WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

WIPO MAGAZINE

GENEVA - DECEMBER 2008 - No.6

Conference on Intellectual Property and Global Challenges

International Conference Centre Geneva (CICG)
July 13-14, 2009 – **Save the Date!**

The Conference will address issues relating to the interface of intellectual property with other areas of public policy, notably health, the environment, climate change, food security and disability.

Further information will be published in due course.

Conférence sur la propriété intellectuelle et les défis mondiaux

Centre international de conférences Genève (CICG)
13-14 juillet 2009 – **À noter dans votre agenda!**

La conférence portera sur les questions relatives à l'interface de la propriété intellectuelle avec d'autres domaines d'intérêt général, notamment la santé, l'environnement, le changement climatique, la sécurité alimentaire et l'invalidité.

Des informations supplémentaires seront publiées en temps voulu.

Conferencia sobre la Propiedad Intelectual y los Desafíos Mundiales

Centro Internacional de Conferencias de Ginebra (CICG)
13 y 14 de julio de 2009 – **¡Anote esta fecha!**

En la conferencia se abordarán asuntos relacionados con la conexión existente entre la propiedad intelectual y otras áreas de política pública, como la salud, el medio ambiente, el cambio climático, la seguridad alimentaria y los discapacitados.

Se publicará más información próximamente.

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MEETINGS OF THE ASSEMBLIES OF WIPO MEMBER STATES

2008 Report

Topped by the appointment of Mr. Francis Gurry as the next Director General of the Organization, the WIPO Assemblies met in September to review the past year's activities and discuss the Organization's future work program. The General Assembly Chairman, Ambassador Martin I. Uhomoibhi, Nigeria's Permanent Representative to the United Nations in Geneva, underlined the success of this year's session in his concluding remarks, noting that Member States were united by the vision set out in Mr. Gurry's acceptance speech (see page 6) of an Organization getting to grips with the big issues and fulfilling its role as the "pre-eminent forum for intellectual property discourse."

Photo: WIPO/Mercedes Martínez Dozal

The General Assembly appointed Mr. Francis Gurry as Director General by acclamation on September 22.

Appointment of the New Director General

Mr. Gurry, an Australian, was appointed as Director General for a six-year term that began on October 1 and will run through September 2014. In unanimously appointing Mr. Gurry, WIPO Member States put regional differences behind them to focus on the future health of the Organization and achieved, in the words of Ambassador Uhomoibhi, "a seamlessly smooth, harmonious transition" that Mr. Gurry said "would provide a good basis to tackle all the challenges of the future."

Committee on Development and IP (CDIP)

Member States took stock of the work of the CDIP which, in the two formal meetings held in March and July, had considered 15 of the 45 recommendations in the WIPO Development Agenda and expressed the need for mechanisms to facilitate coordination with other WIPO bodies so as to ensure effective implementation.

The General Assembly approved the work program for implementing the five costed recommendations from a list of 26 requiring additional resources. Member States agreed to make resources available to the Secretariat in line with WIPO's program and budget process.

The General Assembly approved the start of consultations for the convening of a donor conference in 2009 to help mobilize additional resources, by encouraging the establishment of trust funds or other voluntary funds, specifically for least developed countries (LDCs), while continuing to accord high priority to financing activities in Africa. The aim would be to promote the legal, commercial, cultural and economic exploitation of IP in these countries. The conference would also seek to improve the mobilization, coordination and management of extra-budgetary resources at WIPO, through an exchange of ideas and best practices.

Standing Committee on Copyright and Related Rights (SCCR)

The General Assembly decided that the November 2008 session of the SCCR would continue to discuss the protection of broadcasting organizations and cable-casting organizations, based on an informal paper by the Chair, outlining his understanding of the main positions and of the divergences to be addressed.

At the March 2008 meeting of the Committee, Member States had expressed a willingness to find a way forward on the protection of audiovisual performances. In light of this, WIPO had been requested to prepare a summary of recent activities and the positions of the members of the SCCR.

WIPO had organized a number of national and regional seminars in Africa, Asia and Latin America to promote progress on the issues at the levels of national legislation and international consensus-building. In preparing these events, WIPO had followed a flexible and balanced approach to the protection of performers at the national level in practical areas such as contractual relations and collective bargaining, the exercise and transfer of rights and remuneration systems. Similar events are planned for the coming year and Member States agreed to keep the issue on the agenda of the next General Assembly meeting.

Member States noted the status of discussions on the question of exceptions and limitations to copyright, in particular the Committee's decision to mandate a WIPO study on exceptions and limitations for the benefit of educational activities, including distance education and taking cross-border aspects into account.

Advisory Committee on Enforcement (ACE)

The November 2007 session of the ACE had discussed international, regional and national cooperation in the field of enforcement of IP rights, with a particular focus on criminal remedies. These discussions had paved the way for an update of the WIPO Casebook on the Enforcement of Intellectual Property Rights, the second edition of which will be available shortly. The General Assembly underscored the importance of WIPO's role in the enforcement of IP rights, and noted the growing number of enforcement-related activities undertaken by WIPO in the last year.

Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

Member States took note of a progress report on the IGC's analysis of gaps in the protection available for traditional knowledge and traditional cultural expressions/expressions of folklore. These gap analyses were developed and reviewed through an open commentary process in preparation for the IGC's October 2008 session (see page 24). Delegates also welcomed the continued successful functioning of the WIPO Voluntary Fund for Indigenous and Local Communities.

Standing Committee on the Law of Patents (SCP)

There had been a revival of discussions within the SCP and, as requested by the General Assembly in 2007, an overview of current international patent issues covering the different needs and interests of all Member States had been released by the Secretariat in April 2008. The June 2008 SCP meeting welcomed the report as a good basis for discussion and it remained open for written comments until the end of October 2008. It will serve as the basis for the SCP's discussions at its next meeting in early 2009, along with four additional preliminary studies on: dissemination of patent information (*inter alia*, the establishment of a database on search and examination reports); exceptions from patentable subject matter and limitations to the rights (*inter alia*, research exemption and compulsory licenses); patents and standards; and client-attorney privilege. Delegates endorsed a recommendation to convene a conference in 2009 on issues relating to the implications of patents on certain areas of public policy, such as health, the environment, climate change and food security.

Internet domain names

WIPO continues to take steps and to develop tools to ensure fair and transparent Uniform Domain Name Dispute Resolution Policy (UDRP) procedures, which are administered by its Arbitration and Mediation Center. Recent developments within the Internet Domain Name System (DNS) had expanded opportunities for mass registration of domain names, and consequently increased the challenges for IP rights owners to enforce their rights. The Center is actively engaged with the Internet Corporation for Assigned Names and Numbers (ICANN) to bring to its attention circumstances that may frustrate the intended functioning of the UDRP. WIPO is also engaged in efforts that aim to enhance the observance of principles of IP protection in the introduction of new gTLDs and in the introduction of internationalized domain names (IDNs: non-Latin script) at the top level, which ICANN foresees taking place in the course of 2009.

Article 6*ter* of the Paris Convention for the Protection of Industrial Property (Paris Convention)

Member States approved a revised communication procedure under Article 6*ter* of the Paris

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Convention, under which communications will be published electronically every six months. This will simplify communication procedures and provide greater legal security for all parties involved, as the new publication dates will create generally applicable starting points for the calculation of the time limits for transmittal of any objections by concerned parties (see Article 6*ter*(4) and (6)). (See *www.wipo.int/edocs/mdocs/govbody/ en/p_a_40/p_a_40_1.doc Annex 2*.)

Madrid Union for the International Registration of Trademarks

Member States of the Madrid system for the international registration of trademarks amended a number of rules governing that system to improve accessibility of information regarding the fate of international registrations in designated contracting parties. Under the current procedures, if the trademark office of a contracting party designated in an international registration has decided, following examination, that the trademark in question cannot be protected in the territory of that contracting party, it is required to submit a refusal notification to WIPO within a given time period. However, such a notification requirement currently does not exist when the trademark office has decided that the trademark can be protected. This system of "tacit acceptance" will be changed as from September 1, 2009, by the introduction of an obligation for designated contracting parties to submit a so-called "statements of grant of protection." The change is accompanied by a transitional arrangement whereby any contracting party that requires more time to implement this obligation will have until January 1, 2011, to do so.

A WIPO study will be carried out on the implications and advantages of including other languages in the regime of the Madrid system. The current working languages are English, French and Spanish. The study will focus on the benefits of including Arabic, Chinese, Portuguese and Russian as official filing languages. An expansion of the number of filing languages of the Madrid system is expected to boost membership of the system and to further stimulate growth in its use, both within new member countries and established members.

Hague Union for the International Registration of Industrial Designs

Member States of the Hague system amended a number of its rules in order to improve the accessibility of information regarding the fate of international registrations in designated contracting parties. This helps holders of industrial design rights to determine the status of protection of their designs by establishing a formal framework for the communication of a statement of grant of protection.

The current fee reduction scheme under the Hague Agreement Concerning the International Registration of Industrial Designs – which reduced fees for applicants from LDCs to 10 percent of the prescribed fees as of January 1, 2008 – will be extended to certain intergovernmental organizations (IGOs), the majority of whose members are LDCs. As from January 1, 2009, an international application filed by an applicant from a contracting party that is an LDC or a member state of an IGO, the majority of whose members are LDCs and whose international application is exclusively governed by the 1999 Act of the Agreement, will qualify for the fee reduction scheme. Member States decided that designers from the 16 member states of the African Intellectual Property Organization (known by its French acronym OAPI – *Organisation africaine de la propriété intellectuelle*) will be the first to benefit from this 90 percent reduction in fees.

Following the results of a study on the implications of adding Spanish as the third working language of the Hague system, in addition to English and French, broad support was received from members of the Hague Union Assembly and other WIPO Member States. The addition of Spanish is expected to boost new accessions; act as a clear and strong incentive for Spanish-speaking countries to join the Hague system and/or facilitate their accession process; and be of direct interest to the offices of existing members for whom Spanish is the official language of operation. It would also benefit industrial design owners in existing member countries who would gain from a more stream-lined and cost-effective means of protecting their industrial designs.

Investment Plan for Madrid and Hague Systems

Much progress had been achieved in the implementation of a four-year investment program (2008-2011) to update the information technology architecture of the Madrid and Hague systems. The IT Modernization Program, which aims at generating efficiencies in the administration of the two systems, comprises three categories of sub-projects (internal operation, external communication and governance and technical) and is to be implemented in

three phases over the period of the project, for an estimated cost of some 15.3 million Swiss francs.

