factories, llc. Preliminary Review

will not be considered different from the full or partial purchase option being contemplated under Section 87.5 and hence not considered violative of the same.

Free grantback

“87.6. Those that obligate the licensee to transfer for free to the licensor the inventions or improvements that may be obtained through the use of the licensed technology;”

Considering that improvements may also be made by the licensee, Section 87.6 was designed to encourage the technology recipient to improve on the technology being acquired thereby enhancing their inventive capability/skills in process.

Hence, the provision below was found non-conforming with Section 87.6:

“Licensee shall promptly furnish to Licensor full details of all the Improvements during the term hereof and Licensee shall grant to Licensor a non-exclusive royalty-free license in perpetuity, with a right to sublicense, to use anywhere in the world the Improvements and the patent, applications based upon such Improvements and the patents issued or to have been issued upon such applications.”

Export restriction

“87.8. Those that prohibit the licensee to export the licensed product unless justified for the protection of the legitimate interest of the licensor such as exports to countries where exclusive licenses to manufacture and/or distribute the licensed product (s) have already been granted;”

The infusion of technology is seen as an opportunity for economic development. The improved quality of the local product will make it competitive in the world market thereby earning for the country the necessary foreign exchange. Export restrictions are not usually stated in a straightforward manner but comes in the form of limiting the sales territory by defining the territory as, for example, the Philippines.

The following provision is an example:

“Licensor hereby grants to ABC, during the term and subject to the provision of this Agreement an exclusive license to

the use the Information to process, manufacture, distribute and sell the Subject Products under the Trademarks in the Territory.”

Even if the territory were defined to include other countries, it would still be considered as an implied export restriction since the opportunity to sell to other countries is limited only to those which are in the list. An acceptable exclusion would only be countries where there are no existing licensees.

A requirement from the licensor that its approval is needed prior to export is also considered an implied export restriction since approval may be withheld onerously as shown in the provision below:

“Except with the express agreement by Licensor, Licensee will not sell the subject Products outside of the Territory and undertakes to use its best endeavors to prevent the export and sale of Subject Products by third parties outside of the Territory. Violation of this provision will be deemed a material breach and as such will be ground for termination of this Agreement.”

Another form of implied export restriction is having the licensee sell through the licensor or its distribution channels.

Restriction to use the Technology after the expiration

“87.9. Those which restrict the use of the technology supplied after the expiration of the technology transfer arrangement, except in cases of early termination of the technology transfer arrangement due to reason(s) attributable to the licensee;”

The provision which restricts the use of the technology after the expiration of the technology transfer arrangements defeats one of the basic objectives for which an arrangement to the industrial development of the country. A classic example is shown below:

“Rights and obligation of parties on termination or expiration. Upon the termination or expiration of the Agreement or upon the closing of any unit, the Franchisee shall immediately discontinue the use of all operating systems and the logo. If the outlet unit is under lease agreement, the Franchisee shall immediately remove all signages or logo, outdoor or indoor and remove all super graphics or markings.”

The above provision may only be allowed if the valid and subsisting intellectual property rights covered the technology and/or if the termination were due to the fault of the licensee.

Non-contestability of the validity of licensor's patents

"87.11. Those which require that the technology recipient shall not contest the validity of any of the patents of the technology supplier;"

"Not contesting the validity of the licensed patent rights" refers for instance, the obligation not to raise an objection to the patent for the patented invention or not to request for a void judgment, etc.

Examples are:

Licensee shall not contest, nor aid others in contesting, directly or indirectly, the validity of or title to any of the licensed Patents and the licensed rights granted to licensee by licensor hereunder either during the term of this Agreement or after the termination or expiration of this Agreement.

Hold-harmless Clauses

"87.14. Those which exempt the licensor for liability for non-fulfillment of his responsibilities under the technology transfer arrangement and/or liability arising from third party suits brought about by the use of the licensed technology;"

Based on 87.14, there are two instances licensor should be held liable. These are.

"For non-fulfillment of their responsibilities under the technology transfer arrangement; and/or

"For liability from third party suits brought about by the use of the licensed product or the licensed technology."

