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**Second WIPO Annual Conference on  
South-South Cooperation on Intellectual Property and Development  
Geneva, 22 November, 2013**

Presentation of the Report of the Second Inter-Regional Meeting  
on South-South Cooperation on Patents, Trademarks, Geographical Indications,  
Industrial Designs and Enforcement.

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Cluster 1: IP Strategies and Competition:

The first cluster of the Cairo meeting dealt with two interlinked issues that are fundamental to IP, namely: IP Strategies, and IP and Competition.

An introduction to the session was made by WIPO presenting details of work undertaken in the DA implementation focusing on developing national IP strategies and methodologies. National experience on the evolution of IP systems, and the development of IP strategies were present from five national experiences, as well as the view point of ICTSD. A succinct encapsulation of a development-friendly IP strategy has been summed up by saying that the starting point should not be IP, but a country's development and public policy objectives, tailored to its level of development. Key attributes common to most of the national experiences presented have been the need for coordination among all national agencies, as well as cooperation with industry, allowing for the alignment of the objectives of all main stakeholders. Training has also been highlighted as an essential component in national IP strategies.

With regard to the session on competition, an introduction by WIPO served to frame the IP-Competition debate. IP was presented as being an inherently pro-competitive mechanism, but this held true only when the assets covered by the IP were genuinely differentiating. Otherwise, the assets lack of differentiation would defeat the purpose, thus leading to confusion and hence defeat competition. It was therefore essential to find the proper balance. Indeed, in Peru's experience, it was confirmed that IP rights mainly encouraged innovation and the development of incremental technologies, and therefore as an instrument, it stimulated rather than curbed competition. Nonetheless, the potential conflict between them stemmed from the fact that IP right-holders could be inclined to delay technology transfer to the public by using anti-competitive practices. It was essential therefore – as was presented by WIPO, that there be cooperation between IP offices and competition authorities. Indeed, Peru presented a live example of this where INDECOPI was simultaneously the IP and Competition authorities in one. One of the presentations also focused on the centrality fo the instrument of compulsory licensing in any treatment of IP and competition. The

presenter from Peru also emphasized the need for further exchanges between countries of the South in this IP-Competition nexus.

### Cluster 2: Patents:

Cairo discussed five facets of the patent system. Three of these facets have been at the core of global IP discussions in the last decade and a half at least, namely: flexibilities; coherence with public policies; and transfer of technology and knowledge. Two further facets were dealt with, namely, the fundamental question of patent policy and innovation, and the topic where WIPO has been most active in during recent years, that of infrastructure development and institutional capacity building.

On flexibilities, the relative nature of the use of flexibilities was emphasized at the outset, most notably as it relates to the level of development. A case study of sorts was presented in this regard, which is perhaps the most relevant example of concerted developing country cooperation at the multilateral level in the area of patent flexibilities – that of WTO action on TRIPS flexibilities in the Access to Medicine debate. This process was described in two of the presentations as confirming policy space. It was also underlined from a South African perspective, that public health had been the focus of talk on patent flexibilities, but the future might hold equal treatment for areas such as climate change and energy security challenges. It was emphasized that part of the challenges faced in Africa and the Arab World was the lack of awareness of the patent system, and of technical capacity and expertise. While the laws had the flexibilities, their use was not sufficiently widespread and limited to public health or national emergency situations. Political pressure had also been cited as a reason to shy away from their use. It was not sufficient to have the flexibilities in place, but there is a need for clear guidelines and more awareness on the importance of flexibilities. A presenter also noted the detrimental effects of TRIPS-Plus arrangements that were diminishing the policy space available through flexibilities.

On coherence with public policies, the presentations tackled the question of the role of patent law and innovation, vis-à-vis ensuring competition and public policy priorities. While one presentation emphasized the centrality of patent law to innovation, the rest of the presentations leaned towards the need to ensure market competition. A coherent policy meant taking into account achieving different public policy priorities, including competition and innovation, and not simply to look at the IP regime as an end in itself. Two presenters warned against increased patent grants that adversely affected the quality of patents, and invisible harmonization through patent processing and examination procedures. The essence of a development-oriented patent policy was described as a patent system that was coherent with public policy.

With regard to technology transfer, patent information and knowledge, three national experiences from Chile, India, and South Africa were presented as well as the regional experience of ARIPO. Two of the presentations (Chile and India) emphasized the role of entrepreneurship and the market. While one presentation recounted its experience in creating innovation through entrepreneurship, the other noted the market driven nature of innovation and the problem in developing countries when the market mechanism failed in the innovation cycle. There was the situation in

DCs where the market was not responding to local needs (neglected diseases), and others where there was no market demand for what was being developed in the labs. Hence, this model focused on non-exclusive licenses, without the motivation of financial returns. ARIPO's regional example highlighted the need for regional networks, while South Africa's example noted the need for the IP system to be integrated into the innovation eco-system.

