

Second WIPO Inter-Regional Meeting on South-South Cooperation on Patents, Trademarks, Geographical Indications, Industrial Designs and Enforcement

Inter-Regional Meeting
Cairo, Arab Republic of Egypt, May 6 to 8, 2013

SUMMARY OF THE REPORT

prepared by the Secretariat

The Second Inter-Regional Meeting on South-South Cooperation was held in Cairo, Arab Republic of Egypt, as part of the implementation of the Development Agenda Project on *Enhancing South-South Cooperation on Intellectual Property (IP) and Development among Developing Countries and Least Developed Countries (LDCs)*.

OPENING

1. Organized by the World Intellectual Property Organization (WIPO) in cooperation with the Ministry of Foreign Affairs of the Arab Republic of Egypt and the Academy of Scientific Research and Technology (ASRT), the meeting was opened by Mr. Maged Al-Sherbiny, President, ASRT, His Excellency (H. E.) Ambassador Amr Ramadan, Deputy Assistant Minister for Non-Aligned Movement, Organization of Islamic Cooperation and Specialized Agencies, Ministry of Foreign Affairs, Egypt, and Mr. Yo Takagi, Assistant Director General, Global Infrastructure Sector, WIPO. Referring to the WIPO Project on South-South Cooperation as an important fruit of the Development Agenda, H.E. Ambassador Ramadan pointed out the importance of South-South cooperation on the agenda of the United Nations (UN) General Assembly which had urged all UN specialized agencies to strengthen their support to this process by increasing financial, technical and human resources for South-South activities. In order for WIPO to further integrate South-South cooperation into its work and implement some of the proposals put forward during the two inter-regional meetings on South-South cooperation, it was therefore important to allocate, in the next Program and Budget, financial resources dedicated to South-South cooperation. Speaking on behalf of WIPO, Mr. Takagi highlighted the

fact that the project on South-South cooperation was a concrete result of WIPO's efforts to place development considerations at the heart of its work and strategic framework. Taking into account the fact that developing countries had, in recent years, developed innovative means of using the IP system for development purposes, South-South cooperation therefore presented many benefits in terms, in particular, of knowledge and experience sharing.

2. After a brief introduction to the Roundtable on the "Formulation and Implementation of IP Strategies and WIPO's Development Agenda. National Experiences" by WIPO, presenting, in a nutshell, the tools available to guide national undertakings in formulating national IP strategies, Brazil, China, Egypt, India, Japan and the International Centre for Trade and Sustainable Development (ICTSD) presented their experiences in this regard. Some of the main lessons learned included the importance of ensuring effective coordination at the national level, aligning the IP strategy with national development objectives and sectoral priorities, including all the stakeholders in the process, and providing adequate monitoring mechanisms. Keeping in mind the fact that IP strategies were not an end in themselves but rather a tool to achieve broader development objectives, it was important to consider two dimensions when formulating an IP strategy, namely the notion of IP for development (e.g. effective IP administration, protection and utilization) and the notion of development-oriented IP (e.g. use of flexibilities). As pointed out by Japan, a major issue for developing countries and LDCs and necessary foundation to encourage more partnerships was the lack of an adequate IP infrastructure and effective enforcement. As a complement to North-South cooperation, South-South cooperation and the exchange of experiences and lessons learned among developing countries and LDCs was therefore recognized by all as an important vector of cooperation, as highlighted by the recent establishment, in Brazil, of a special fund dedicated to enhancing South-South cooperation in the field of IP in cooperation with WIPO.

3. Setting the stage for the discussions on Topic 1 "The Interface between IP Policy and Competition Policy: Exploring Potential Tensions and Complementarities", Mr. Pires de Carvalho, Director, IP and Competition Policy Division, WIPO, highlighted, in a short video statement, the fact that WIPO's program on IP and competition policy focused on finding the right balance between IP protection and competition, ensuring that IP remained a pro-competitive mechanism and not a barrier to competition. As showcased by Peru's and Egypt's experiences, there were circumstances under which IP and competition law could come into conflict, such as when IP right holders delayed technology transfer to the public domain using anti-competitive measures or when companies refused to grant licenses to retain the monopoly. Taking into account the fact that potential conflicts between IP protection and competition could indeed arise, it was important to put in place legislative mechanisms to solve these and make use of flexibilities such as, in particular, compulsory licensing. As illustrated by the ASRT's successful partnership with a number of countries and other partners to, in particular, harness innovation through an effective use of the IP system, South-South cooperation was an important tool which developing countries and LDCs could greatly benefit from. In this regard, there was a need to, in particular, harmonize practices, develop guidelines and standardize procedures in the field of compulsory licenses and the use of other flexibilities.