A license agreement would usually involve two things -- intellectual property rights and the technology.

Therefore there is the possibility of two different liability cases, damages arising from infringement and damages arising due to a faulty product.

Since the licensor is the one who granted the right to use the intellectual property rights and/or the provider of the technology used in the manufacture of the licensed products, it is only but fitting that he can be made responsible for any damages as a result of infringement or defects on the technology that he is transferring.

However, to protect licensor from any negligence on the part of the licensee in carrying out instructions provided by licensor, a qualification that defects caused by licensee's negligence shall not fall under the licensor's responsibility, may be incorporated.

Another example is as follows:

“The Franchisee shall indemnify the Franchisor, its officers and directors, employees, agents, successors and assigns against any and all claims, damages or liabilities based upon, arising out of, or in any matter related to the operations of the franchised outlet.”

Moreover, note that a no warranty provision is also considered as a hold-harmless clause, as follows:

“The Franchisor unless with written request and approval, makes no warranties, representation or guarantees upon which the Franchisee may rely and assume no liability or obligations to the franchisee in connection with this Agreement.”

The following sample provision is more explicit:

“Licensee agrees that licensor's entering into this Agreement in no way makes a warranty that the practice by licensee under the Technical Information does not constitute infringement of any patent of any Person who is not a party hereto, and licensee further agrees that licensor does not assume any responsibility for any such infringement although licensor shall assist licensee in solving the infringement.”

Note that the inclusion of a proviso “to the extent allowed by law” provides substantial compliance to the effect that any restriction will be based on appropriate legal limitation.

Mandatory Provisions

Section 88 of the Intellectual Property Code, on the other hand, enumerates the mandatory provisions that should be incorporated in a voluntary licensing agreement as follows:

Governing law

“88.1. That the laws of the Philippines shall govern the interpretation of the same and in the event of litigation, the venue shall be the proper court in the place where the licensee has its principal office;”

This requirement is two pronged -- that the governing law of the contract should be Philippine laws in the event of litigation; and venue shall be the proper court having jurisdiction over the place where the licensee has its principal office.

However, a number of arguments may be presented in order to adapt a more liberal view of the above provision as follows:

1. Our voluntary process should not be perceived as anti business growth;
2. It must be noted that the matter of venue is considered procedural in nature – one that basically pertains to the trial and relates to the convenience of the parties rather than upon the substance and merits of the case. Thus, the absence of such a provision does not gravely affect the essential requirement that Philippine laws shall govern contract interpretation; and
3. Since recent trends and practice show that parties choose to settle their disputes through arbitration, the inclusion of the litigation venue is considered superfluous.

As worded, the IP Code allowed arbitration as an alternative to litigation as a mode of speedily resolving any dispute among the parties. The requirements on venue under Section 88.1 and Section 88.3 should be imposed alternatively and compliance with one should exempt compliance with the other.

It should be noted that under the present Rules of Civil Procedures, no injunctive or other extraordinary relief can be obtained without posting a bond, the amount of which is to be determined by the court.

In cases of reciprocal agreements -- either of the parties may become the Providing or the Recipient Party, the following sample provision is a clear illustration of a violation of this Section:

“This Agreement shall be construed and interpreted in accordance with the plain meaning of its terms and conditions and be subject to the laws and regulations of the Philippines. In the event of litigation, the venue shall be the proper court where the Receiving Party in the Philippines or in Saudi Arabia as the case may be, has its principal office.”

Continued access to improvements

“88.2. Continued access to improvements on techniques and processes related to the technology shall be made available during the period of the technology transfer arrangement;”

This Section of the Intellectual Property Code mandates the inclusion of a clause stating that continued access to improvements in techniques and processes related to the technology shall be made available to the licensee during the period of the technology transfer arrangement. Such provision, however, does not have to be included verbatim. Usually the definition of technology being licensed would include improvements. Thus although Section 88.2 was not literally written, such definition would be considered substantially compliant.

