

*Cooperation between WIPO & WTO
and the TRIPS Agreement*



Karen Lee Rata
Senior Counsellor
Office of the Special Counsel

Outline

- Background of WIPO and WTO
- WIPO-WTO Cooperation
- TRIPS Agreement
- Current Activities of the TRIPS Council
- Relevant Activities in WIPO

- History
 - Paris Convention (1883)
 - Berne Convention (1886)
- WIPO Agreement (1970): BIRPI (previously)
- UN Specialized Agency (1974)
- Main Areas (3): Progressive Dev of Int'l IPRs; Int'l Reg Systems; Dev Coop to assist DCs and LDCs
- Member States: 179 (as of March 2002)

- GATT (1948)
 - Bretton Wood System: IBRD, IMF, [ITO]
- WTO (1995)
 - Trade in Goods (GATT)
 - Trade in Services (GATS)
 - Trade-related IPRs (TRIPS)
- Members: 146 (as of April 4, 2003)
 - Cambodia and Nepal, 148 Members

WIPO-WTO Cooperation

- General Framework
- Specific Framework
 - WIPO-WTO Agreement (1995)
 - Joint Initiatives (2)

WIPO-WTO Agreement

- Entered into force, *January 1, 1996*
 - Art. 2 Collection of Laws & Regulations
 - Art. 3 Emblems pursuant to Art. 6*ter* PC
 - Art. 4 Legal-Technical Assistance in regards the TRIPS Agreement

Joint Initiatives

- July 1998
 - For the DCs facing 1/1/00 deadline
 - Dr. Idris and Mr. Ruggiero
- June 2001
 - For the LDCs with 1/1/06* deadline
 - Dr. Idris and Mr. Moore

WIPO Assistance

- Legislative Advice
- Awareness Bldg and Human Resource Dev
- Institution Bldg and Modernization of IP Systems
- Enforcement
- LDCs Unit
- WIPO Academy

TRIPS Agreement

- “Agreement on Trade-Related Aspects of Intellectual Property Rights”
 - April 15, 1994 (Marrakesh)
 - January 1, 1995 (entered into force)
 - January 1, 1996/2000/2006 (implementation)
- Integral Part of the WTO--binding on all Ms
 - Effect of harmonization is worldwide
- First Comprehensive Agmt on IPRs

IPRs covered in TRIPS

- Copyright and Related Rights
- Trademarks
- Geographical Indications
- Industrial Designs
- Patents
- Layout-Designs of Integrated Circuits
- Protection of Undisclosed Information

TRIPS Discussion

- Overall Purpose
- General Provisions
- Substantive IPRs
- Enforcement
- Dispute Settlement

Preamble

- Ensures laws and enforcement of IPRs themselves do not become barriers to trade through:
 - Basic principles
 - Minimum standards
 - Enforcement Provisions
 - Dispute settlement mechanism

General Provisions

- Art. 1 Identifies IP for TRIPS purposes
- Art. 2 Incorporates major WIPO Conventions
- Art. 3 National Treatment
- Art. 4 MFN Treatment
- Art. 7 Objectives

WIPO Conventions

- WIPO Conventions incorporated in TRIPS
 - PC (1883) - Stockholm Act 1967
 - BC (1886) - Paris Act 1971
 - Rome Convention (1961)
 - Washington Treaty (1989)
- WIPO Treaties concluded Post-TRIPS
 - TLT (1994), WCT & WPPT (1996), PLT (2000)
- Ongoing work at WIPO
 - TK, Electronic Commerce, substantive PLT

Substantive IPRs

- Section 1: Copyright and Related Rights
- Section 2: Trademarks
- Section 3: Geographical Indications
- Section 4: Industrial Designs
- Section 5: Patents
- Section 6: Layout-Designs of Integrated Circuits
- Section 7: Protection of Undisclosed Information
- Section 8: Control of Anti-Competitive Practices in Contractual Licences

Copyright

- Berne Convention (1883)
- Protection of expressions and not ideas
 - literary, scientific and artistic domain, whatever the mode or form of its expression
- Berne+ features
 - Computer programs under Berne (Art. 10.1)
 - Compilations of data (Art. 10.2)
- Term: life of author +50 yrs.
 - Publication / making of work

Related Rights

- Berne and Rome Conventions
- Performers, Producers of phonograms, Broadcasting organizations
- Term: 50 yrs. Performers; P. phonograms
20 yrs. Broadcasting orgs.