4. After a brief video introduction to Topic 2 on "Patent-Related Flexibilities in Multilateral Treaties and their Importance for Developing Countries and LDCs" by Mr. Baechtold, Director, Patent Law Division, WIPO, in which he pointed out the importance of flexibilities in safeguarding the public interest while at the same time promoting innovation and economic development, H. E. Ambassador Ramadan provided an analysis of the TRIPS Agreement aiming, mainly, at balancing rights and obligations in a manner conducive to social and economic development. In the area of public health, paragraph 6 of the Doha Declaration on access to medicines for countries with limited manufacturing capacities was, he pointed out, an important development and it was crucial to ensure that the implementation of the World Trade Organization's (WTO) decision in this regard would benefit developing countries and LDCs facing serious public health crises. Other important flexibilities yet to be fully utilized by many

developing countries and LDCs were those related to utility models. An overview of the situation in the African and Arab region highlighted in this regard the fact that while a number of countries had included flexibilities in their legislations, there had been very little use, if none at all, of these in practice. Lack of technical expertise, awareness of the importance of flexibilities, and clear guidelines were cited amongst some of the main challenges in this field. In this regard, it was suggested that a positive way forward would be to gather information from countries that had successfully implemented flexibilities and compile these into case studies so that their experiences could be shared in the framework of future South-South cooperation activities.

5. As far as Topic 3 on “Patent Systems in Developing Countries and LDCs. The Need for Coherence between Patent Law and Public Policies: Innovation, Health and Trade” was concerned, Mr. Baechtold, Patent Law Division, WIPO, provided a brief video introduction setting the tone for the discussions stressing the fact that one of the most compelling challenge for developing countries and LDCs was to formulate patent laws that were in line with other national policies related to *inter alia* innovation, health, and trade. The absence of national coordination mechanisms in most developing countries and LDCs, as pointed out during the discussion, represented in itself an important challenge, as well as the lack of capacities and capabilities. To achieve coherence between the patent system and public policies and reap the benefits of innovation, it was crucial to acknowledge that the patent system was not an end in itself and for patent policies to be aligned with other public policies. Enhanced exchange of experiences, best practices and lessons learned among developing countries and LDCs in this regard would therefore, it was stressed, be particularly valuable.

6. Topic 4 entitled “Supporting Innovation, Technology Transfer, Patent Information and Knowledge Dissemination. National and Regional Experiences” provided an opportunity to showcase concrete examples from Chile, India, South Africa and the African Regional Intellectual Property Organization (ARIPO), such as in particular Chile’s National Institute of Industrial Property “*INAPI proyecta*” virtual platform encouraging innovation through an effective use of the IP system and the dissemination and transfer of knowledge and technology, India’s Council of Scientific and Industrial Research open-source drug discovery project ensuring, through an open innovation model, access to new drugs for the treatment of neglected diseases, and South Africa’s Innovation Hub, one of the country’s most important science and technology parks set up to spear innovation in the fields of green economies, biosciences and ICT with a specific focus on enterprise and skills development and innovation support. An overview of these national experiences, in addition to ARIPO’s experience in developing a number of tools to promote innovation and enhance the use of the IP system within its Member States, highlighted the importance of gathering information on good practices and lessons learned with regard to the development of science and technology parks and patent information and knowledge dissemination platforms and the importance of building regional networks and mechanisms in this regard.

7. The Roundtable on “South-South Exchanges on Best Practices for the Development of National Patent and Innovation Strategies in Developing Countries and LDCs” provided an opportunity for China, Chile and the ICTSD to share their views and highlight the importance of carefully planning and monitoring the IP system in line with each country’s development priorities and objectives. Absorptive capacity, it was stressed, was a major challenge for developing countries and LDCs in particular and it was therefore important, when formulating innovation strategies, to take into account each country’s level of technological development, capacities and development priorities. In case of weak technological capacities, the IP system had to be used so as to maximize the space for imitation and reverse engineering while respecting international obligations. As far as South-South cooperation was concerned, there were two important areas which could be further explored, namely the commercialization of publicly-funded research and the use of utility models, which, as a type of IP rights used for incremental innovation, were particularly useful tool for countries with low technological

capabilities. It was suggested, in this regard, that WIPO undertake specific initiatives to raise awareness of the importance of utility models in developing countries and LDCs.