Below is an example a definition considered compliant with the Section under discussion:

“Patents (including patents of importation, patents of confirmation, patents of improvement, patents and certificates of addition and utility models, as well as divisions, reissues, continuations-in-part, renewals and extensions of any of the foregoing and applications therefor, owned by Licensor, covering inventions with respect to which the first application for patent anywhere was filed prior to the date of expiration or termination of this Agreement, relating to Technical information Furnished from Licensor to Licensee under this Agreement.”

Arbitration

“88.3. In the event of the technology transfer arrangements shall provide for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the

Arbitration Rules of the United Nations Commissions on International Trade Law (UNCITRAL) or the Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country;”

As stated in the Intellectual Property Code, in the event the technology transfer agreement provides for arbitration, the Procedure of Arbitration of the Arbitration Law of the Philippines or the Arbitration Rules of the United Nations Commission on International Trade Law (UNCITRAL) or Rules of Conciliation and Arbitration of the International Chamber of Commerce (ICC) shall apply and the venue of arbitration shall be the Philippines or any neutral country.

As such if the agreement does not contain any arbitration provision, this is not considered as violative of Section 88.3 of the IP Code. It should be noted that what a direct violation entails is the inclusion of a different arbitration rule aside from that specified by the IP Code, as shown in the example below:

“In the event of any dispute whatsoever arising as between any parties hereto with regard to this agreement it is mutually agreed by parties hereto that law of the State of California shall apply and ought to be determined by its proper courts.”

In a precedent case where the venue was absent but Philippine Arbitration Law would govern the conciliation proceedings, the requirement to include the venue of arbitration was reconsidered. It was reasoned that as provided in the Philippine Arbitration Law, parties couldn’t ordinarily stipulate a venue of arbitration other than the Philippines after they have stipulated the application of the Philippine Arbitration Law.

Tax liability

“88.4. The Philippine taxes on all payments relating to the technology transfer arrangements shall be borne by the licensor.”

Since it is the franchisor that earns, it is only fair that he pays for the corresponding taxes thereon. This is the underlying reason for the mandatory provision that Philippine taxes on all payments relating to the technology transfer arrangement shall be borne by the licensor. Non-conformity with Section 88.4 of the Intellectual Property Code does not only come in the form of absence but also comes in the following manner:

“The compensation for all the cost and expenses due shall be payable by Licensee to Licensor at the end of a month immediately succeeding the month in which the invoice of Licensor has been received by Licensee. Any taxes imposed by any government in the Philippines on such payment, if any, shall be borne by Licensee, and all amounts payable under this Agreement shall be paid in US Dollars.”

Limiting the tax liability to just the income tax or withholding tax is also considered as violative of Section 88.4 since the IP Code requires that all Philippine taxes shall be paid by the licensor as the following sample provision shows:

“Licensee shall pay the withholding or income tax on Licensor’s behalf by deducting from the royalties payable to be levied under the laws of Philippines on the royalty income of Licensor arising hereunder, and Licensee shall send to Licensor, without delay, a tax certificate with the English translation thereof showing the payment of such tax.”

Using the term “net” will also make the provision non-conforming since it implies that licensee will pay the taxes. This is shown in the sample provision below:

“As remuneration for the right to use the Trade name, the Licensee pays to Licensor a license fee of 2.5% (say two point five percent) of their actual turnover of the Licensee for the respective year. Monthly invoices in the amount of one twelfth of 2.5% (say two point five percent) of the planned turnover will be issued and they will be due and payable at the beginning of every month. After year end the final yearly license fee will be assessed based on the actual turnover and an audit or debit note will be issued.”

The License fee includes Philippine withholding tax and is net of any other similar income tax imposition thereon as well as any value added or similar tax.

Given below is another sample provision showing an indirect way of passing the tax to the licensee:

“If the Licensee shall not send tax receipt in due time, Licensee shall then pay Licensor the amount equal to the

corresponding withholding tax, which shall not be deducted from the royalties.”

Moreover, in order to reconcile the IP Code with Republic Act No. 8424⁵ where it specifically states that the value added tax will be paid by the licensee, the Intellectual Property Office has, on various occasions, granted exemptions from the coverage of Section 88.4, more specifically on the payment of VAT. Applicants are only required to submit a copy of the tax certificate of the licensee.