Lisbon Union for the Protection of Appellations of Origin

The Lisbon Union Assembly agreed to establish a working group to explore the introduction of possible improvements to the procedures of the Lisbon Agreement for the Protection of Appellations of Origin and their International Registration (see page 20).

Patent Cooperation Treaty (PCT) Union

A number of amendments were made to the Regulations under the PCT. These include amendments relating to the supplementary international search system – due to enter into force on January 1, 2009 – as well as amendments relating to the processing of international applications under Article 14(4) and the amendment of claims, which will enter into force on July 1, 2009.

Member States adopted, in the form of an "understanding," a set of criteria to facilitate decisions relating to the addition of further languages of publication under the PCT (see *www.wipo.int/edocs/mdocs/govbody/en/pct_a_38/pct_a_38_4.doc*).

Following a request by the 2007 PCT Assembly, a study was prepared by the Secretariat on the eligibility criteria for determining the group of developing and least developed countries whose applicants should benefit from a reduction of PCT fees, suggesting that a combination of criteria based on income or other economic indicators of development of a country and of criteria based on the size of a country, reasoned by size of economy, should be used (see *www.wipo.int/edocs/mdocs/govbody/en/pct_a_38/pct_a_38_5.doc*). Member States agreed that the issue should be placed on the agenda of the PCT Working Group in 2009.

Digital Access Service for Priority Documents

Member States reviewed progress in the implementation of a new voluntary service – digital access service for priority documents (DAS) – which responds to the business needs of applicants by enabling them to meet priority document requirements of patent offices without having physically to obtain and submit certified copies to each of them. The service will also facilitate the work of patent offices which may obtain priority

Photo: WIPO/Mercedes Martinez Dozal

The WIPO Assemblies brought together the 184 Member States of the Organization.

documents under alternative arrangements. The DAS service will offer a simple and safe digital alternative to filing paper copies of priority documents with multiple patent offices. It leverages existing systems such as the Electronic Document Interchange system under the PCT, and offers a gateway (via WIPO's PATENTSCOPE® website) to digital libraries to be maintained by patent offices as well as the WIPO Secretariat. It is currently envisaged that development and testing of communication arrangements between WIPO and at least some of the pilot offices will be completed in early 2009 allowing practical use to begin during the second quarter of 2009 (see *www.wipo.int/edocs/mdocs/govbody/en/a_ 45/a_45_2.doc*).

Patent Law Treaty (PLT)

The PLT Assembly unanimously agreed on the applicability, to the PLT and Regulations under the PLT, of a number of modifications to the Administrative Instructions under the PCT made in the past year, with immediate effect. A modified Model International Request Form will provide a checkbox that indicates the authorization by the applicant to receive advance copies of notifications by e-mail from the Office, if the Office wishes to do so.

FRANCIS GURRY ADDRESSES WIPO GENERAL ASSEMBLY

The following is a synopsis of Mr. Gurry's acceptance speech to the WIPO General Assembly on his election as Director General, in which he outlined challenges and priorities for the Organization in the years ahead.

Photo: WIPO/Mercedes Martínez Dozal

Mr. Gurry's acceptance speech outlined his priorities for the future and committed to the strategic realignment of the Organization.

The evolution of technology, economy and society in recent years has raised a number of challenges of a fundamental nature for this Organization. The most fundamental of all is perhaps the attention that is directed at intellectual property (IP). As a highly specialized subject matter, IP enjoyed many long and quiet years in the shade before, quite suddenly, in the last two decades, coming under the full glare of the blazing sun of public opinion and scrutiny. The management of this climate change in the world of IP is itself a major task.

In this regard, it is useful to remember that IP is not an end in itself. It is an instrumentality for achieving certain public policies – most notably, through patents, designs and copyright, the stimulation and diffusion of innovation and creativity on which we have become so dependent, and through trademarks, geographical indications and unfair competition law, the establishment of order in the market and the countering of those enemies of markets and consumers: uncertainty, confusion and fraud. In the end, our debates and discussions are about how IP can best serve those underlying policies: whether modifying the international framework will enhance or constrain innovation and creativity and contribute to their diffusion, and whether it will add confusion, rather than clarity, to the functioning of the market.

There are a number of developments that risk impairing the capacity of the IP system to deliver on its basic mission of stimulating innovation and creativity and contributing to market order. WIPO needs to anticipate and to address the implications of these developments.

The patent system

A first development is the infusion of technology into every aspect of our daily lives and into every part of economic existence. As the trend has accelerated, the economic value of innovation has increased and, with it, the desire to acquire property rights over the frontiers of knowledge. The functional consequence of this trend is that the system is becoming a victim of its own success. Patent Offices are choking on demand and struggling to perform in a manner that is timely enough to be responsive to the needs of the economy. There are an estimated 3.5 million unexamined patent applications in the world today. The quality of the output of Patent Offices, pushed to cope with such strong demand, is also under critical scrutiny.

The Patent Cooperation Treaty (PCT) was designed to provide a multilateral means of dealing with the growth of demand and internationalization of the patent system. However, it is not providing a sufficiently adequate solution to the crisis in demand management. The problem is of such a critical and urgent nature that a solution will be found. It is of fundamental importance that the solution be a multilateral one, rather than one established by a group or groups of the most adversely affected States. The PCT provides a better basis for constructing the future solution than any other.

Creative works in the digital environment

The twentieth century model of returning value to creators, performers and their business associates, which relied on the distribution of physical packages containing the works, is under the most

For the Development Agenda to fulfill this promise, I believe that it is essential that we translate the political consensus into concrete and effective projects.

radical of threats from the convergence of expression in digital technology and the distributional power of the Internet. This development may work to the disadvantage of the developing world where creators and performers do not have the same access to the Internet, bandwidth and alternate models of obtaining financial rewards as their counterparts in the developed world.

For the whole world, incentives to the creation of content for the educational system and the enrichment of our lives with literature, music, films and other creative works are fundamental questions. As in the case of the choking of the patent system, solutions will be found. The market itself may find the solutions in the systems of private law and in the private application of technological solutions. But it would be unfortunate if we were to move from a centuries-old system of publicly created and overseen rights to systems of private law, simply by default as opposed to conscious choice. Consumers far outnumber creators and performers, making the political management of such discussion uncomfortable. This feature of domestic politics, as well as the global nature of file-sharing on the Internet, suggests that it may be more appropriate to conduct the discussion at the international, rather than the national, level. I believe that WIPO remains the right forum to conduct this discussion.

Illegal downloading and counterfeiting

The widespread illegal downloading of music and films from the Internet raises more generally the question of respect for IP. The counterfeiting of physical products, which has spread to many sectors of the economy, is raising serious concerns for health and safety and consumer protection. The value of counterfeit goods in international trade is estimated to exceed US$200 billion per annum. Plurilateral accords to deal with the scourge are under consideration. Reflection is needed on the appropriate role in this area for WIPO: Should that role be confined to awareness-raising and the training of customs officials, the police and the judiciary? Or should it encompass a more robust engagement, and, if so, alone or in cooperation with other concerned international agencies?

Broadening the IP horizon

No less important are developments that call upon the IP system to broaden its horizon and to make its mission more attuned to the collective consciousness of the international community. First and foremost is the question of how IP can contribute to the reduction of the knowledge gap and to greater participation on the part of the developing and least developed countries (LDCs) in the benefits of innovation and the knowledge economy. IP alone is not going to bring about the solution to differential levels of development, but the recent consensus on the WIPO Development Agenda provides a wonderful opportunity for the Organization to be part of the solution.

For the Development Agenda to fulfill this promise, I believe that it is essential that we translate the political consensus into concrete and effective projects. The opportunity exists for the Organization to construct a global knowledge infrastructure, comprising public, freely available databases of technological and scientific information and operating on common standards for data interchange. Such an infrastructure would contribute in a practical way to share the social benefit of IP systems. Through office automation and training, IP offices and research institutions and universities in the developing world could be equipped to participate in this infrastructure.

The Development Agenda offers an opportunity for WIPO to review the effectiveness of its service delivery in the area of capacity building. I believe that the adoption by countries of National Intellectual Property and Innovation Strategies, which WIPO could assist in developing, where so desired, would provide excellent vehicles for aligning the capacity-building activities of the Organization with the economic resource base and the economic objectives and priorities of countries.

The Development Agenda and WIPO's capacity-building activities also provide an opportunity to address the special needs of LDCs. I propose to build upon my predecessor's initiative of establishing an LDC Division by strengthening the human and financial resources in this Division.

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. . . the process will be, and will require, a collective effort and I look forward to working with all of you and count on your support.

There is also a dimension to the Development Agenda which calls for a continual analysis and reflection on the best means of making IP work to the advantage of all countries, regardless of their level of development. The Secretariat needs to be better equipped with resources for economic research and statistics in order to provide the Member States with a sound empirical basis for that reflection. I intend to establish a Division to provide impact studies to support Member-State processes; to anticipate developments affecting the world of IP; and to equip management with the means of identifying future strategic developments that may impact upon the Organization.

The protection of traditional knowledge and traditional cultural expressions is another area that has been identified as a means of broadening IP to make it more responsive to the needs of the developing world. It has become apparent that there is a need to recognize explicitly the contribution to human society of collectively generated and maintained innovation and creativity and to protect the artifacts of that innovation and creativity. The Organization has undertaken a long process of discussion and negotiation on the means of meeting this need. I believe that it is time to move this process to concrete outcomes that will see WIPO embrace a broader base of constituents and a more universal mission.

Closer cooperation within the United Nations system

WIPO is not alone in facing challenges of a fundamental nature. Many of those fundamental challenges have been identified in the Millennium Development Goals and others have been identified through the collective expression of concerned governments, commentators, the media and civil society. They include climate change, desertification, epidemics, access to health care, food security and the preservation of biodiversity. History shows that human society has usually turned to technology, the application of science to the solution of practical problems, as one of the principal means for dealing with threats and difficulties confronting it. Policies designed to stimulate the creation and diffusion of technology are thus directly relevant to the consideration of the ways in which the global community can respond to the problems. I propose to establish a Division that will actively engage in the dialogue and search for solutions that take place in the international community, focusing on the specific contribution that IP and WIPO can make within the framework of collective action to address these global challenges.

A functional Organization

For WIPO to address these, and other, challenges, we need a functional Organization. The Organization is not only the Secretariat but also its Member States, the users of WIPO services and non-governmental stakeholders. A precondition to the effective functioning of the Organization is trusted communication among these various actors. This will be a priority from the outset. I shall endeavor to find ways in which to communicate better to all our constituents and to intensify the dialogue between constituents.

