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WORLD INTELLECTUAL PROPERTY ORGANIZATION
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WIPO GENERAL ASSEMBLY

Twenty-Eighth (13th Extraordinary) Session
Geneva, September 23 to October 1, 2002

POLICY ADVISORY COMMISSION (PAC)

Memorandum of the Director General

1. The Assemblies of the Member States of WIPO approved, in their thirty-second series of meetings, from March 25 to 27, 1998, the proposal contained in the 1998-1999 biennial Program and Budget to establish the Policy Advisory Commission (PAC), comprised of eminent individuals from a wider range of policy backgrounds. It was noted that “the policy-making and medium-term planning processes of WIPO, its responsiveness to international trends and technological developments, and its capacity to anticipate and to meet the needs of the market sector and users of global protection systems, would benefit considerably from the availability of informed and objective advice from eminent international experts from a broad range of fields with bearing on intellectual property cooperation and WIPO’s operations” (see document A/32/2 - WO/BC/18/2, Sub-program 01.3).

2. The mandate of this independent advisory body was defined in the same document (see Sub-program 01.3) and reaffirmed in the most recent Program and Budget of the Organization (see WO/PBC/4/2, Sub-program 02.2). The PAC was to “identify and comprehensively review issues that may need to be dealt with by WIPO, or that may have bearing on its operations and formulate recommendations for policy development and enhancement of WIPO’s operations.”

3. It should be noted that the role of the two Commissions is strictly advisory and consultative and shall “never replace or diminish the role of the Member States in the initiation and monitoring of the program of the Organization.” WO/PBC/4/2 reiterates that “advisory input continues to be ancillary only, and does not replace or diminish the role of the Member States in the initiation and monitoring of the programs of the Organization”.

4. The third meeting of the PAC took place on October 11, 2001, at the WIPO Headquarters. Twenty-one members attended the meeting, as well as one representative of a member, and its report to the Director General of WIPO is contained in Annex I. The list of participants at the meeting is contained in Annex II. A meeting of the Task Force of the PAC took place in Beijing on May 22, 2002.

5. The General Assembly is invited to note and comment on the present document and the report to the Director General of WIPO.

[Annex I follows]

ANNEXI

POLICY ADVISORY COMMISSION

REPORT OF THE THIRD MEETING
GENEVA, OCTOBER 11, 2001

1. Upon the invitation of Dr. Kamil Idris, Director General of the World Intellectual Property Organization (WIPO), the Policy Advisory Commission (PAC) of WIPO held its third plenary meeting on October 11, 2001, at WIPO headquarters in Geneva.
2. The list of participants is attached. Ms. Dolores Jiménez Hernández acted as rapporteur for the meeting.
3. The meeting was opened by the Director General, who welcomed the members and thanked them for their individual and collective presence. This presence, he said, was a clear demonstration of the growing importance of intellectual property for economic development and wealth creation and of the relevance of the PAC itself.
4. In outlining the path ahead, the Director General stated: "today, it is a challenge for all — international organizations, the NGO community, the market sector and the non-state actors — that we move from the rhetoric of universal dream to the realization of all these important dreams and objectives." He reiterated the commitment of WIPO to work closely with this eminent group, in seeking ideas that could help to streamline the policies and activities of the Organization.
5. PAC members appointed President Guido de Marco of Malta as Chairman of the Commission.
6. President De Marco noted that the role of the Commission was "to bring the wealth of experience of persons who are not necessarily experts in patents and in copyright, but who because of the political dimension of their responsibilities are very much abreast of what is happening to us all." He spoke of the inherent human capacity to create and added that as the world has moved into digital revolution and new concepts in creativity, it needs the legal framework to keep abreast of change; in this sense, he considered it a privilege to serve the PAC in dealing with topical matters and events that so much impact our daily lives.
7. The agenda for the meeting included two substantive issues, namely:
 - (i) Agenda for Development of the International Patent System;
 - (ii) Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore.
8. PAC members addressed the agenda items in the broad context of the future of the intellectual property system, and in so doing they introduced to the discussions such issues as the critical role of WIPO, the importance of its contribution, its unique competence and the

need for continuity of leadership, if the intellectual property system is to be developed to serve all countries and users in responding to the challenges of the times.