8. An overview of the Arab region's experience in terms of partnerships and opportunities for collaboration with South American and African countries in the framework of the Roundtable on "South-South Exchanges on Infrastructure and Institutional Capacity for an Effective Use of the Patent System in Developing Countries and LDCs" highlighted the importance, for the future of South-South cooperation in the field of IP, of a political framework for cooperation. Taking into account the role of civil society in advocacy and policy negotiations, the importance of ensuring inclusion of civil society in future South-South cooperation initiatives was also stressed, in addition to the role, as facilitators, promoters and catalysts, of intergovernmental and non-governmental organizations. Geographical commonalities and proximity were also important factors in the norms diffusion process and experience had shown, as highlighted by the example of the use of compulsory licenses in Africa, that regional proximity had played an important role in the use of TRIPS flexibilities in the region. As showcased by India's experience, it was also crucial, at the national level, to ensure government support to the process through concrete initiatives and incentives to encourage an effective use of the patent system. In this regard, the development of the *Traditional Knowledge Digital Library (TKDL)*, a resource classification and patent search mechanism against the misappropriation of traditional knowledge in India, was a good example of a successful initiative and experience which had been and could be further shared in the framework of future South-South cooperation activities.

9. Setting the stage for Topic 5 on "Trademarks and Other Distinctive Signs and the Public Domain: Main Policy Issues Facing Developing Countries and LDCs", Mr. Höpperger, Director, Law and Legislative Advice Division, Brands and Designs Sector, WIPO, highlighted in a short video statement the fact that there were many different approaches as to which signs could be protected and registered and that the Secretariat had prepared a guiding document on relative and absolute grounds for trademark protection refusal to assist Member States in this area. A specific study focusing on trademarks and the public domain and reviewing, in particular, country practices regarding which signs could be registered and which ones should be kept free, excluding certain signs from protection (general exclusion from registration and protection for deceptive signs for instance and exclusion on the basis of the distinctiveness requirement), had also been carried out. In this regard, it was pointed out, a situation which caused some concerns as far as the public domain was concerned was the increased use of trademark protection once patent or copyright protection had expired, as illustrated by the Lego brick case. In addition, developing countries and LDCs were faced with increased counterfeiting and frauds in the trademark registration process. Enhanced cooperation and exchange of experiences between trademark offices from developing countries and LDCs would therefore, it was stressed, be an important step forward.

10. After a brief video introduction to Topic 6 on "Geographical Indications (GIs) in the Implementation of Public Policies: Best Practices and the Socio-Economic Dimension of GIs" in which the Secretariat pointed out to a WIPO publication entitled "*Geographical Indications – An Introduction*" as a useful source of information on GIs, a series of presentations and examples of successful uses of GIs by Cuba, Ethiopia, Thailand and ARIPO highlighted the importance and potential of GIs as a tool for development. By increasing the value of local products, GIs promoted local traditions and culture and boosted the development of local communities. Challenges in this regard however included the need for an adequate political and regulatory framework, lack of capacities and resources to develop and implement GI strategies, lack of awareness of the value of GIs, and the need for encompassing strategies including aspects related to marketing and business planning. Exchanging successful experiences, best practices and lessons learned in this regard, it was stressed, would greatly benefit developing countries and LDCs.

11. Introducing the Roundtable on "South-South Exchanges on Best Practices for the Development of IP and Branding Strategies in Developing Countries and LDCs" with an

overview of the WIPO project on *IP and Product Branding for Business Development in Developing and Least-Developed Countries* showcasing the development of IP and branding strategies for nine products in three countries, Panama, Thailand and Uganda, Mrs. Toso, Senior Advisor, Special Projects Division, WIPO, pointed out the importance of an encompassing approach, involving all the stakeholders (IP authorities, producers and consumers) in the process and complementing the IP strategy with an appropriate marketing strategy. Best practices consolidated into a framework for action and step-by-step guide for the design of IP and branding projects would be shared with Member States as a result of this project. Country experiences, in particular from Cuba, Thailand and Uganda, also emphasized the importance of linking GI strategies with national development priorities and the importance of capacity-building, awareness-raising at the local and community level, and government leadership and support.