I plan to undertake a thorough process of strategic realignment in the coming years. It will cover the corporate culture of the Secretariat, the efficiency of business processes and the alignment of programs, structure and resources to the Organization's strategic goals. To my colleagues in the Secretariat, I would emphasize that the process will be, and will require, a collective effort and I look forward to working with all of you and count on your support.

I have offered more questions than solutions. The questions challenge the capacity of multilateralism to provide timely responses. They are, in many ways, generational questions, and it would be a pity to see them squandered in polemics and in the narrow considerations of local politics. The challenge for the multilateral community is that these generational questions are arising more and more frequently because the pace of technological progress is reducing the time separating the generations. Responding to the questions will require our combined ingenuity and versatility.

Ban Ki-moon: WIPO Can Be a Champion

The United Nations Secretary-General Ban Ki-moon referred to WIPO as "a unique organization with a unique contribution to make in meeting the global challenges faced by the UN" during his first visit to WIPO headquarters, on November 18, to meet with WIPO Director General Francis Gurry and address staff. He underlined the need "to pool our resources, pool our wisdom and act as One United Nations." Mr. Ban stressed that with the UN's limited resources success in addressing the challenges – which included regional conflict, human rights abuses, abject poverty and death from rampant diseases – would only come when all the organizations within the System worked together. "In this time of economic crisis," he continued, "this is a practical imperative, as much as a moral one."

"WIPO can be a champion in helping to meet the Millennium Development Goals; a champion in joining the global efforts to combat climate change; a champion in helping to tackle high food and energy prices," said the Secretary-General.

Mr. Gurry reiterated his commitment to closer collaboration with the UN family on global challenges, and highlighted the central role that "IP policies – designed to stimulate the development and dissemination of new technologies – have to play in the collective efforts by the international community to find solutions to some of the greatest challenges confronting humanity." He stressed the need to ensure "that WIPO's voice is heard in all fora where these global public policy issues are discussed and that we take a leading role in identifying intellectual property-based solutions."

Photo: WIPO/Mercedes Martínez Dozal

United Nations Secretary-General Ban Ki-moon addressing WIPO staff.

Building for the Future

The foundation stone for WIPO's new office building was officially laid on November 7. During the ceremony several symbolic items – to intrigue and instruct future generations – were placed in a steel cylinder embedded in a concrete block, which will become part of the structure of the building. Included were the WIPO Convention, the WIPO flag, a WIPO medal, the UN Charter, a copy of the bill of sale of the land, the brochure about the architectural competition, a selection of architect's blueprints, a copy of the contract with the general contractor, a USB key with photographs of the construction site from its start-up in April 2008, the official gazette of that day (*Feuille d'Avis Officielle*), Swiss coins from 2008 and the ceremony program.

The new building will have four underground levels, an atrium-style ground floor with a cafeteria and five floors of offices with 560 workplaces. Its design, by the German firm Behnisch Architekten, includes a cooling system using water from deep within Geneva's lake, and its 1,400 m² roof will be insulated from summer heat by earth and vegetation (see *Green Design – From Cradle to Cradle*, WIPO Mag. 2/2007). Completion is expected in October 2010. The future WIPO headquarters complex will then comprise five inter-connected buildings.

Photos: WIPO/Mercedes Martínez Dozal

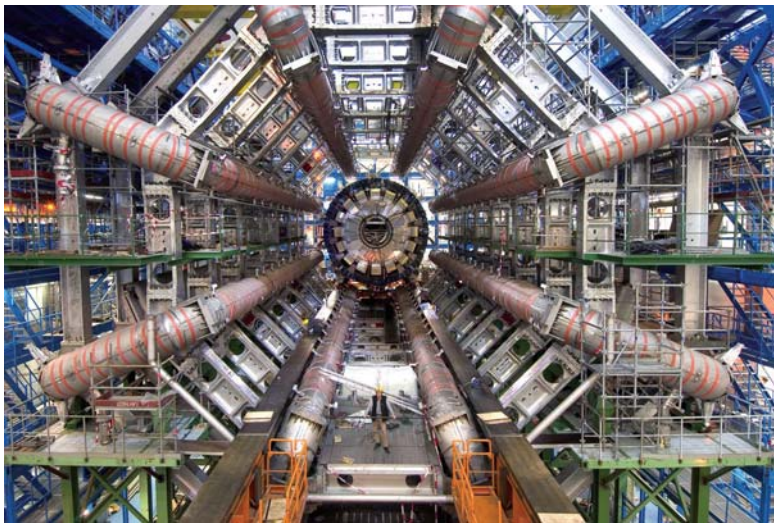
WIPO Director General Francis Gurry and the Chairman of the WIPO General Assembly, Ambassador Uhomoibhi of Nigeria watch as the cylinder is placed into its concrete housing.

WIPO's new building will be one of the first in Geneva to incorporate a sustainable energy source – a cooling system using water from Lac Léman.

CERN AND INNOVATION

The Heart of the Matter

Photos: © CERN



Eight toroid magnets surround the calorimeter that is placed into the middle of the detector to measure the energies that the particles produce when protons collide.

The LHC spans the border between France and Switzerland about 100 meters underground.

A freezing, 27-kilometer, underground ring, colder than outer space, producing temperatures from collisions a hundred thousand times hotter than the sun, in a vacuum where the pressure is ten times lower than on the Moon… it is no wonder that CERN's Large Hadron Collider (LHC) has captured the world's imagination. Thousands of scientists and engineers from over 60 countries worked for over 20 years to produce a machine of unequalled scientific artistry and technical complexity that will delve deep into our origins, seeking out the infinitesimal particles that are the building blocks of the universe.

The challenges were enormous. More than 9,000 magnets, cooled to a frigid minus 271.3°C using 10,080 metric tonnes (t) of liquid nitrogen and nearly 60t of liquid helium, control two beams of trillions of hadrons that race around the accelerator ring in opposite directions at over 11,000 circuits a second – almost the speed of light. When they are allowed to intersect, 600 million collisions take place every second, simulating the conditions of the Big Bang. Gargantuan detectors measure the speed of the debris particles to a few billionths of a second and their location to millionths of a meter.

The September launch of the LHC created a buzz across the planet. We were clearly witnessing something momentous – definitely a "milestone in scientific history" – but what would it mean to us as individuals and how might it impact our lives?

Aside from the research insights it promises, the mere building of the LHC is a tremendous achievement, stretching the boundaries of technical know-how and generating major breakthroughs and applications that are already impacting on research and business practices in fields from medicine to micro-electronics and solar energy to computer modeling. The conceptualization and development of the equipment which enables the pure research that is CERN's *raison d'être* has, therefore, also made it a seedbed for technological innovation, the potential applicability of which can sometimes take years to understand and develop.

How does CERN share this knowledge with the world? What is its approach to intellectual property (IP) and to patents – tools designed to enhance dissemination of technical knowledge and encourage technological development? Is there a role for IP in the world of pure science, where the focus is knowledge as opposed to commerce? Does IP figure in one of the largest scientific collaborations in the world, and, if so, in what way?

To answer some of these questions, and to get a better idea of CERN's approach to technology transfer, WIPO Magazine sat down with Jean Marie LeGoff, who heads CERN's Technology Transfer Office (TTO).

CERN in a nutshell

CERN, the European Organization for Nuclear Research, is one of the world's largest centers for scientific research. Its focus is fundamental physics, finding out what the universe is made of and how it works. At CERN, the world's largest and most complex scientific instruments are used to study the basic constituents of matter – the fundamental particles. By studying what happens when these particles collide, physicists learn about the laws of nature.

The instruments used at CERN are particle accelerators and detectors. Accelerators boost beams of particles to high energies before they are made to collide with each other or with stationary targets. Detectors observe and record the results of these collisions.

Founded in 1954, the CERN Laboratory sits astride the Franco-Swiss border near Geneva. It was one of Europe's first joint ventures, and now has 20 Member States.

Source: *http://public.web.cern.ch*

An open science policy

LeGoff began by clearly underscoring CERN's strong orientation toward an "open science" policy, which favors making the methodology, data and results of experiments freely available. CERN also uses open source in the development of software. According to LeGoff, it is the only valid approach for the highly collaborative environment in which CERN operates as, "no company, not even Microsoft, would be able to develop software projects of the scale and sophistication required for CERN's experiments at an affordable price."

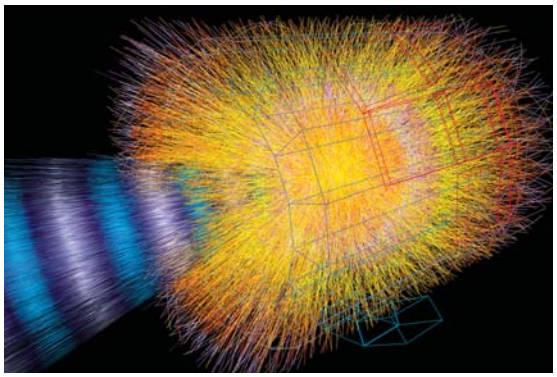
However, he notes that IP does have a significant role to play in this environment. Not least, the patent system ensures that a research lab like CERN is able to stake its claim and be recognized as the inventor of a wide range of technologies. As LeGoff explains, "We would like to make sure that it is known that a particular idea comes from CERN, so patenting helps in traceability. Typically, for a patent relating to the fundamental concept of a new accelerator where the application for industry was limited, we would not seek protection in many countries."

The patent system also allows CERN to monitor the broader impact of its activities – both in catalyzing technological development and in subsequent commercialization – through, for example, licensing.

While CERN's use of IP might be considered somewhat unconventional – focusing more on the recognition than on the reward aspect of the system – it provides an interesting illustration of the pragmatic use of patenting within a non-commercial environment.

Photos: © CERN

The CERN theory group plays a vital role in imagining new aspects of physics that can then be tested by designing and running experiments.



A simulation of a lead ion collision.

CERN and industry – technical symbiosis

As far back as the 1970s, CERN began to recognize the broader impact of its research activities. As most of CERN's ground-breaking instruments do not exist in the market place, it falls to the scientists themselves to develop "proof of concept" and to demonstrate the functionality of much of the equipment they require. Industry is then contracted to manufacture and assemble the required parts. As CERN takes full responsibility for performance and outcomes, industry can participate

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IP Rights in Commercial Partnerships

Partnerships with industry are an important part of CERN's technology transfer endeavor. Such arrangements create an opportunity to build prototypes from spin-off CERN technologies for commercial application. While industry bears the financial costs, CERN's aim is to facilitate assessment of the commercial viability of a given technology. Once a commercially promising technology is identified, then CERN establishes a partnership agreement that includes IP rights.