9. In introducing the agenda items, the Director General expressed his belief that in the patent system lies the primary facilitator of human innovation and in traditional knowledge lies the roots of our common culture and heritage. "This is precisely why, in our vision, the empowerment of people is the central role of WIPO, and in empowering people we need to take into account that they should be able to produce, compete and trade, and for that we need justice and not charity, full participation and not merely integration."

Agenda for Development of the International Patent System

10. Under this item the Secretariat and Mr. Patrick Smith, former Director General, Australian Industrial Property Organisation, made a presentation on the project approved at the last session of the Assemblies of the Member States of WIPO. This project includes the initiative of the Director General to launch worldwide consultations aimed at preparing a strategic blueprint for the development of the international patent system, which will focus on the increasing demands of global users, making it more accessible and user-friendly, and provide a more equitable balance between the rights of inventors and the general public. It was noted that feedback from PAC members, as policy-makers, was important in ensuring alignment between global and national agendas and also to increase the desired political momentum.

11. Statements by PAC members revealed broad agreement on the inherent value of intellectual property to the world and to human development. In this context, members discussed the serious problems and difficulties facing the intellectual property system and emphasized the significance of addressing them with a view to finding far-reaching solutions.

12. The members praised the Director General's courage in dealing with the many complex aspects of the matter in a comprehensive manner, and in taking an integrated approach, encompassing all technical and political concerns and interests involved. The timeliness of the initiative was also praised, as it came precisely when "the patent system is at... a crisis in terms of the ever-increasing over-workload caused by duplication worldwide in processing patent applications," and when "... the classical paradigms and assumptions on which the world economic foundations relied and evolved over the last decades are being questioned."

13. President Ion Iliescu of Romania noted that technological change and increasing "dematerialization" of the concept of property lead to new forms of economic power and the way it is exercised, implying the evolution of new dynamics in production and commercial strategies. He stated that intellectual property, being central to this process, must not be regarded as only an object worth being protected, but also as "an instrument that is essential to our integration in these dynamics." Any country that wishes to achieve economic stability and growth, the President said, needs a strong system of protecting and promoting intellectual property, which should induce the trust and confidence of investors as well as stimulate creation. The President urged WIPO to help put into practice the concept of the knowledge-based economy to the benefit of all countries, saying that as a promoter of policies, with global relevance, WIPO can contribute to reducing the "knowledge divide."

14. Referring to the encouragement and advancement of creativity as an important factor in production, President Petar Stoyanov of Bulgaria spoke of a unique opportunity to reduce the distance between the most advanced and other nations. He concurred that the conceptualization and creation of a global patents system is a major challenge for the international community, and considered that it was important for WIPO to continue to provide strong leadership in developing the patents system to support the release of creative potential for economic benefit without unnecessary obstacles. While acknowledging the merits of strong intellectual property protection, he also stressed the need to make the system more accessible, saying that not only the vertical development of the system, but more importantly its broadening, should be encouraged, so as to offer equal opportunities to all creators irrespective of their financial or economic strength.

15. General expectations and concerns were discussed, in particular about how much harmonization was feasible, considering both the wider range of stakeholders in the work of WIPO, including creators, consumers and producers, and also the considerable variations in the stages of technological and economic development of different countries. How to reconcile them all? How to make the intellectual property system affordable to all creative persons and entities? And how to ensure that the system operates to the maximum benefit of all who participate in it, were among the questions raised.

16. The Director General specified that the entire process of simplifying the intellectual property system, and more particularly the patents system, which is currently highly complex due to the existence of several related treaties administered by WIPO, is precisely intended to create a broad basis of consensus among the widest possible range of beneficiaries from all countries.