Three presenters tackled the issue of national patent and innovation strategies. China and Chile emphasized the strong linkages between an effective patent system and innovation. China's strategy relied on enhancing patent quality and competitiveness, encourage R&D, promote patent utilization, and strengthen the availability of patent information. A different perspective was given by ICTSD, focusing on LDCs, and emphasizing the crucial role played by absorptive capacity in innovation. Again re-surfacing the issue of the market, and the need to promote technology transfer beyond normal market flows. An important question was also raised in this regard, on whether all patents equated innovation, the key being patent quality. It was also suggested that innovation is not only about patents, but equally about R&D, trade, investment, ICT, procurement, competition and industrial policies, technical standards, etc. Each IP system should be tailored to each country's level of technological development.

On the issue of infrastructure and institutional capacity for an effective use of the patent system, the experience of the Arab League's bilateral cooperation arrangements, particularly with Latin America was presented, and so was the view of civil society on SSC in the IP area, and particularly in the area of health. The Indian experience in this area was presented, explaining various mechanisms for funding innovation. An interesting brief on India's Traditional Knowledge Digital Library was also given, focusing on its use as a defensive protection tool against misappropriation of TK. It has also become the basis for international cooperation.

### Cluster 3: Trademarks & GIs:

The Cairo meeting dealt in the third cluster of issues with the two types of IP protection, trademarks, GIs, and the related overarching theme of Branding strategies.

In its treatment of trademark protection, the first session focused on the question of the public domain, a constant consideration for the registration of signs. Two of the presentations tackled the WIPO Development Agenda Recs. 16 and 20 emphasizing the need to preserve the public domain, and the related DA Project thereon. The trademark was also explained as a marketing tool for consumers. The key intended attribute to TMs was that they should protect consumers against confusion. However, should the level of protection go beyond that, then there is a need to consider policy space for adopting exceptions to trademarks. This view was emphasized in one of the national presentations where it was emphasized that protection should not affect free speech, nor lead to abusive enforcement, or anti-competitive practices. An interesting question was raised on the links between trademarks and TK. The need to adopt measures to protect against counterfeit products was also presented, in part through awareness raising. Equally so, technology transfer was raised as one of the key priorities needed.

The session on GIs presented three national experiences in the use of this form of protection, in addition to the regional perspective of ARIPO. An induction into the history, and various forms of GI protection was presented at the outset by WIPO. All presentations focused on the beneficial effects of GIs. In Cuba, Ethiopia, and Thailand, it was portrayed as a marketing tool for collective rights promoting community development, and specifically rural development. The ARIPO region, while it did not yet have concrete examples of use, yet saw significant potential for it. Advice was highlighted on the need to integrate GIs into national development plans.

The roundtable on Branding Strategies brought an explanation of the topic through the examples of the three country cases undertaken in the DA project on branding, namely Panama, Thailand, and Uganda. The Cuban experience was also presented. The contribution of the branding strategies – essentially through GI protection, was again emphasized in the national experiences. Nonetheless, it was emphasized that branding was a long process, with IP as only one key aspect – similar to the situation with innovation, where IP was also one element.

#### Cluster 4: Industrial Designs:

Two sessions were devoted to the cluster on industrial designs, one focusing on current issues and future trends, while the other focused on industrial design and innovation. A presentation by WIPO focused on the rising importance of industrial designs, and pointing out that in the last ten years there has been a two-fold increase in the number of registrations. The presentation focused on what the Organization was doing to facilitate registration. The national presentations from Egypt, Republic of Korea and Ethiopia exchanged national experiences. The need to encourage fair competition and innovation was emphasized. The presentations from Egypt and the Republic of Korea underlined the problem of confusion in industrial design protection. What constituted a design element that needed protection? And also, given that industrial designs could be protected under a number of laws, there was confusion in this regard as well.

The presentation from Korea highlighted the national experience in design promotion starting in the 1960s, and reaching a point nowadays where design was looked upon as perhaps even more critical than engineering. Finally, there was also an informative presentation on the IP system in Ethiopia and the various tools of protection, including for industrial designs.

#### Cluster 5: Enforcement:

The last cluster of the Cairo inter-regional meeting dealt with IP Enforcement. Three levels of the issue were discussed. Primarily, how to account for socio-economic, technical and development variables, then on to a discussion of the contribution of right-holders to enforcement, and finally, the more widely discussed and animated level of the enforcement debate of the fight against piracy and counterfeiting.

Three presentations were given on the socio-economic aspects of IP enforcement, including two overviews of the national experience of Cambodia and South Africa. The role of DA Recommendation 45 was seen having created a new dimension to enforcement, instilling development and social concerns. The presenters emphasized the importance for each government to develop its own IP policy, strategy and work plan on enforcement. The balance between the public interest and the rights of the right-holder was the litmus test of this strategy. The South African perspective emphasized the notion of cooperation between all stakeholders in IP enforcement, and particularly that the involvement of the private sector and right-holders was essential. This last point was also corroborated by WIPO, which underlined the importance of cooperation between public authorities and right-holders. While it was noted in the experience of Cambodia that the main challenge in enforcement was consumer attitude and awareness, where counterfeit and pirated goods were often endorsed by consumers.