Commercial partners usually have exclusivity over the results of R&D projects within their own market and have access to CERN's background IP in order to exploit the results. Royalty rates are calculated on the basis of the relative value of the background IP to the resulting technology. Similarly, CERN has access to the IP of the results of joint R&D projects for their own research purposes. Also, whenever possible, CERN will seek to license these results in other domains of application in order to maximize the diffusion and impact of its technologies.

in developing new technologies and gain cutting-edge knowledge and expertise without the associated commercial risks of development. From CERN's viewpoint, LeGoff noted, this helps minimize costs of developing these technologies as contractors do not feel the need to factor in security margins, which could result in "a multibillion Euro machine costing two or three times more."

This creates a potentially fruitful situation for industry, where companies are able to gain expertise and know-how from their association with a cutting-edge project without any real commercial risk. As LeGoff notes, "it is well known among the companies that contract with CERN that it is not a profitable market. That said, these companies acquire a wealth of expertise and in some cases, contracting with CERN offers an opportunity to further develop their R&D."

Recently, CERN studied the impact of high-tech contracts, worth some one billion Euros, granted to 630 companies involved in the LHC construction. Of the 178 companies that replied, 30 percent said they had developed new products not related to high-energy physics, 17 percent had established new markets and 14 percent had set up new business units. "Quite a finding" LeGoff remarked, "illustrating the impact of CERN's fundamental research and how it can generate innovation that can directly impact on society."

Technology transfer and patents – indicators of excellence

According to LeGoff, CERN's technology transfer activities, including those underpinned by patents, are fuelled by a desire to consolidate its position as a center of technological excellence. However, while the impact of its fundamental research on society is of far greater importance than any technology transfer aimed at a commercial return, he noted, "you can't get one without the other." He explains, "You know, patenting is something that is not essential to an open science environment, but it is something that absolutely is needed by industry to develop products and bring them to market. We don't develop products, we develop technologies and some of these are just too advanced, too costly and too far removed from daily life for there to be market interest. So, it is a question of timing." LeGoff explained, "if we believe there is commercial potential in specific markets then we will seek patent protection in those countries. Patent protection is important to us because, although it can take around 10 years for a CERN technology to reach the market, it enables us to establish licensing agreements with industry, to diffuse the technologies and to generate a return on the licenses for the life of the patent and to minimize the financial burden on the Organization."

A number of CERN technologies are of great relevance to society, particularly in the field of medical imaging. LeGoff noted, "Those fantastic devices, now regularly used for cancer treatment (see box page 13) derived from our research had to be developed by industry, which had to invest a considerable amount of money and time to bring them to market." They are now of immediate benefit to doctors and their patients as well as creating financial benefits for industry and the wider economy. Spin-off products, such as these, also clearly help to demonstrate the significant impact of investments made by governments into pure scientific research. CERN's member states take a keen interest in technology transfer, which is now a key part of its mission.

Spin-off Technologies

The spin-off technologies from CERN's experiments have revolutionized medical imaging. For example, technology combining computed tomography (CT) for imaging human structure and anatomy with positron emission tomography (PET), for biochemical functions and metabolism – developed from a prototype built by two CERN scientists in 1977 – today gives physicians close to 20/20 vision for diagnosing and planning treatment of cancer.

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Pet Scans are one of many spin-off technologies from CERN experiments.

While such technologies seem extraordinarily advanced, to CERN scientists they are, in fact, out-of-date. Bridging the gap between the worlds of scientific research and business is a lengthy process. LeGoff notes that "From the technologies we produce, it takes approximately 10 years to get to a commercial device that can be manufactured and is cost-effective and affordable. Those machines that are state-of-the-art for clinicians today were developed from high energy physics technologies in the late 1970s, and in our view, they are rather old because they are not using the technologies from the LHC, for example, which were developed in the 1990s."

LHC technologies, which require fast and high-precision measurement of particle (photon electrons) energy, momentum and time, will, undoubtedly, continue to enhance medical and molecular imaging enabling increasingly better detection, and more targeted treatment, of small tumors raising cancer survival rates.

LeGoff believes that the challenges involved in building the next accelerator, a very powerful electron linear collider, will produce major developments in the fields of nanotechnology and microelectronics, opening up unprecedented opportunities for dedicated patient treatment, for example, and "allowing us to address the nano world at the nano level."

CERN's patent portfolio

All IP generated by its employees, belongs to CERN. Typically, the organization has joint ownership of any breakthrough technology developed together with a partner institute.

With a growing sense of the potential for industrial application of its technologies, CERN's technology transfer strategy has expanded to explicitly include IP. CERN filed its first patent application in 1996, and currently holds 230 patents corresponding to 35 patent families, using WIPO's Patent Cooperation Treaty (PCT) as a cost-effective route to protect its technologies internationally. According to LeGoff, CERN is "very cautious in only patenting those technologies that are believed to have market potential." He added, "in an open science environment, the PCT allows us to buy time, to attract industry interest and on the basis of that to decide where to patent our technologies before the patenting process becomes prohibitively expensive."

More than 60 percent of CERN's patent portfolio is licensed. In 2007 the commercialization of IP – licenses, services and consultancies – generated some 1.5 million Swiss francs. This is just a fraction of CERN's budget, but it is in line with CERN's policy of "favoring dissemination as opposed to income." Preferential terms are offered to licensees, particularly research institutes. Bridging the technology gap between the worlds of science and industry clearly represents a significant challenge and one that CERN's technology transfer team is tackling head-on. "It is now our job to make the relevance of these advanced technologies and their potential for the next generation of innovation known to industry," he notes.

Creating a patent culture

Within a fundamental research community such as CERN, scientists typically race to publish their findings. This can destroy the novelty of a technology, which is a basic requirement of the patenting process. How does CERN tackle this problem?

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Sifting for digital gold

CERN is at the forefront of networking technology. As befits the home of the World Wide Web, the organization is leading some of the most ambitious IT projects in the world.

At full capacity, the LHC will produce roughly 15 petabytes (15 million gigabytes) of data annually. To put this in some perspective – if we say that one byte (which equals one letter) is a grain of rice then a petabyte is the equivalent of 80 bowls of rice for every person on the planet or enough to cover central London in a meter of rice (thanks to managed networks for working this out *http://blog.managednetworks.co.uk/tag/petabyte/*). The LHC Computing Grid (LCG) will store and process huge amounts of data globally and transfer it at rates in excess of one gigabyte/second! The LCG will enable thousands of scientists around the world to access and analyze this data. For these scientists, it has been said that using the LCG will be "like sifting for digital gold."

In addition to its own LCG, CERN heads the Enabling Grids for E-science. This is used by the wider research community (from biomedical science to astrophysics), who share a common infrastructure connecting and harnessing the power of over 20,000 computers into a seamless whole.

These grids are useful for a wide range of research applications involving large amounts of data. The WISDOM project, for example, is using grid computing to speed drug discovery for diseases, such as malaria and the bird flu virus (H5N1). The MammoGrid (with which CERN is associated) is using grid technologies to build a pan European database of mammography images. This will allow the sharing of data and resources in analyzing mammograms to improve breast cancer treatment and reduce the risk of misdiagnoses.

CERN's TTO has been actively cultivating the idea that there is no fundamental incompatibility between the need to publish scientific results for academic purposes and IP protection, in spite of the need to safeguard novelty for patenting purposes. "In fact, there is increasing evidence that scientists' own research is enriched through exposure to the patenting process which forces them to examine the prior art. While this is common practice in industry, it is rather new in the world of fundamental research," he explained.

In its drive to raise IP awareness among its scientists, the TTO explains that patents are important to CERN because they increase the probability of technology transfer, they enhance the value of technologies and they ensure that CERN is recognized as the originator of an exceptional invention. LeGoff believes that "the idea that IP and fundamental research are compatible is taking root." Emphasizing again that "It is a question of timing – timing is key." LeGoff expects that IP consciousness among CERN's scientific community will expand as the pressures leading up to the LHC's launch ease.

Attitudes to IP, he thinks, have been influenced by a number of factors. First, researchers have been exclusively focusing on the enormous technical challenge of creating the LHC and not necessarily on the broader application of its technologies. Second, there are fears that IP protection will threaten research freedom. And third, there is a general lack of understanding within the research community about the role of patenting and IP generally.

CERN's technology transfer strategy is clearly evolving and IP is playing a role in its technology transfer mission. CERN is using the IP system to expand its options, to confirm its role as a center of excellence in its field and to be recognized as a technology innovator and a leading hub for technology transfer.

That said, there is a strong sense that the jury is still out as to whether the IP system, in all its complexity, will, in the future, be the best vehicle for CERN to maximize the impact of its research on society.

IP AND SOFTWARE

The WIPO Latin America and Caribbean (LAC) Regional Seminar on Intellectual Property and Software in the 21st Century: Trends, Issues, Prospects took place in San José, Costa Rica, on August 19 and 20 with the participation of ten governments in the region and over 200 representatives of the software industry. The Seminar provided crucial information to demonstrate the role of software in economic development for countries in Latin America. It covered four themes: IP rights protection of software and its relation to economic development; business models and licensing in the software industry; development of standards in the software field; and the role of public authorities and private companies in software development.

The Seminar highlighted the relevance of, and relationship between, IP rights and software to the governments and software industry of the LAC region. Software procurement and development decisions, standards-development policies, tele-communications and information and communication technology policies are all affected by how IP rights in software are provided, licensed and enforced. This relationship is horizontal from an IP perspective, cutting across both patent (patenting of software) and copyright questions (licensing, particularly open-source). This sector-specific approach to the issues stimulated intense interaction among public authorities and the software industry representatives. The dynamism of the local software industry also served as a catalyst in showcasing rich practical experiences in the issues under debate.

WIPO Magazine invited Mr. ANDRÉS GUADAMUZ GONZÁLEZ to develop the topics under discussion at the Seminar. Mr. Guadamuz, a lecturer at the SCRIPT Law and Technology Centre, University of Edinburgh, is an expert on IP and software, and has developed interesting analyses on issues including software patents, open source software licenses and the interplay between proprietary and open source software. In this article Mr. Guadamuz focuses on the issue of software patents, the topic of his presentation in the Costa Rica Seminar.

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Software Patentability: Emerging Legal Issues

Andrés Guadamuz González

There is little doubt that the software industry is still one of the powerhouses of the global economy. Despite the recent financial downturn, global worldwide spending on software amounted to some US$257 billion in 2007. Given its economic importance, it is clear that any discussion about the legal protection awarded to software is of the utmost interest to producers, consumers and all economies that share, or want to share, in the growing demand for computer programs.