Trademarks

- Paris Convention (1883)
- Signs used on or in relation to goods/services
 - “service marks”- hotels, car rentals, airlines
 - “trade names”- commercial names & designations
 - Capable of distinguishing products or services
- Requirement: “distinctive”- prevent confusion
- “Well-known marks” extended to services
- Term: 7 yrs., renewable indefinitely

Geographical Indications

- Subcategory of commercial designations
 - goods originating in a territory, region or locality;
 - where certain quality, reputation or other characteristics are attributable
- “Indication of Source” (PC)
- “Appellation of Origin” (Lisbon)
- Additional protection for wines & spirits

Industrial Designs

- Ornamental or aesthetic aspect of goods
 - textile designs, autos, clothing, shoes, watches
- Requirement:
 - new or original
 - appeal to the sense of sight
 - reproducible by industrial means
- Term: 10 yrs.

Patents

- Any invention in all fields of technology
- Requirements:
 - new; inventive step; industrially applicable
- Exceptions: *ordre public* and morality, certain med. treatments, plants, animals, essentially bio. processes
 - Exclusions to exceptions:
 - micro-organisms
 - non-biological & microbiological processes
 - plant varieties
- Term: 20 yrs. from filing date

Integrated Circuits

- Washington Treaty (IPIC)
- Detailed layout-designs or plans of IC
- Requirement: result of creator's efforts
 - not commonplace at the time of creation
- Term: min. 10 yrs; may limit to 15 yrs.

Trade Secrets

- Undisclosed Information
 - “Know-how” vs. “Trade secrets”
- Requirements:
 - information is secret
 - has commercial value because it is secret
 - took reasonable steps to keep it secret
- Patents vs. trade secrets
- Term: as long as it's secret

Anti-competitive practices

- Recognition of certain practices pertaining to IPRs, which restrain competition
- Members **may** adopt appropriate measures
- Consultations are **required** upon request
 - by any other Member of WTO
 - exchange non-confidential information

Enforcement

- General obligations
 - effective enforcement
 - fair and equitable procedures
- Civil and admin procedures & remedies
- Provisional measures
 - including TROs or prelim. injunctions
- Border measures
- Criminal procedures & sanctions

Dispute Settlement

- Art. 64 brings TRIPS under DSU
- Exceptions
 - Moratorium on non-violations claims for 5 yrs., which ended on January 1, 2000
 - TRIPS Council to examine scope & modalities
- To date, total of 200+ WTO cases
 - 25 cases concern IP issues
 - [Compare: 5 IP cases under the GATT]

Current Activities

- TRIPS Council
 - Special Sessions
 - Regular Sessions

Post-Doha

- **Special Session of the TRIPS Council**
 - Establishment of a multilateral system on GIs
- **Regular Session of the TRIPS Council**
 - The TRIPS and Public Health Declaration
 - Paragraph 6
 - Paragraph 7
 - Other issues under the Doha Declaration

Other Doha Issues

- Extension of products of GIs
- Art. 27.3(b) review
 - Discussion on CBD compatibility
 - Traditional knowledge and Folklore
- Article 71 review
- “Non-violation” claims under TRIPS
- Electronic Commerce
- Technology transfer to LDCs

Relevant Activities in WIPO

- Access to Medicines
- Geographical Indications
- Electronic Commerce
- Article 27.3(b)
- TK, GR and Folklore

Access to Medicine

- HIV/AIDS crisis
- UN and the Global Fund
- Long-term goals should not be replaced by short-term solutions
- WIPO is a key organization on this issue
 - Patent system promote development of new drugs
 - Drugs we have may not have been found
- WIPO cooperates with WHO and WTO

- SCT – began work in 9/00
 - Definition of GI
 - Generic terms
 - Conflicts between TM and GI
 - Conflicts between homonymous GI
 - Protection of GI in the country of origin and abroad
- Lisbon Agreement
- Electronic Commerce

E-Commerce

- First Report, 4/99
 - TM and SM
- Second Report, 9/01
 - Other abusive registration, including GI
- ccTLDs, gTLDs
- WCT and WPPT, in force 2002

Article 27.3(b)

- Plant Variety Protection
 - UPOV
 - 2002 WIPO-UPOV Joint Symposium
 - “Coexistence of Patents and Plant Breeders’ Rights in Promotion of Biotechnology”
 - 2003 WIPO-UPOV Joint Symposium
 - “IPRs and Plant Biotechnology”
- Biotechnology

- Background
 - 1978 *sui generis* model for protection of folklore with UNESCO
 - 1998 Fact finding missions to 28 countries
 - Report “IP Needs and Expectations of TK Holders”
 - Three case studies on sharing benefits
- 2000 GA established the IGC
 - GR, TK and Folklore

Conclusion

- Relationship is fluid
 - Basic structure, but with flexibility
 - Additional Agreements or Initiatives as necessary