The presentation given by WIPO focused on the importance of effective IP protection and respect for IP in promoting economic growth and development through innovation and creativity. Indeed, the point was emphasized that without adequate protection, the IP system would be undermined. The work of the Advisory Committee on Enforcement (ACE) was also presented. In WIPO's experience, and as substantiated by the presenters from Egypt, South Africa, Cambodia, and the League of Arab States, awareness raising was a critical element in the success of enforcement efforts, and more so than punitive enforcement. A difficulty highlighted by WIPO and other presenters was the fact that enforcement implied the need for resources, and this issue was particularly difficult for developing countries facing funding and material limitations, and more urgent alternatives for such resource use.

A different perspective on enforcement was given by a presentation by an Egyptian academic. It was emphasized that IP must be viewed as a development issue, facilitating access to knowledge for development. It was also emphasized that development was simply more than economic growth. Knowledge is thus a quasi-public good where the cost of producing it was significant, yet its replication not only almost cost-free, but also beneficial. Hence, the debate we have on access versus incentives, which in the presenters view was translated into the tension inherent in DA Recommendation 45. Knowledge could be monopolized by closure and access to it limited, and given the weak market structures found in developing countries, this was to be avoided at all cost. The example of the music industry in Egypt was given, where studies showed that informal and underground economies could also have a positive impact on development, and serve as an engine for growth. In fact, it was presented that illegal copying contributes to promoting the musicians' work to a wider audience – it was the middleman that would be affected by this. The presentation went on to highlight that if the choice in developing countries was between the expensive and the illegal, then one had to rethink the definition of what was considered to be illegal, and furthermore, to look at grassroots practices to identify the best way forward for each country. Alternative approaches to “one size fits all” were strongly needed in the field of enforcement.

## Proposals

Participants acknowledged the importance of South-South cooperation in the area of intellectual property and development, to complement North-South and triangular cooperation, in assisting developing countries in achieving their national development objectives and realizing the UN Millennium Development Goals.

Participants also expressed the need for WIPO to continue its role in promoting South-South cooperation in intellectual property and development through acting as a convener, knowledge broker, partnership builder and analyst and progress monitor. WIPO can also assist developing countries and LDCs to more systematically gather, consolidate, and analyze information on national, regional and inter-regional South-South initiatives, and generally, raise awareness about South-South cooperation.

Participants requested WIPO to advance its work on South-South cooperation in the area of intellectual property and development through, inter alia, the following activities:

1. Complete the activities adopted in the first phase of the project and implement the proposals made in the first and second interregional meetings in Brasilia and Cairo through a second phase of the project, that would continue to provide the forum for south-south cooperation.
2. Finance south-south cooperation activities and initiatives as part of the next WIPO program and budget for 2014 – 2015.
3. Ensure that WIPO activities in the area of cooperation for development are informed and guided by good practices and lessons learnt existing in the South, including the full and effective utilization of the flexibilities inherent in multilateral treaties and the Development Agenda Recommendations.
4. Strengthen networking and matchmaking between research centers, civil society, academic institutions, and IP authorities in the South, to complement North-South and triangular cooperation (implement project activity on establishing an interactive web portal/virtual network).
5. Prepare case studies on successful South-South cooperation models in the area of patent, copyright, trademarks, geographical indications, industrial design, and enforcement, in accordance with WIPO Development Agenda Recommendations.
6. Strengthen the institutional structure in WIPO to promote South-South cooperation and ensure the proper coordination with UNDP office for South-South cooperation, including through its multilateral South-South support architecture, consisting of the Global South-South Development Academy, the Global South-South Development Expo and the South-South Global Assets and Technology Exchange System. Ensure sufficient financial resources for WIPO to host the Global South-South Development Expo in 2015.
7. Experiences and lessons learned from developing countries and LDCs in the framework of such meetings and other activities to be consolidated into publications, handbooks, policy guides or any other type of relevant/useful material.

8. Continue to organize WIPO annual and inter-regional thematic meetings to review the progress made and advance South-South cooperation in the area of intellectual property and development.
9. Ensure that assistance provided in formulation and implementation of national intellectual property strategies/policies, patent, innovation and branding strategies/policies will be guided by each country's national development plans/goals and public policy objectives.
10. Support South-South cooperation programs to incentivize grass root and community based innovation initiatives and the mobilization of financial resources.
11. Ensure efficient coordination in WIPO between the focal point for South-South cooperation, the Regional Bureaus and the Patent Division in the provision of legal assistance, training and capacity building, in particular in the area of implementation of WTO para. 6 protocol, and of flexibilities.
12. Increase awareness in developing countries and LDCs on utility models and its contribution to innovation and creativity.
13. Support the use of official languages of countries in the South in international intellectual property systems to facilitate their access and use by IP offices and users in developing countries and LDCs.

Participants emphasized their commitment to continue the cooperation, sharing of information, good practices and lessons learnt as well as seek to initiate or deepen joint collaboration activities in technical assistance and capacity building in all areas of intellectual property and development.

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