Software has been remarkably difficult to classify as a specific form of IP subject matter because its dual nature presents particular difficulties for those trying to draw analogies with existing legal categories. This is why there have been attempts to classify it as subject to copyright, patents or trade secrets and even to a *sui generis* software right. It is indicative of the complexity of the debate that it has gone on for more than 20 years, and, if the recent interest in the topic is anything to go by, will continue for years to come.

But what makes the legal classification of software so difficult? The problem may lie in the fact that software is not a monolithic work but that it has several elements that could fall into different types of IP protection. If we define software as a set of instructions to a computer that bring about a certain result, then the manner in which those

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instructions are expressed should give us an idea about the type of IP protection that applies. These instructions are initially expressed as source code – lines of instructions in a computer language. As source code is expressed in written form, it is therefore logical to define software as being subject to copyright protection as a literary work. This is indeed the existing approach towards software protection in several international treaties. For example, Article 4 of the WIPO Copyright Treaty (WCT), Article 10 of the World Trade Organization's TRIPS Agreement[1] and section 3 of the European Council Directive 91/250/EEC on the Legal Protection of Computer Programs all define software as literary works subject to copyright protection.

However, software is not only the source code that operates in a computer; software has to be compiled into object code – machine-readable instructions that can be directly executed by the computer. This translation usually has no bearing on the type of protection awarded to software because the object code is a direct result of the source code, and one can argue that its legal status should be indistinguishable from that of source code.

The problem with strict classification of software as a literary work arises when one considers that computer programs have other elements that are not usually protected by copyright. Software is not only a literary expression; the lines of code have a function that is not dependent on their grammatical construction. The source code from a computer program can be completely different from that of another program, and yet have the same functionality to produce a similar set of instructions that achieve a similar result. This is at the heart of the idea/expression dichotomy that is often at the forefront of the software protection debate.

It is clear that copying large parts of source code and inserting them into another program constitutes copyright infringement. However, this type of infringement is relatively rare, and the real problem has become the protection of non-literal elements contained in software.

Is there copyright infringement for the copying of the functional aspects of a computer program? The answer has been a very complex and lengthy 'yes'. This is evidenced by the initial application of the idea/expression dichotomy to software and then by the inception and reliance on the (rather clunky) so-called *Abstraction-Filtration-Comparison*[2] doctrine in the U.S., which has been both applied and criticized by the U.K. courts. Most recently, the case of the protection of the functional elements of computer software has been thrown open again in the U.K. with the case of *Navitaire v Easyjet*, where the High Court significantly diminished copyright protection of non-literal elements by finding that copyright protection should not be extended to the functional aspects contained in software.

Patentability

It is precisely the difficulty with protecting non-literal elements of computer programs that has created the perceived need for the patentability of software. This is because patents are used to protect functional aspects of works. There is no idea/expression dichotomy in patent law. If an idea fulfils the requirements for patentability – it is a patentable subject matter, it is novel and involves an inventive step – then it will be awarded patent protection. American courts opened the door to the patentability of computer programs by allowing a patent for software that controlled manufacturing processes as early as 1981.

Similarly, Art 27.1 of the TRIPS Agreement states that patents should be awarded to all inventions irrespective of their field of technology. Subsequent cases have expanded patentability of software in the U.S. to what it is today. With the patent door open, and the seeming chaos in the copyright protection camp, it is not surprising that software companies rushed to get patents, resulting in an explosion of successful applications in the U.S. In 1986, the number of patents issued under classes usually deemed to be related to software amounted to 3,078. In 2006 alone, the United States Patent and Trademark Office (USPTO) issued 41,144 software patents, and the total issued by that year was 336,643.

The European Patent Office (EPO) has followed suit, and in a series of decisions of the Technical Board of Appeals, it has allowed limited patentability of computer-implemented inventions that involve a technical effect (or contribution, or process). These rulings have allowed for the limited patentability threshold to exist as long as the invention that is going to be implemented through a computer fulfils this requirement of technicality. It is well understood that the source code, or the literary and textual element of software, cannot be patented, but that if the software produces

1 The Agreement on Trade-Related Aspects of Intellectual Property Rights

2 Found in *Computer Associates International, Inc. v. Altai, Inc.,* (2nd Cir. 1992) 61 USLW 2434. In short, this test abstracts all the elements found in the computer program, filters out the not protectable ones and then compares what is left to search for similarities.

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some sort of effect in the same way that an invention does, it will be awarded protection. The problem is that the precise definition of this technical effect or process has been very difficult to pinpoint in the period of over 20 years since the first ruling by the EPO came about.

Further cases have been toying with this distinction, but have often been muddled and/or contradictory. The bottom line is that the EPO has granted a large number of patents for computer-implemented inventions, some estimates claim that 30,000 patents had been issued by 2003. The EPO issued 8,981 patents classed under computing in 2007 alone.

The trend around the world has been increasingly to allow for the granting of software patents. Australia, Brazil, India and Japan allow for the granting of computer-implemented inventions in one way or another, which seems to indicate that most of the major patent-owning countries consent to the patentability of inventions through computer programs. It is expected that the number of nations granting software protection will grow in the future, and more patent examiners around the world will be presented with applications that describe some form of algorithm.

Challenges for WIPO

It seems clear that as more and more software patents are issued by the largest patent-granting offices, there will be increasing calls for international harmonization on the topic. As mentioned above, international treaties do not really cover the issue of patentability of computer programs. The closest to a unified international approach is the inclusion of specific rules regarding computer programs in the Patent Cooperation Treaty (PCT).

Rule 39.1 of the PCT states that:

> *"No International Searching Authority shall be required to search an international application if, and to the extent to which, its subject matter is any of the following: […] (vi) computer programs to the extent that the International Searching Authority is not equipped to search prior art concerning such programs."*

Similarly, Rule 67.1 reads:

> *"No International Preliminary Examining Authority shall be required to carry out an international preliminary examination on an international application if, and to the extent to which, its subject matter is any of the following: […] (vi) computer programs to the extent that the International Preliminary Examining Authority is not equipped to carry out an international preliminary examination concerning such programs."*

While these are useful guidelines in the increasingly relevant PCT, they are procedural provisions that help searching and examining authorities in navigating their way around potentially conflicting subject-matter provisions. This author believes that there is need for a more substantive approach.

Some of these issues were amongst those discussed by the 200 participants at the *WIPO Regional Seminar on Intellectual Property and Software in the 21st Century*. Emotionally-charged topics were handled in a constructive manner which permitted most speakers to find room for agreement. Information and communication technologies (ICTs) are of paramount importance to developing economies; therefore, the legal aspects of their protection are of relevance to policymakers in developing regions. In this author's opinion, WIPO has risen to the challenge of informing Member States about the latest legal developments in an ever-evolving area.

THE THIRD ACCESS TO KNOWLEDGE (A2K3) CONFERENCE

Organized by ten international partners, the Third Access to Knowledge (A2K3) Conference, held in Geneva from September 8 to 10, attracted over 400 participants – and many more to its blog (*www.a2k3.org*). Below, Mr. SISULE F. MUSUNGU, President of IQsensato (*www.iqsensato.org*) and A2K3 Conference coordinator, provides an overview of the conference objectives, followed by two commentaries from guest speakers – "The A2K Challenge" by Mr. MAXIMILIANO SANTA CRUZ from the Permanent Mission of Chile to the United Nations in Geneva and "A2K and the WIPO Development Agenda" by Mr. AHMED ABDEL LATIF, IP Program Manager at the International Centre for Trade and Sustainable Development (*http://ictsd.net*).

Overview

Sisule F. Musungu

The A2K3 Conference, building on two earlier conferences, presented and discussed new research, ideas and findings on access to knowledge (A2K) and took stock of progress in advancing A2K goals in international fora ranging from WIPO to United Nations (UN) human rights bodies.

Key objectives included:

- to advance the thinking on the conceptual framework for A2K;
- to present new analyses, information and findings including country case studies;
- to assess progress in implementation and discuss strategies for advancing A2K initiatives and mandates in international fora and processes such as the WIPO Development Agenda;
- to present specific success stories in technology and business; and
- to continue mobilizing academia, civil society, governments and the private sector around A2K issues.

Topics ranged from the broad, including the relationship between A2K and issues such as trade, human rights, the knowledge gap and the WIPO Development Agenda, to the more specific, such as copyright limitations and exceptions, prizes as alternatives to IP rights-based monopolies, media and communication rights through to practical, open business strategies and technologies of access.

Geneva offered an ideal venue to attract new participants to the A2K discussions and to relate A2K ideals to concrete policy and business concerns, taking discussions outside the academic sphere. The broader audience targeted by the Conference included government officials (especially those involved in the areas of IP, human rights and trade negotiation); officials from key international organizations, such as WIPO, the World Trade Organization (WTO), the World Health Organization (WHO), the UN Educational Scientific and Cultural Organization (UNESCO), the UN Conference on Trade and Development (UNCTAD), the International Telecommunication Union (ITU); civil society representatives; academics and researchers, particularly from developing countries; and industry representatives.

The event was organized jointly by the Information Society Project at Yale Law School (Yale ISP), Electronic Information for Libraries (eIFL.net), the Electronic Frontier Foundation (EFF), the Center for Technology and Society at the *Fundação Getúlio Vargas* (FGV) School of Law, Rio de Janeiro, the International Centre for Trade and Sustainable Development (ICTSD), the International Federation of Library Associations and Institutions (IFLA), IQsensato, Knowledge Ecology International (KEI), the Library Copyright Alliance (LCA), UNU-MERIT and 3D —>Trade – Human Rights – Equitable Economy.

The A2K Challenge

Maximiliano Santa Cruz

Though A2K did figure on the agenda of the WTO just four years ago, through the movement on access to medicines, it was barely mentioned at WIPO and was a rather marginal issue at the WHO. That has changed over the last few years. A2K now has a strong influence in intergovernmental processes at WIPO, the WTO and the WHO. What happened? Perhaps policymakers started to note that the balance in the IP system had tilted heavily to one side. The system no longer fulfilled its dual goal: not only bringing benefits to inventors and

creators but also to society in general. While some saw upward harmonization as the only possibility, proponents of A2K suggested a more horizontal approach in which everybody would gain from increased access to knowledge, collaboration, and new and complementary models of innovation.

The WHO saw its IP activity increase with the extensive Report of the Commission on IPRs, Innovation and Public Health (CIPIH) and with the adoption in May 2008 of the Global Strategy and Plan of Action on Public Health, Innovation and IP. Among other things, the Global Strategy aims to promote research and development through greater public access to knowledge by creating open databases and compound libraries; to support open licensing of inventions and know-how; to consider the use of research exceptions; to encourage discussions for an essential health and biomedical research treaty; and to develop access to and transfer of key health technologies through patent pools, the use of flexibilities and the use of databases to determine patent status.