12. With regard to Topic 7 entitled “Protecting Industrial Designs: Current Issues and Future Trends”, a short video introduction from the Secretariat highlighted the fact that industrial design registrations had doubled over the last ten years and that policymakers worldwide had started recognizing the important contribution of industrial design to innovation and economic growth. Major challenges from the point of view of developing countries and LDCs in this regard were the lack of awareness and infrastructure for design filing and protection, the need for a more user-friendly framework for filing and examination, and jurisdictional differences in the legal framework and scope of protection.

13. The Roundtable on “Industrial Design, Innovation and IP Protection: National Strategies. Experiences of Developing Countries and LDCs” provided an opportunity to further discuss the question of industrial design protection from the point of view of the Republic of Korea, Ethiopia and Egypt and highlighted, in particular, the importance of government initiatives, promotion and protection strategies to boost this sector and the need for automating the filing and examination process to reduce costs and increase efficiency.

14. Under Topic 8 entitled “IP Rights Infringements and Enforcement: Accounting for Socio-Economic, Technical and Development Variables, including in the context of Recommendation 45 of the WIPO Development Agenda”, the national experiences of Cambodia and South Africa highlighted the importance of cooperation between enforcement authorities, government agencies and right holders, as well as the importance of building an IP culture and raising awareness of IP as a tool for innovation and creativity for society at large. Lack of resources, awareness, consumer attitude, and lack of information-sharing and cooperation at the national level and across borders remained major challenges in the field of enforcement to ensure that society as a whole could reap the benefits from the IP system. South-South cooperation was in this regard an important vector to exchange experiences, good practices and promote information-sharing and cooperation between enforcement agencies and IP offices. An alternative view put forward during the discussion on enforcement stressed the importance for developing countries and LDCs to look at practices at grassroots level so as to identify the best approach for each country, ensuring a balance between protection, repression and access to knowledge.

15. A brief video introduction by Mr. Vermandele, Deputy Director, Building Respect for IP Division, WIPO, on Topic 9 entitled “Experiences and Lessons Learned of the Contribution of Right Holders to IP Enforcement and the Cost Thereof” set the stage by pointing out the important role of right holders in the field of enforcement in terms, in particular, of awareness-raising and cooperation with enforcement agencies and consumer groups. From Egypt’s perspective and experience from the point of view of the software industry and pharmaceutical sector, IP protection and enforcement were two sides of the same coin, but lack of awareness and resources remained a major challenge for developing countries and LDCs, as well as jurisdictional differences in protection and enforcement mechanisms.

16. The final Roundtable on the “Fight against Piracy and Counterfeiting in Developing Countries and LDCs: Progresses and Challenges. National Strategies” provided an opportunity for South Africa and Cambodia to highlight national initiatives undertaken in this regard, such as in particular South Africa’s latest campaign against piracy and counterfeiting focusing on the value of IP rights and their contribution to socio-economic and cultural development, and Cambodia’s experience in terms of the importance of sharing information with the increase, in particular, of counterfeit products on the Internet and counterfeit medicines, two important challenges for developing countries in the field of enforcement. As highlighted by the League of Arab States, strengthened cooperation with the private sector and civil society, the development of appropriate legal frameworks, and increased regional and international cooperation to control the flow of counterfeit goods were also essential elements to ensure effective enforcement.

17. Concluding the meeting, the final discussion provided an opportunity to review the main ideas and proposals on the way forward with regard to South-South cooperation in the field of IP. In this context, a number of Delegates reiterated their support to the South-South cooperation process and the importance of following-up on the proposals put forward during the two inter-regional meetings on South-South cooperation organized in the framework of the WIPO Project on South-South cooperation through, in particular, the allocation of resources dedicated to South-South cooperation in the Organization’s Program and Budget. As agreed, it was pointed out that the Secretariat would prepare a detailed report containing all the discussions and ideas put forward during the meeting, which would be shared with Member States in the framework of the *Second WIPO Annual Conference on South-South Cooperation* to be held in conjunction with CDIP/12.

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