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WORLD INTELLECTUAL
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# SECOND INTERNATIONAL FORUM ON CREATIVITY AND INVENTION – A BETTER FUTURE FOR HUMANITY IN THE 21ST CENTURY

organized by
the World Intellectual Property Organization (WIPO)

in cooperation with
the State Intellectual Property Office (SIPO) of
the People's Republic of China

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## THE DEVELOPMENT OF THE INTERNATIONAL PATENT SYSTEM

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1. Today, there is no international patent. There is no possibility that anyone will grant an "international patent." There are certain international agreements that facilitate the advancement of the patent system but none of them are an "international patent." The current framework of the patent system consists of a patchwork of national, regional and international legal, organizational and administrative arrangements for obtaining and enforcing patents.

2. The most important international agreement is the Paris Convention for the Protection of Industrial Property of 1883 (known as "The Paris Convention"), which has been revised several times since then (the most recent revision was in 1979).

3. This Agreement provides for the principle of national treatment for foreign applicants, the 12-month priority right and other measures concerning the patent system.

4. On the question of national treatment, each member country takes upon itself to grant to nationals and residents of other countries the same treatment that it grants to its own citizens and residents.

5. However, the Paris Convention does not provide for any kind of actions if one or another country does not comply with the obligations under the treaty. That was one of the reasons the United States of America had initiated a procedure in the GATT (the predecessor of the World Trade Organization (WTO)), that led to the conclusion of the TRIPS Agreement (the Agreement on Trade Related Aspects of Intellectual Property Rights) that, in such cases, allows for a complaint to be submitted to the WTO arguing that the country is not complying with its international commitments. The WTO may establish a committee of inquiry composed of three members, and an appeal may be submitted to a panel of seven.

6. If both entities decide that the relevant country is not honoring its international commitments, it may decide to impose sanctions on that country in the area of international trade, such as not allowing the reduction of customs duty on imports by that country. In other words, the sanctions are not limited to the areas of intellectual property, but to all areas of activity of the WTO.

7. The TRIPS Agreement, which was concluded as part of the Marrakech Agreement establishing the WTO, came into force on January 1, 1995. This means that now the protection of the international patent system is covered not only by conventions administered by WIPO, but also by the WTO Convention. The link between the intellectual property system and global trade has been brought into sharp focus by the TRIPS Agreement.

8. All developed countries had to implement the principles of the TRIPS Agreement already in 1995, namely when the WTO Agreement came into force. Developing countries like Israel, Mexico, India, Brazil and the Republic of Korea or the Philippines were given a grace period of five years and were only compelled to implement TRIPS by the beginning of the year 2000. The least developed countries have an additional five-year grace period. Today the least developed countries include some 49 countries (34 in Africa (like Chad, Niger, Mozambique, Tanzania or Sudan), 14 in Asia (like Nepal, Bhutan and Myanmar), and one in Latin America and the Caribbean (Haiti); those countries, who are members of the WTO have until 2005 to implement the TRIPS Agreement.

9. One issue that may arise has to do with compulsory licensing. Many international companies take up patents in many countries in order to use these countries as targets for export, instead of manufacturing the product in that country. This provision is allowed by the Paris Convention and also by the TRIPS Agreement. However, the introduction to the TRIPS Agreement states that there should not be any discrimination between importing a product and manufacturing it locally. If importation is regarded as supplying the needs of the country it basically undermines the notion of compulsory licensing, which is enacted in the laws of many countries to counter the reluctance of companies to manufacture in those countries. The question is still open. Many countries have abolished the principle of compulsory licensing, but others are still considering their policy on the matter.

10. Another provision of the Paris Convention deals with the independence of patents, which means that, if a patent is granted in one country and then invalidated by a court decision, that does not affect the patents granted in other countries.

11. The Paris Convention introduced the notion of priority rights. That means that if an application is filed in one country party to the Convention, the relevant date of that filing is applicable to all other countries party to the Convention, and any applicant who files his application later is regarded as submitting a "well-known" invention for patent protection. The original applicant is given one year by the Convention to file his application in other member States and retain the original filing date of the first country as the date of application. This provides inventors with a year of grace within which to submit their applications in all or some countries party to the Convention without losing the status of first inventor in any country.

12. The existing patent system still entails the examination of the patent application according to the main criteria of patentability, namely novelty, inventive step and industrial applicability.

13. In order to prevent the need to examine and re-examine the invention in many countries, a new Treaty was concluded in 1970 called the Patent Cooperation Treaty (PCT). The idea of the PCT is that the applicant may file an "international application" in one country and in one language. The application is filed with the World Intellectual Property Organization (WIPO) in Geneva, and is examined by one of the designated major examination offices, which now include also the State Intellectual Property Office (SIPO) of China. The search report issued by that Office is then circulated to all countries in which the applicant wishes to receive a patent. In the final analysis each member country grants a patent on the basis of the search report prepared by the major examination office.

14. The PCT is the major achievement of the international system of the recent years. It still does not allow for the grant of an "international patent" by any one institution, but saves the time otherwise spent on examination and re-examination of the application by different countries.

15. During the last session of the Assemblies of the Member States of WIPO, the Director General of WIPO presented a document entitled an "Agenda for Development of the International Patent System" (WIPO document A/36/14) in which he drew attention to some of the shortcomings of the present international patent system, such as duplication of examination work, cost for obtaining patent protection, increased workload for IP offices, time consuming processing of applications, etc.

16. The said document also proposes to Member States some objectives for overhauling of the international patent system, whereby inventors and industry should be able to obtain, maintain and enforce their patents through simple, inexpensive, timely, and reliable procedures, which should support the exploitation of patented technology either through manufacturing, incentives for investment, licensing or other technology transfer arrangements. At the same time an effective patent system should help countries to pursue economic development and other national interests by fostering innovation.

17. Under the future patent system national and regional intellectual property offices will evolve into services organizations, that will provide support for R&D and business development, not only by registering IP rights, but in particular by providing enhanced access to technological and business information, contained in patent documents.

18. At present several harmonization processes have been initiated, such as within WIPO the patent law harmonization (first step was the conclusion of the PLT, the next step will be the discussion of the substantive provisions of patent laws) and the reform of the PCT. There are other projects for harmonization of procedures and substantive patent laws in various countries, but none of them attempts to reach the stage of granting an international patent.

19. I personally believe that we should eventually have one international patent, granted by an institution such as WIPO and applicable to all member countries.

20. In any event, it should be made clear that the protection of patents is not an end in itself. It is a means of encouraging creativity, industrialization and investment. As the legend on the cupola of the WIPO headquarters building in Geneva puts it: “human genius is the source of all works of art and invention. These works are the guarantee of a life worthy of men. It is the duty of the State to ensure with diligence the protection of the arts and inventions.”

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