But the biggest shift has been in WIPO. The WIPO General Assembly in 2007 made the landmark decision to create the Committee on Development and Intellectual Property (CDIP) and to adopt 45 recommendations under the WIPO Development Agenda, in order to mainstream the development dimension into all the Organization's activities, several of which are strongly linked to A2K issues. It includes recommendations to deepen analysis of the implications and benefits of the public domain; to initiate discussions on how to further facilitate A2K and technology transfer; to prepare guidelines to identify items which are in the public domain; and to promote pro-competitive licensing practices to foster creativity, innovation and the transfer of technology. One of its most important challenges: to change the way we perceive IP, to analyze its complexity from different angles and consider the unintended consequences of certain policies.

It is important to note that issues related to A2K are not alien to the WIPO permanent committees. Following a proposal by Chile in 2004, the Standing Committee on Copyright and Related Rights (SCCR) took on the task of discussing exceptions and limitations to copyright, particularly for libraries and educational purposes and for persons with disabilities. WIPO has commissioned several expert studies on those issues (see page 25). Preliminary studies on exceptions and limitations, dissemination of patent information and technological standards – issues strongly linked to A2K – are also under preparation within the Standing Committee on the Law of Patents (SCP).

A2K and the WIPO Development Agenda

Ahmed Abdel Latif

The ICTSD steered the panel which examined challenges facing WIPO in implementing the A2K-related issues in the WIPO Development Agenda recommendations, described above by Mr. Santa Cruz. Several panelists emphasized that the WIPO Development Agenda offered an opportunity to place the notion of the public domain at the center of the IP debate. Mrs. Teresa Hackett, Program Manager, eIFL-IP, called for WIPO to hold a global meeting as well as to undertake a study in this area.

Dr. Uma Suthersanen, Queen Mary College, University of London, proposed the creation of an international register of public domain matter. Developing countries and LDCs would be able to rely on it to boost their indigenous innovation, as innovation and creativity also depend, to a large extent, on viable access to public domain sources.

Mr. Richard Owens, Director, Copyright E-Commerce, Technology & Management Division, WIPO, pointed to a number of suggestions for possible future work in this area such as addressing problems related to the identification of public domain material as well as the preparation of a major study which could include a comparative analysis of legislative approaches to defining public domain subject matter and a survey of tools for identifying and accessing public domain material.

Mr. Dominique Foray, Chair of Economics and Management of Innovation, *École Polytechnique Fédérale de Lausanne* (EPFL), focused on low-income countries, as their ability to benefit from foreign direct investment is limited by weak absorptive capacities. He underlined the importance of promoting local innovation in these countries by addressing local needs through "specialized innovation systems generated at the micro-level," and emphasized the importance of taking this into account in the implementation of the Development Agenda.

The A2K3 conference reflected the participants' keen interest in WIPO's work, particularly in the context of the Development Agenda, the implementation phase of which requires the active contribution and participation of WIPO and its stakeholders, particularly Member States and civil society organizations.

BEGINNING OF A NEW ERA FOR THE LISBON SYSTEM

Photos: INPI

The Lisbon System's 50th anniversary ceremony was headed by Mr. Christophe Guilhou, Chair, Lisbon Union Assembly, Mr. Francis Gurry, Director General, WIPO, and Mr. António Campinos, President, National Institute of Industrial Property (INPI), Portugal.

The 50th anniversary celebration of the Lisbon Agreement on the Protection of Appellations of Origin and their International Registration took place at a ceremony on October 31 in Lisbon. The ceremony rounded off a two-day Forum, co-hosted by WIPO and the National Institute of Industrial Property (INPI) of Portugal in the city which gave birth to the Agreement in 1958, after many years of difficult negotiations.

WIPO Director General Francis Gurry addressed over 200 participants from some 50 countries during the ceremony, stressing the importance of geographical indications as a means of differentiating products within an increasingly global, and ever-more standardized, marketplace. He also underscored their "enormous potential, in particular to developing countries, in terms of allowing them to reap the benefits of added value based on unique characteristics of certain products originating in these countries, including products derived from traditional knowledge." He urged Member States to demonstrate the same pioneering spirit and determination as that of the great Portuguese explorers in advancing the future development of the Lisbon system.

Lisbon attracts new adherents

Geographical indications are understood by consumers to denote the origin and the quality of products. Although many geographical indications and appellations of origin concern agricultural products, other goods with a unique identity deriving from a specific region can also benefit from this form of intellectual property. The Lisbon Agreement provides an international legal framework with a large degree of flexibility in its implementation by contracting parties without impinging on the effectiveness of protection accorded to geographical indications registered internationally.

In the first four decades of its existence, the Lisbon Agreement attracted only a small number of Member States. During that period there were various unsuccessful attempts to create a new system for the international registration of geographical indications that would have a much wider geographical coverage. However, since 1997, ten new countries have acceded to the Lisbon Agreement and several others are considering doing so.

What lies behind this renewed interest? First, many countries have established national systems for the protection of geographical indications that focus on a delimitation of the relevant geographical area based on criteria corresponding to those applicable under the Lisbon Agreement with respect to appellations of origin. Second, unlike the TRIPS Agreement[1] – which prescribes a higher level of protection for geographical indications for wines and spirits than it does for other products – the Lisbon Agreement requires Member States to protect all appellations of origin, regardless of the product category to which they relate. This is certainly important to the many countries whose geographical indications concern products other than wines or spirits.

Possible improvements to the existing procedures under the Lisbon Agreement will be explored in more formal international discussions scheduled to take place in March of next year within the context of a Working Group established in September 2008 by the Assembly of the Lisbon Union. This will provide an opportunity to build on an Agreement that elegantly combines effective protection with flexible application – an instrument whose time has come and that may well still be thriving in another 50 years' time.

Forum explores challenges

Discussions during the Forum included the challenges facing the Lisbon System; interpretation of the provisions of the Agreement in the light of its negotiating history; and its possible link to regional systems such as those existing in the European Community and the African Organization for Intellectual Property. The Forum also discussed the opportunities that geographical indications and appellations of origin offer to products from developing countries and the importance of facilitating their international protection. The Forum served to promote a better understanding of the Lisbon System ahead of the more formal international discussions scheduled to take place in March.

1 The Agreement on Trade-Related Aspects of Intellectual Property Rights, of the World Trade Organization (WTO)

FAMOUS APPELLATIONS OF ORIGIN

An appellation of origin is a special kind of geographical indication generally consisting of a geographical name or a traditional designation used on products which have a specific quality or characteristics that are essentially due to the geographical environment in which they are produced. Consumers are familiar with these products and often request them – even unknowingly – using their geographical name. The following examples may ring a bell.

One such appellation of origin is *Prosciutto di Parma* or Parma ham. For ham to receive the Parma name, it must be produced in the province of Parma – in the Emilia-Romagna region of north-central Italy – using exclusively pigs from that area. Each step in production, from the breeding of the pigs and their diet through processing to the final packaging, is closely monitored and controlled by the *Istituto Parma Qualità*. Only the Istituto can brand the finished ham with the seal of Parma's five-pointed ducal crown, qualifying the ham as true Parma ham.

For those with stronger tastes, there is Tequila from Mexico. Tequila production is governed by federal regulations that define where it can be made, where the agave plants to make it can be grown, what has to be stated on the label, where it can be bottled and how much of the content must be made from what percentage of agave sugars. So, when you see a bottle labeled "Tequila," you know you are getting the real thing.

Feta cheese – the struggle for authentication


Photo: AFP

It is not simply a matter of having a quality product that has a place of origin that makes it unique and which can be recognized by a traditional name or geographical area. Obtaining a geographical indication is a long and often difficult process, not always rewarded with success.

Feta cheese may evoke images of Greece in the minds of most consumers, but "feta" is produced and sold in many countries. It provides an excellent example of the kind of wrangling that may occur over the designation of a product as a geographical indication. Greece launched a process to protect the designation for feta in the mid-1980s, passing laws to protect the name and control production. These dictate the milk to be used and the geographical area from which it must be sourced – sheep and goat milk from herds that range freely in the rocky mountain slopes and island coastlands of Greece. But it would prove an arduous task for Greece to earn appellation of origin recognition for its feta as cheese called "feta" was then produced worldwide on a scale many times that of Greece's estimated 100,000 metric tonne annual output.

When the European Commission finally recognized Greece's right to the feta appellation of origin in 1996, producers in the rest of Europe were granted a five-year grace period to change the name of similar cheeses that they designated as "feta." However, the EC feta regulation was subsequently challenged twice in the European Court with Greece receiving a final ruling in its favor in 2005. Since then, imitation feta cheeses produced in other countries of Europe use terms such as salad cheese or Greek-style cheese. Outside the European Union, countries not bound by the Lisbon System may still use the term feta.

SLEEPING QUEENS – OUR LIFE IN CARDS

The holiday season is the perfect time for family and friends to gather around and play their favorite games – or try out a brand new one like *Sleeping Queens*. One of this year's most popular games, *Sleeping Queens* is proof that a six-year-old, with the right cards, can become an inventor and license her intellectual property rights. *Sleeping Queens* was created by Miranda Evarts, the first child inventor of a game released on the international market. She came up with the original idea and developed the rules with the support of her family. Miranda then landed a successful licensing agreement with an award-winning game company, *Gamewright*.

Photos: Courtesy of Evarts family

One sleepless night Miranda, her imagination running wild, played a game in her mind where she rescued queens who had fallen under a sleeping spell. She got up, went to her parents and announced: "I made up a game!" Promptly tucked back into bed, she championed the cause of the sleeping queens in her dreams all night long. The next morning, an enthusiastic Miranda outlined her ideas to her parents, older sister, Madeleine, and baby brother, Stephen. The sleeping queens were embraced and adopted as a family project.

"My family and I had been playing lots of card games to help with simple math skills," Miranda explained. Her mother, Denise Evarts added: "Games bring families and friends together. We have game night at our home about once a week, and when friends visit they should be prepared to play!"

The Evarts started playing the new game by drawing first the queens, then kings, knights and dragons on regular playing cards – adding a whole panoply of characters to introduce more fun. They based them on everyday life, concocting the Tie-Dye King, inspired by Mr. Evarts' tie-dye clothes and the Baby Queen from Mrs. Evarts' work as a doula (a provider of non-medical support in the childbirth process). "We have the Pancake Queen and we always ate pancakes," explained Madeleine. "It was just our life in cards."