Conclusion

The legislative intent behind the incorporation of said prohibited and mandatory provisions in the IP Code was to provide added advantage to local licensees.

On its face, the strict implementation of the enumerations under Sections 87 and 88 seem to be in harmony with the constitutional mandate of providing protection to local industry specially in the field of technology transfer.

This is based on the principle of economic nationalism, the following constitutional provisions are illustrative of said principle:

“the pursuit of an independent foreign policy in which national sovereignty, territorial integrity, national interest, and the right to self-determination shall be of paramount consideration in relations with other states”⁶

Thus, it can be said that the provisions outlined under Sections 87 and 88 merely flesh out this policy of the state as enshrined in the Constitution.

Further, another Constitutional pronouncement is worth mentioning as follows:

“the state shall develop a self-reliant and independent national economy effectively controlled by Filipinos”⁷

This Constitutional provision is only one of many other provisions scattered in the fundamental law of the land. It should be noted that under Section 14, Article XII, Filipino citizens receive special constitutional protection

⁵ Tax Reform Act of 1997

⁶ Section 7, Article II, 1987 Constitution.

⁷ Section 19, Article II, 1987 Constitution.

in the practice of their professions. It establishes the general rule that the practice of all professions in the country shall be limited to Filipino citizens.

Other provisions in the Constitution include Section 1 of Article XII on expanding productivity and promoting industrialization; Section 12, Article XII on preferential use of labor, domestic materials and locally produced goods; and Section 13 of the same Article on the pursuit of trade policy for the general welfare.

Every rule, however, admits of certain exceptions and foreign investments in the form of technology transfer agreements or licensing agreements should necessarily be afforded certain exceptions within reasonable bounds.

Moreover, even constitutional provisions should not be given a narrow and strict interpretation.

The Supreme Court in *Tuazon v. Land Tenure Administration*⁸ had the occasion to state that:

“The words in which constitutional provisions are couched express the objective sought to be attained. They are to be given their ordinary meaning except where technical terms are employed in which case the significance thus attached to them prevails.

“The Constitution is not to be construed narrowly or pedantically, for the prescriptions therein contained, to paraphrase Justice Holmes, are not mathematical formulas having their essence in their form, but are organic living institutions, the significance of which is vital nor formal. There must be an awareness, as with Justice Brandeis, not only of what has been, but of what may be.

“The words employed by it are not to be construed to yield fixed and rigid answers but as impressed with the necessary attributes of flexibility and accommodation to enable them to meet adequately whatever problems the future has in store. It is not, in brief, a printed finality but a dynamic process.”(Emphasis supplied)

⁸. G.R. No. L-21064. February 18, 1970.

Moreover, legal authorities are in unison that certain prohibited provisions may be allowed a liberal interpretation in certain cases – such as shortages in domestic capital and lack of technological expertise – with the end in view that foreign investments can be sought for financial and technical assistance – *exitus acta probat*⁹.

The late Prof. Nolleto supports such view as follows:

*“Foreign investments are not necessarily harmful for Philippine economy. Since no nation can have absolute economic independence from the family of nations, there will always be some form of cooperation, investment being one form. However, as the Philippine economy advances with greater productivity and growth of domestic capital, the need for foreign capital can be expected to diminish.”*¹⁰

The provisions cited in the Constitution can be said to be far from absolute. The phrase, “...save in cases prescribed by law” provides us with reasonable flexibility to make exceptions in certain cases, as well as to maintain the option for reciprocal rights between the Philippines and its foreign counterparts.

We need not look further than to re-examine the declaration of policy found within the IP Code itself, which states that:

“Sec. 2. Declaration of State Policy. – The State recognizes that an effective intellectual and industrial property system is vital to the development of domestic and creative activity, facilitates transfer of technology, attracts foreign investments, and ensures market access for our products. It shall protect and secure the exclusive rights of scientists, investors, artists and other gifted citizens to their intellectual property and creations, particularly when beneficial to the people, for such period as provided in this Act.

“The use of intellectual property bears a social function. To this end, the state shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good.

⁹. The event justifies the deed.

¹⁰. Nolleto, *The New Constitution of the Philippines*, 1990.