17. Here recognized that the word "patent" itself was regarded by some as carrying negative connotations. But it was a matter of self-evident fact that patents meant innovation, inventions and technology, including the technology created by indigenous peoples and others; and to that extent the patents system is clearly a preeminently important catalyst for economic growth and development. It should therefore be of interest to all nations, all communities and all economic disciplines.

18. Members of the PAC strongly supported the need to review and improve the legal and administrative framework of the intellectual property system, as well as the range of services offered to traditional and new users and beneficiaries. In this context, the importance of ensuring cooperation for identifying the necessary changes in the structure and the functions of national and regional patent offices as well as for their enhancement and gradual transformation in order to remain relevant, was emphasized. International preliminary examination offices should be able to maintain or even increase the quality of their examinations, so that the possibility of national patents being based on an international preliminary examination might be considered.

19. Questions were raised, and suggestions made, on issues such as how to set up effective mechanisms to retain talent in the country of origin; how to deal with the destructive potential of counterfeit creations; and how to measure and confirm the impact of intellectual property in human development indicators. In sharing national experiences, it was pointed out that developing countries with limited resources often have to make a choice between whether they should invest in a national patents system and continue to duplicate the examination of patent applications, or, alternatively, invest in promoting the use of the system

in general, including by small and medium-sized enterprises (SMEs), universities and research centers. In recognizing the need to mobilize financial support for creators, WIPO was invited to explore possibilities of establishing national and international funds or foundations, including by the means of television programs on intellectual property worldwide.

20. The Commission agreed that in view of the magnitude of the challenge, the support of senior political leaders was necessary for real and balanced solutions, and stressed the need for increased momentum through political advocacy in a number of capitals, to explain to the leaders of the executive, legislative and judiciary branches the objectives of the Patent Agenda.

21. In reaffirming the relevance of the patent agenda the following resolution was adopted:

“The Policy Advisory Commission, in recognizing the critical role of WIPO, strongly supports the WIPO Patent Agenda and the Director General’s vision, strategy and strong leadership, in leading worldwide consultations with the view to shape the strategic blueprint for the future development of the international patents system. It also strongly supports WIPO’s effort to create political momentum worldwide so as to achieve the expected objectives of the Patent Agenda.”

Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore

22. Following a presentation made by the Secretariat on this matter, all participants shared their views in an open dialogue and agreed on the relevance of this subject not only in itself but also as an integral part of any discussion on the future of the intellectual property system, including the agenda of the patents system.

23. Traditional knowledge and related issues was recognized by all members as an area of huge economic, social and cultural impact in which the world needs to transcend the general debate and find solutions, either by means of recommendations or legal instruments of protection. In this context the creation of the WIPO Intergovernmental Committee was highly appreciated and the importance of its current and future work acknowledged.

24. Members discussed several approaches to be explored, such as the step-by-step approach, to that of seeking quick comprehensive solutions. From the approach that emphasizes the protection of access to genetic resources through model law clauses, to that of establishing a Convention. The prevailing inclination was towards providing a substantive role to WIPO so that it leads and guides the process.

25. In the context of national strategies to promote and protect products of origin, which generally involve a component of traditional knowledge and relate to low-income social groups or communities, comments were made highlighting the value of existing intellectual property instruments such as those concerning geographical indications. Successful experiences in the use of such instruments were mentioned as an illustration of policy development in this field: graduating from national economic policy, to industrial or agro-industrial policy, to intellectual property policy.

26. Members recognized that WIPO has already made an important contribution in this field, but stressed that the Organization, in addressing the issues, should not limit its options only to traditional concepts, or attempt to force a one-size-fits-all solution. Among the difficulties apparent, an immediate challenge was the insufficient awareness within interested groups, both of their rights and of the various possibilities that are offered by the intellectual property system.