When they finished developing the full game, Mr. and Mrs. Evarts initiated contact with *Gamewright* via e-mail. "I knew from the beginning that I wanted to approach *Gamewright*, because we loved their other games," said Mrs. Evarts. The company found *Sleeping Queens* unique and interesting, and requested a prototype. "It didn't take more than a couple of test sessions to notice that we had a unique game on our hands," said Jason Schneider, *Gamewright* Product Development and Marketing Manager.

"They loved the name and idea right away" said Mrs. Evarts. "They told me what they liked and didn't and we got back to work. It was not always easy to go back and change things, especially for Miranda, but we kept that vision of the game on the shelf."

The negotiations with *Gamewright* over the IP rights went well. "It was actually a very smooth transaction and it only took about six months from idea to license agreement," explained Mrs. Evarts.

Following the success in the original English version, *Sleeping Queens* is being translated into various other languages. As for Miranda, her imagination is still running wild, dreaming up new games.

AMMONIA SYNTHESIS – THE DOUBLE-EDGED SWORD

From France's Nicolas Sarkozy to America's President-elect Barack Obama world leaders are pointing to investment in emerging green technologies and research as the way ahead in boosting the world's sagging economy and creating new jobs, suggesting programs equivalent to U.S. President Franklin Roosevelt's New Deal of the 1930s. But as the call goes out for green innovation and climate change technologies, there is an important lesson to learn from an ammonia synthesis patent which marks its 100th anniversary this year: some inventions may be a double-edged sword.

Fritz Haber filed a German patent in 1908 for the synthesis of ammonia for which he won a Nobel Prize in Chemistry in 1918. It was a truly breakthrough invention; Haber discovered how ammonia, a chemically reactive, highly usable form of nitrogen, could be synthesized.[1] Naturally nitrogen-rich soil is prime agricultural land due to its high productivity, but the nitrogen is depleted with each harvest, lowering the yield of farmlands year after year. A means of restoring nitrogen to soil would lead to a continuous, bountiful crop. Our atmosphere is 78 percent nitrogen, but it exists in a chemically and biologically unusable form. Thanks to Haber's discovery cheap nitrogen became readily-available and easily usable as a fertilizer. Ammonia synthesis exponentially increased harvests and will continue to do so for years to come. His invention is credited with saving millions of lives and will probably save billions more.

But nitrogen has another application: it is the key ingredient in the explosive TNT (Trinitrotoluene). In his Nobel Prize acceptance speech, Haber only mentioned the growing demand for food as his motivation, but he was well aware of the invention's other application. Following his discovery of ammonia synthesis, he had spent World War I working on poison gas research, earning the title "father of chemical warfare." Haber's ammonia synthesis invention cuts both ways; it has contributed to saving lives of millions but also to the deaths of millions.

Moving forward one hundred years and even the positive application of ammonia synthesis has repercussions. Haber could not have foreseen "the cascade of environmental changes, including the increase in water and air pollution, the perturbation of greenhouse-gas levels and the loss of biodiversity that was the result from the colossal increase in ammonia production and use that was to ensue."[2] We now have to deal with soil, river and air pollution from run-off of chemical fertilization.

However, nitrogen fertilization will not be abandoned any time soon. The world's population is expected to grow to 9 billion by 2042, and further increase our dependence on nitrogen fertilizers. A number of different scenarios for future nitrogen fertilizer use and the challenges likely to be faced by what has been called "our nitrogen economy" over the next hundred years are discussed in the article "How a century of ammonia synthesis changed the world," published in the September 28, 2008, issue of *Nature Geoscience*.

Photos.com

Who would really want to judge whether the benefits of Haber's invention outweigh the repercussions? Can we even envisage a future without it? Ammonia synthesis does not stand alone; many inventions have had both positive and negative applications in addition to contributing to air, ground and water pollution. Policymakers, researchers and innovators are dedicated to finding climate change technologies that will not cause further damage to the planet.

1 "How a century of ammonia synthesis changed the world," Jan Willem Erisman, Mark A. Sutton, James Galloway, Zbigniew Klimont, and Wilfried Winiwarte, *Nature Geoscience*, September 28, 2008.

2 *Ibid*

COMMITTEE MEETINGS

IGC – Consultations to Continue on Future Work Program

After attempts to hammer out compromise texts on the future work program of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) faltered at the Committee's 13th session, WIPO Director General Francis Gurry and the IGC Chairman, Ambassador Rigoberto Gauto Vielman of Paraguay, said they would pursue efforts to bridge differences among Member States to move the international negotiations forward. The IGC's mandate calls upon the Committee to accelerate its work, and expectations remain strong that the Committee should produce a significant outcome by the time it is required to report back to the WIPO General Assembly in September 2009.

Mr. Gurry described the outcome as disappointing, but suggested, "the failure to close a deal was a measure of the political significance of what is on the table: potentially, a major normative shift in the intellectual property system." He remarked on the increasing political will to find a substantive and credible basis for systematic recognition, within the law of intellectual property, of the rights of indigenous peoples and local communities.

"We had an excellent week of discussions where delegations showed a high level of engagement and I am personally surprised that at the end we could not agree," said Ambassador Gauto Vielman. He added, "There is no doubt in anyone's mind that the process needs to move forward in a meaningful way. The disagreements centered on the best manner to achieve this." He said the time available for the 13th session, which met from October 13 to 17, had been insufficient to bridge the differences, and indicated that he would pursue informal consultations with Member States and observers, including representatives of indigenous and local communities taking part in the IGC's work, before the next session.

The program and budget adopted by WIPO Member States foresees two full IGC sessions in 2009.

Proposals and counter-proposals

An African Group initiative (see *www.wipo.int/meetings/en/doc_details.jsp?doc_id=109774*) called for inter-sessional procedures, including three expert groups charged with distilling key findings from the IGC's extensive work on the protection of traditional knowledge (TK) and traditional cultural expressions (TCEs) and on the interplay between IP and genetic resources, to provide more focused material for review at the next session. However, a number of delegations signaled their unwillingness to accept various features of this plan, calling for all work to be held within the framework of the formal sessions and all working meetings to be fully open-ended. Such counter-proposals were seen by others as reducing the chances of the kind of focused, intensive work required to produce workable outcomes from a complex, technical, multilateral process.

The results of proposals to analyze gaps in the international protection available for TK and TCEs, drawn up in the IGC session held in February, were reviewed in this session. These gap analyses contrast the current international legal framework with specific examples of gaps in protection and practical considerations of how best to address these. The analyses are expected to help prioritize issues, identify substantive areas and to guide the future work of the IGC towards concrete results.

Participation of indigenous peoples

The IGC continues to build on intergovernmental mechanisms to ensure that indigenous peoples and local communities have a more influential voice. An Indigenous Caucus and a capacity-building workshop were convened prior to the IGC and the Committee's opening session featured a panel discussion with indigenous representatives, chaired by Mr. Albert Deterville of the Indigenous People (Bethechilokono) of the Saint Lucia Governing Council. ■

SCCR – Key Copyright Issues Under Review

The current state of play of WIPO's work on limitations and exceptions and on the protection of audiovisual performances and broadcasting organizations was the focus of the November meeting of the Standing Committee on Copyright and Related Rights (SCCR).

A number of Member States also stressed the need to address the special needs of disabled persons, including access to copyright-protected works by those who are visually impaired. Such access may involve copying and transforming a work into a readable format such as Braille, large-print books or audiobooks. National law in many countries allows such copying and transformation without the rightsowner's permission; however, in other countries, such acts could infringe copyright if undertaken without authorization. It was agreed to analyze current limitations and exceptions in this area. The SCCR asked for a draft questionnaire to be prepared and circulated before its next session, to include limitations and exceptions related to educational activities, activities of libraries and archives and provisions for disabled persons as well as to digital technology in the field of copyright. The findings will serve as the basis for future discussions.

Member States remained committed to developing the international protection of audiovisual performances. The SCCR supported the organization of further regional and national seminars to facilitate information exchange and promote national systems of protection in this area.

The Committee decided to continue discussions on the protection of broadcasting organizations with a view to concluding an international instrument and noted progress had been made in boosting understanding of the various stakeholder positions. Participants reaffirmed the General Assembly's decision in 2007 that the approach to protection must be signal-based and that a diplomatic conference could be convened only after agreement on objectives, specific scope and object of protection. The SCCR agreed to continue its analysis of the matter and asked for an information meeting to be organized during its next session in May 2009 to focus on current conditions within the broadcasting environment with special reference to developing and least developed countries.

The SCCR meeting was preceded by a two and a half-day information session that included the presentation of four WIPO studies on copyright limitations and exceptions, including those for the benefit of libraries and archives and visually impaired persons in the digital environment. A summary of the outcome of seminars and stocktaking of positions on the protection of audiovisual performances was also presented in this session.

Easier computer access for the visually impaired at WIPO

In August, the President of the World Blind Union (WBU), Dr. William Rowland, and the Chair of the WBU Copyright and Right to Read Working Group, Mr. Christopher Friend, visited WIPO to acknowledge the step taken by WIPO to install software for the visually impaired on its public computers. This software, consisting of a screen reader and screen magnifier, allows a visually impaired person to use a computer and to navigate through sites in such a way that web pages are read out aloud.

Photo: Mark Miller

WIPO is committed to ensuring that any delegate attending meetings at its headquarters receives equal access to information. It is working progressively towards achieving an accessible website by following the Web Content Accessibility Guidelines of the Web Accessibility Initiative (*http://w3c.org/wai*). Pages created according to these guidelines greatly enhance the usability of sites by the visually impaired. The Organization also makes electronic versions of documents available to visually impaired delegates as soon as they are distributed on paper to other delegates.

IN THE NEWS

Satellite Channel on IP Rights

Talal Abu-Ghazaleh, the first Arab satellite channel on intellectual property rights, launched in Egypt this summer with the dual aim of strengthening awareness on IP issues and of giving a clearer picture of the IP situation in the Arab world. Based in Cairo, with offices in most major cities, Talal Abu-Ghazaleh will handle regional and international IP issues, providing a clearer understanding of the legal, economic, technical and social dimensions of IP protection in relation to issues important to the Arab world such as the preservation of biological diversity and the protection of traditional knowledge and expressions of folklore.

The Talal Abu-Ghazaleh channel broadcasts on NileSat in both Arabic and English. ■ Source IP Watch

China Reports Sharp Increase in IP Cases

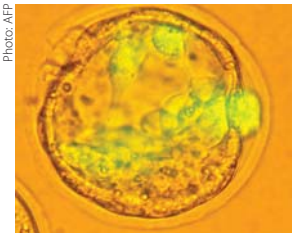
China's Intellectual Property Rights Court has reported a steady rise in IP rights cases over the past 30 years, and more specifically since accession to the World Trade Organization in 2001. Between 2001 and 2007, local IP courts nationwide settled 74,200 such cases with an annual increase of 22.92 percent. However, in the first ten months of 2008, those same courts handled over 20,000 cases, a 40 percent rise over 2007.