“It is also the policy of the State to streamline administrative procedures of registering patents, trademarks and copyright, to liberalize the registration on the transfer of technology, and to enhance the enforcement of intellectual property rights in the Philippines.”

A closer perusal of the above-mentioned section provides that the state has a dual function when it comes to intellectual property – that of the protection of intellectual property owners *vis-à-vis* the diffusion of said intellectual property for the promotion of national development and progress and necessarily the general welfare.

Take note that the last paragraph uses the word “*liberalize*” to qualify the registration of technology transfers.

This means that the prohibitive clauses contained under Section 87 are not absolute but may be interpreted in such a way as to allow exceptions in certain meritorious cases.

Further, in keeping with established rules of statutory construction, said provisions should also be construed in relation to other pertinent provisions of the Code.

Hence, Sections 87 and 88 should not be studied as detached and isolated expressions or provisions but the whole and every part of the statute must be considered in the interpretation of said sections 87 and 88¹¹ and it should be remembered that every provision of a statute must be given effect.¹² This brings us to the another provision of the IP Code.

The Declaration of State Policy of the IP Code has already been stated. Yet, in determining further if the prohibited clauses enumerated under Section 87 is open or subject to certain exceptions we only need to look at Section 87 itself when it provides for an excepting clause in the form of Section 91 as follows:

“Sec. 91. Exceptional Cases.- In exceptional or meritorious cases where substantial benefits will accrue to the economy, such as high technology content, increase in foreign exchange earnings, employment generation, regional dispersal of industries and/or substitution with or use of local raw materials, or in the case of Board of Investments, registered

¹¹ Araneta v. Concepcion, 99 Phil. 709; Tamayo v. Gsell, 35 Phil. 953; Manila Lodge v. CA, GR L-410011, September 30, 1976; Lopez v. El Hogar Filipino, 47 Phil. 249.

¹² Salaysay v. Castro, 98 Phil. 364.

companies with pioneer status, exemption from any of the above requirements by the Documentation, Information and Technology Transfer Bureau after evaluation thereof or a case by case basis.”

The presence of the above provision further buttresses the position that the prohibited clauses enumerated under Section 87 are not absolute, and that it admits of certain exceptions – *omnis regula suas patitur exceptionis est omnis exception est regula*.¹³

Hence, Section 91 enumerates the circumstances described as exceptional and meritorious that may be used as a ground in exempting a licensing agreement application from complying with Section 87.

It should be noted that Section 91 is deemed a special provision and Sections 87 and 88 are general provisions. *Generalia specialibus non derogant*¹⁴ - where there is in the same law a particular or special provision, and also a general provision which in its most comprehensive sense would include what is embraced in the special or particular provision, the latter must be operative, and the general provision can only affect such cases as not within the particular or special provision.¹⁵

Further, the Intellectual Property Code was enacted by the legislature with the end in view of streamlining our intellectual property laws to further the economic policy of government of enticing more foreign investments in the country.

Even the Supreme Court, in a long line of cases, has adopted the liberal approach in order to fully carry into effect the purpose of the law.¹⁶ This is specially true to remedial legislation, as it should lean towards a liberal view because of the principle long accepted that remedial legislation should receive the blessings of liberal construction¹⁷.

It is therefore humbly submitted that a strict interpretation with no breathing space with regards to Sections 87 and 88 would be defeating the very purpose of the law's passage – *ratione cessat lex, et cessat lex*.¹⁸

¹³ Every rule is subject to its own exception and every exception is a rule; see also *Hodges v. Municipal Board*, L-18276, January 12, 1967.

¹⁴ General words do not derogate from special words.

¹⁵ *Manila Railroad v. Collector of Customs*, 52 Phil. 950; *Neri v. Akuti*, 74 Phil. 185; *Lichauco v. Apostol*, 44 Phil. 138.

¹⁶ *Bautista v. Murillo*, G.R. No. L-13374. January 31, 1962.

¹⁷ *City of Baguio v. Marcos*, G.R. No. L-26100. February 28, 1969.

¹⁸ When reason for the law ceases, the law ceases.