27. It was recalled that a common historical thread of PAC discussions was the desire to create a comprehensive system protecting knowledge; if this knowledge was to be used for the benefit of humanity, then traditional knowledge should clearly be part of the agenda. It was emphasized that the context in which the PAC considered the patents system was one where the dynamics of change were a paramount consideration, and traditional knowledge was very much concerned with change.

28. The Commission recognized that there is room for the protection of traditional knowledge. Some recalled that while WIPO is recognized as having the requisite expertise, there nonetheless exists strong competition for influence; therefore, WIPO should act quickly and not only in the context of the WIPO Intergovernmental Committee (which, it was mentioned, should also explore the soft law approach) but additionally through parallel measures and tools for international protection, such as encouraging adhesion to the Lisbon Agreement and building capacity to help national offices to develop intellectual property assets from their local traditional knowledge and related resources.

29. The Chairman stated that something new is being conceived. WIPO is moving ahead and must face the challenge of choosing the means and arguments that will best serve the objective.

30. Reaffirming the importance of the work in process and the need to accelerate it, the PAC adopted the following resolution:

“The Policy Advisory Commission strongly supports the recognition by the international community of the inherent value of the contribution of traditional knowledge to the cultural and scientific richness of the world. The PAC also encourages and supports WIPO’s effort to find appropriate intellectual property mechanisms which recognize the inherent value of traditional knowledge and grant protection to traditional knowledge against unauthorized use.”

31. Following completion of the two substantive agenda items described above, brief presentations were made by the Secretariat on WIPO’s work program on Least Developed Countries (LDCs) and on recent developments in the field of copyright and related rights.

The Critical Role of WIPO

32. The debate on the two main agenda items included a discussion on the role of WIPO, with members of the Commission affirming that WIPO has the mandate, expertise, public acceptability, credibility and competence to play a leadership role in these matters; it was the view of members that the Organization is best placed to bring cohesion to the related dialogues presently taking place in a number of international fora.

33. When discussing the patent agenda, it was noted that recognition of the need to find a balance among the interests involved was already an important step in the right direction, but more importantly, it was essential to recognize that synthesizing all the relevant considerations would be a task not only of a legal nature, but also one that concerned commitment and leadership. "Markets are imperfect mechanisms to harmonize all the interests involved and we must start by recognizing the role of WIPO as an integral part of the patent agenda, and also that the agenda is not only about fostering this debate but rather about bringing the debate to a possible reconciliation which makes intellectual property more acceptable for society at large."

34. In discussing traditional knowledge and related issues, it was further noted that the collective experience of the PAC, and the opportunity to discuss issues that might go beyond the existing mandate of WIPO, should serve as a complement to WIPO's efforts. In recognizing the results achieved, it was emphasized that WIPO has a very important role to play in not only the issues discussed but in all interrelated activities which may be taking place in a number of other organizations.

35. This dialogue was summarized by the Chairman of the Commission, who observed that we exist in a world which, paradoxically, yearns for a universal raising of the quality of life, while simultaneously witnessing an increase in the number of LDCs. This fact reflected how critical the role of WIPO, and the need for continuity of leadership, were, in striking a balance between the rights of all sectors involved and in developing policies to channel the potential for intellectual property to address the priority needs of all countries and communities.

36. In the course of the meeting, many members commended the Director General for the broad and substantial progress WIPO had made during the first term of his leadership, and expressed the opinion that it was highly desirable that Dr. Idris should continue to lead the Organization for a second term as Director General.

Recommendations:

37. The Commission recommended:

- That the two substantive agenda items of the third PAC meeting continue to be examined as part of the process of developing the intellectual property system for economic, social and cultural development.

- That the WIPO agenda for the development of the international patents system should be presented to political leaders at the highest possible level, and that independent members of the PAC concerned with international development of the patents system should contribute by advocating the agenda.

- That efforts towards further substantive harmonization of patent law, and PCT reform, should be pursued in a coordinated manner, consistent with the objectives of the global patent system.