More and more Chinese feel concerned with IP issues. Mr. Xi Siaming, Vice-President of China Supreme People's Court, said that IP rights cases are drawing wider attention and covering a greater range of rights: patent violations, franchising, domain names, trademarks, etc. The Supreme Court has designated various specialized courts to handle the different types of IP rights cases that may arise. For example, of the 71 courts specialized in patent violations, 38 specifically handle new plant varieties and 43 the layout of integrated circuits. As of October, China had received 4.66 million patent applications and 6.25 million trademark applications.

The National Copyright Administration also reported that China has been increasingly tough in cracking down on IP rights infringement and piracy. Local offices of the Administration dealt with 66,000 infringement cases and confiscated 478 million pirated products from 2002 to 2007. ■

Nobel Prize Winning Jellyfish

Photo: AFP



A human embryonic stem cell illuminated by green fluorescent protein.

This year's Nobel Prize for Chemistry went to Osamu Shimomura, Martin Chalfie and Roger Tsien for their research into the green glow of a jellyfish, which resulted in the isolation and use of green fluorescent protein (GFP), one of the most important tools in contemporary bioscience research.

GFP was first observed in crystal jellyfish found drifting in the currents of North America's west coast in 1962. Osamu Shimomura was the first to isolate the protein, discovering its bright green glow under ultraviolet light. Martin Chalfie subsequently demonstrated its value as a luminous genetic marker. Roger Tsien then broadened the spectrum of GFP colors beyond green, enabling researchers to give different proteins and cells different colors and thereby follow their biological processes simultaneously.

GFP can be connected to proteins in cells so researchers can observe movements and interaction that were previously invisible to them, such as the development of nerve cells or the spread of cancer. ■ Source *cnn.com*

The 7th Economist Innovation Award

In recognition of the great importance of innovation to the economy, *The Economist* started discerning Innovation Awards to talented, creative individuals in diverse areas seven years ago. This year's winners, announced in October, were:

Photo: © Economist

Bioscience: Sir Martin Evans, Director, School of Biosciences, and Professor of mammalian Genetics, Cardiff University, for his work on stem cell research, "knockout" mice, and gene targeting;

Business process: Jimmy Wales, Founder, Wikipedia, for public collaboration as a form of product and content development;

Computing and telecommunications: Matti Makkonen, former Executive Vice-President, Senora, for his work on Short Message Service (SMS) text messaging;

Consumer products and services: Steve Chen and Chad Hurley, Co-founders, YouTube, for their work on developing multi-media content sharing;

Energy and the Environment: Arthur Rosenfield, Commissioner, California Energy Commission, for his work as an energy efficiency pioneer;

"No Boundaries":* Sumio Iijima, Professor, Meijo University, Senior Research Fellow, NEC, for his development of carbon nanotubes;

Social and Economic: Bill and Melinda Gates, Co-chairs and Trustees, Bill & Melinda Gates Foundation, for their development of a philanthropic support platform, including support for immunization and literacy projects; and

Corporate use of innovation: Nokia, in recognition of its innovative culture and rapid response to new consumer trends. ■

*** The "No Boundaries" category is for technology-based products or services that do not fit neatly into any of the categories (it includes materials science, nanotechnology and other emerging fields, eg, blue-violet laser).**

Project Launched to Modernize Bangladesh's IP System

WIPO and the European Commission (EC) launched a project in November aimed at the modernization of the IP system in Bangladesh and at helping the country maximize the benefits of IP protection.

The project is designed, through various capacity-building measures, to promote effective management of the IP system, and strategic use of the system in supporting wealth creation and social and cultural development. It will address the challenges faced by Bangladesh in meeting its international obligations and will support the evolution of the national IP system in line with the country's development objectives.

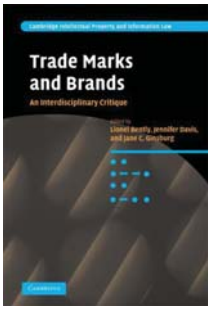
The project has two main clusters of activities. The first is geared to supporting Bangladesh in modernizing its IP legislation and in strengthening its IP administration systems to improve service delivery, by streamlining, simplifying and, where appropriate, automating administrative functions. The second aims at maximizing the use of IP as a tool for economic, social and cultural development. The project will roll out a public outreach program to promote IP awareness in key sectors including universities, R&D institutions, small and medium-sized enterprises (SMEs), creative industries and the business community. It will also promote IP teaching and education through fellowships, course development and linkages with WIPO's distance learning programs.

The overriding objectives of the project are to develop and strengthen the IP system and ensure it operates efficiently and effectively, and to promote a culture of innovation and creativity. The project is also expected to foster a favorable environment that will attract foreign investment to Bangladesh and facilitate technology transfer, contributing to the achievement of the country's overall economic and developmental goals.

The successful completion of the project will enable IP users in Bangladesh – including the business community, researchers, inventors, authors, artists and musicians – to acquire and protect their rights with greater ease and efficiency.

BOOK REVIEW

Trade Marks and Brands: An Interdisciplinary Critique



Edited by Lionel Bentley, Jennifer Davis and Jane C. Ginsburg (Cambridge University Press, US$130)

This volume grew out of two workshops held at Emmanuel College, Cambridge, in 2005 and 2006. It is interdisciplinary in its approach and addresses the following topics: legal and economic history, current positive law in the E.U. and the U.S., linguistics, marketing, sociology, law and economics, philosophy, anthropology and geography.

Readability and the inter-relation of themes are much enhanced by the "Noah's ark" progression of the book: each section brings on board a pair of contributions on one of the above-named topics. The writers, all experts in their fields, consistently refer to, argue against or support the other contribution in their section, also linking it to other parts of the book, making the work more of a seamless whole and avoiding the impression of discontinuity that can so easily occur in such volumes.

The broad picture evoked for developed countries is that marks and signs, up to 19th and later 20th century trademark norms and practice, were in some way "badges of origin" and ultimately a means of quality control. But after this, business and trade orientation increasingly distances rights-owners from consumers and raises questions as to whom trademark institutions now effectively assist – rights-owners, actual producers, consumers, trade competitors? Are consumers unduly manipulated? Should the law treat them as "rational sovereigns" or "gullible fools"?

Initially, as goods increasingly crossed national frontiers, national, then international legal instruments such as the Madrid Agreement for the International Registration of Marks (1891), facilitated enforcement by recognized registration, which first provided *prima facie* evidence of exclusive rights to marks. This exclusivity nonetheless left room for fair competition (viz. *Kellogg vs. National Biscuit Co.*, 1938, for the allowable use of the shape and term of SHREDDED WHEAT).

The volume demonstrates progressively restrictive interpretations of law in European and U.S. courts, as to similarities claimed to be "dilution or blurring" or "tarnishment" of existing marks, seen here to correspond to evolving trading practices and globalization. Whereas, previously, registries and courts more visibly safeguarded the need for unfallacious signs and for non-descriptive and non-generic words, thus also protecting language in the public domain, contributors show them as now faced with applications for signs once probably inadmissible, such as the color orange. It appears that owners' rights to the use of words may only stop "where third party artistic and political speech begins": humor, satire and distinct use won against a dilution claim in *Louis Vuitton Malletier SA vs. Haute Diggity Dog* (2007), the latter having produced animal accessories such as CHEWNEL NO. 5, CHEWY VUITON and DOG PERIGNONN!

In analyzing change, considerable weight is given to the phenomena of franchising and branding. Rights-owners profit from franchising by the grant of licenses, now on a planetary scale: it is startling to read that franchised business represents 38 percent of all U.S. retail sales. A brand is a wider concept than a mark, encompassing an advertising function that can project good reputation, desirable life-style, even spirituality. Upheld by the imagery and other subliminal messages of advertising, it can make suggestive claims that are not legally binding. Furthermore, the diversification of single companies, whose branding can cover thousands of product lines, enables a wealthy giant to render prohibitive the innovatory and financial input necessary for newcomers to compete.

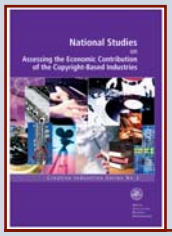
On geographical indications, a case for the excessively static concept of place (considering other factors such as external human influences) and for the substitution of marks or certificates of origin is persuasively countered by another contributor. He outlines interesting 19th and 20th century historical background on the French *Apellation d'origine contrôlée*, indicating that legislation was prepared by due consideration of some of the very factors his colleague believes were excluded. He also argues for current applicability to developing countries and the greater suitability of this *sui generis* approach to establish a many-sided authenticity, given that marks are priority-based.

The editors' claim in the preface of the uniqueness of this work, on the basis of the broad, inter-related range of contributions, is largely justified. Throughout this volume, contributors bear in mind that legislation is inevitably behind constantly-evolving developments, and draw readers into considering the challenges ahead. This work will no doubt be useful to scholars and students as well as to non-specialists wishing to broaden their knowledge on the subject.

NEW **PRODUCTS**

Guide pour l'enregistrement international des marques en vertu de l'Arrangement de Madrid et du Protocole de Madrid
French No. 455F, Spanish No. 455S
60 Swiss francs (plus shipping and handling)

How to Make a Living from Music – Creative Industries Booklet No. 4
English No. 939E
50 Swiss francs (plus shipping and handling)



National Studies on Assessing the Economic Contribution of the Copyright-Based Industries – Creative Industries Series No. 2
English No. 1009E
95 Swiss francs (plus shipping and handling)

Master of Laws in Intellectual Property. Post-Graduate Specialization course on Intellectual Property (Turin, Italy) Collection of Research Papers, 2007
English No. 797E
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Making a Mark: An Introduction to Trademarks for Small and Medium-sized Enterprises
Russian No. 900R
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El sistema international de patentes en 2007 – PCT Reseña anual
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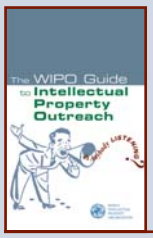

Guide OMPI de sensibilisation à la propriété intellectuelle
French No. 1002F, Spanish No. 1002S
Free of charge

Catalogue of Products – September 2008
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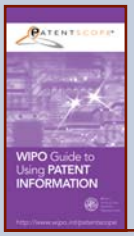

Patentscope – WIPO Guide to Using Patent Information
English No. L434/3E, French No. L434/3F
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