- That, in contrast to the case of patents, where political will needs to be mobilized, traditional knowledge was a field in which technical expertise should be mobilized, as political will to move ahead already exists.

-That future subjects for discussion by the PAC could include: the enforcement of IPRs; WIPO's position in facing the challenge of globalization in a changing world; and, the role of WIPO in managing change, in particular the field of valuation of IPRs in the process of privatization.

Conclusion

38. In a continued spirit of independence and integrity, the third meeting of the Policy Advisory Commission was closed with statements of recognition of the vision and leadership of the Director General in developing the intellectual property system to the benefit of all countries. In taking the floor, the Director General stated that the WIPO General Assembly had taken the work of the Commission very seriously, and that it was important that the PAC continue its important work; in that sense, he said, it was possibly desirable that the future agenda of the PAC include one general topic and also specific issues of interest to the entire membership. The dynamic and deep involvement in the debate of all members in the issues discussed during this third meeting was noted, and considered as a gain reflecting the increasing recognition of the relevance of intellectual property, of WIPO and of the PAC itself.

[Annex II follows]

ANNEXII

POLICYAD VISORYCOMMISSION

LISTOFPARTICIPANTSONOCTOBER11,2001

AIMÉJean -Claude,formerExecutiveSecretary,UnitedNationsCompensationCommission (UNCC)

AMIGOCASTAÑEDAJorge,DirectorGeneral,MexicanIndustrialPropertyInstitute, Mexico

ARAIHisamitsu,ChairmanandCEOofNipponExportandInvestmentInsurance, andformerVice -MinisterforInternationalAffairs,MinistryofInternationalTradeand Industry,Japan

BERNARDDaniel,AmbassadorofFranceintheUnitedKingdomofGreatBritaina nd NorthernIreland

BOUTROS-GHALIBoutros,SecretaryGeneral,OrganisationInternationalede la Francophonie,Paris

DEMARCOGuido,PresidentoftheRepublicofMalta

ESSYAmara,SecretaryGeneral,OrganizationofAfricanUnity,AddisAbaba,andforme r StateMinisterandMinisterforForeignAffairs,Côte d'Ivoire

GABAYMayer,President,UnitedNationsAdministrativeTribunal,andChairman,Patent andCopyrightLawsRevisionCommittees,MinistryofJustice,Israel

GYGERWalter,AmbassadorofSwitz erlandinIndia

HERMASSIAbdelbaki,MinisterforCulture,Tunisia

ILIESCUIon,PresidentofRomania

KORCHAGINAlexander,DirectorGeneral,RussianAgencyforPatentsandTrademarks (Rospatent)

LEHMANBruce, President,InternationalIntellectualPrope rtyInstitute,and formerAssistant SecretaryforCommerceandCommissionerofPatentsandTrademarks,UnitedStates ofAmerica

LUCINSCHIPetru,formerPresidentoftheRepublicofMoldova

MARCHISergio,AmbassadorandPermanentRepresentativeofCanad a,PermanentMission ofCanada inGeneva,andformerTradeMinisterforCanada

OLSSON Henry, Special Government Advisor, Ministry of Justice, Sweden, and former Director of Copyright Department, WIPO

PORZIO Marino, attorney, Adviser to the Ministry of Foreign Affairs, Chile

RAMOS Fidel, former President of the Republic of the Philippines

SELEBI Jacob S., National Commissioner, South African Police Service, South Africa

SINGH Nand Kishore, Member of the Planning Commission, Government of India

SONG Jian, Vice-Chairman of the People's Political Consultative Conference of China, and former State Councilor in charge of science and technology development, People's Republic of China

Represented by Mr. SHA Zukang, Ambassador and Permanent Representative to the United Nations Office at Geneva, at the October 11 meeting.

STOYANOV Petar, President of the Republic of Bulgaria

[End of Annexes and of document]