

The most important man in IP

This month, **Francis Gurry** takes over the role of WIPO director general, as the world's only international organisation dedicated to intellectual property begins its recovery from a period of criticism and stagnation. In an exclusive interview, he tells **James Nurton** about the challenges WIPO faces, the changes he will make and why he is the right man for the most important job in IP

In 1985, when Francis Gurry started working at the World Intellectual Property Organisation, "IP was a speciality known only to practitioners of IP". Twenty-three years on, as he takes over as director general of the Organisation, he believes the IP world has changed remarkably. "IP is now a subject of recurrent discussion in newspapers on a daily basis," he says.

For WIPO itself, much of that newspaper discussion has been hostile over the past two years as accusations about mismanagement, lack of leadership and even fraud have been made in the press in Geneva and beyond. Gurry, who began his six-year term on October 1, says that the troubles of the recent past have prevented WIPO from fulfilling its core role. He intends to change that. In a telephone interview with *Managing IP* on the eve of his appointment by WIPO's General Assembly on September 22, Gurry said his main priority as DG would be "reengaging or engaging WIPO in the many challenges that exist as a result of the changing environment for IP in the world".

The fourth man

Gurry is WIPO's fourth director general since the UN agency – the only international body exclusively focused on IP – was founded in 1970. His appointment followed a day of tense voting in May that saw 14 candidates gradually whittled down by member states over four votes. After leading in each round, Gurry defeated Brazilian, and fellow WIPO staffer, José Graça-Aranha, by 42

votes to 41 in the final vote. Although the voting process was confidential, Gurry was widely believed to have won the support of western, developed countries while rival candidates, notably Graça Aranha, were backed by developing nations.

Despite being a WIPO insider for more than 20 years and a deputy director general since 2003, Gurry had stressed the need for WIPO to change direction in his campaign. His presentation during the election, which was described as slick and impressive by those who saw it, promised to return WIPO to its technical mission. This resonated with (just) enough members who felt that WIPO had failed to focus on its core activities of managing patent, trade mark and copyright activities and had become distracted with promotion, grand gestures and internal politics. As former deputy director general Geoffrey Yu told *Managing IP* in the summer: "There has been too much focus on organisation of conferences and seminars and not sufficient focus on project development."

Criticisms of WIPO were compounded by an increasingly bizarre series of investigations into the previous regime, with enquiries into the use of WIPO funds and building contracts and, ultimately, confusion over the age of the previous director general, Kamil Idris. Once accusations surfaced last year that Idris had lied about his age when applying for the top post and he subsequently argued the mis-statement had been an accident, it became harder and harder for either the agency or



its head to command respect among member states, users, staff or other international bodies. The basic tasks of the Organisation were neglected as the leadership was focused on fighting off the latest allegations made in an increasingly direct series of letters by WIPO staff, mysteriously signed Cincinnatus, or published in the *Tribune de Genève*. (WIPO, like many international organisations that comprise staff from different countries, some of whom have too much time on their hands, leaks like a sieve.) It became clear that the only way for this spiral of innuendo, accusation and low morale to end would be for Idris to quit – which he did, announcing at the end of 2007 that he would step down in September 2008, a year before the end of his second term.

Now, after the campaigning, the nomination by the Coordination Committee in May, and further discussions leading up to the General Assembly last month, Gurry is installed as the new director general. As head of an organisation with 184 member states and 24 international treaties (including the PCT and Madrid Protocol), the Australian can, for the next six years, be called the most important person in IP.

A polarised debate

Gurry says the stalemate at WIPO is due to a “complex of reasons”. Above all, he argues: “For 15 years, since the conclusion of the TRIPs Agreement, the world has been polarised on

IP issues.” This polarisation has pitted the industrialised world against the developing countries – north versus south, in the shorthand. “We will try to break down this polarisation by promoting evidence-based discussion of IP issues and relying on empirical data,” says the Australian. One of his first aims as director general will be to set up an economic research and statistics division.

This polarisation even extends to issues such as anti-counterfeiting, says Gurry. “Of all questions, none is more polarised. But I think it’s a false polarisation. These are universal problems that we have to overcome.” He promises that his regime will focus on counterfeiting and piracy, and examine what WIPO’s role should be. Up until now, WIPO’s activities have mainly been coordinating education programmes. For example, the Organisation has not led negotiations for a global Anti-Counterfeiting Trade Agreement (ACTA), which have been initiated by national governments. “Should we move into a more active role? I think we should,” says Gurry. “The evidence of the extent of the economic value of counterfeiting and piracy and the extent of involvement of organised crime as well as health and safety and consumer protection means we should be more active.”

But Gurry admits that the polarisation between north and south, which he describes as extraneous to WIPO, is only one part of the reason why the Organisation has failed in its core

mission. He talks about the “cultural changes that the Organisation has not sufficiently come to terms with” such as the participation of non-governmental organisations in civil society and geopolitical changes, notably the emergence of north-east Asia. Pressed on why WIPO has failed to respond to these challenges, he says the reasons are “obvious”: “It depends on who’s leading the Organisation.”

The new broom

Gurry will be a familiar face to many IP practitioners. Like his predecessor, he is a WIPO veteran who has held a variety of posts at the Organisation since he joined it in 1985, most recently as the deputy director general responsible for (among other areas) the PCT, the WIPO Arbitration and Mediation Center and traditional knowledge. He has previously served as assistant director general and legal counsel and was director of the Arbitration and Mediation Center. As a long-standing WIPO staff member, Gurry – who is married with three children – lives in Switzerland and speaks English and French fluently.

Prior to joining WIPO, 57-year old Gurry (who has two law degrees from the University of Melbourne) spent a brief period in legal practice and was a law lecturer in Australia and France. He has a PhD from the University of Cambridge, has written or co-written three books on IP and is a professorial fellow in the Faculty of Law at the University of Melbourne. Asked by *Managing IP* in March this year what he would do if he did not work in IP, he replied: “Go back to university and write. If I could not write on IP I might study multilateral negotiations and systems.”

Gurry identifies two achievements at WIPO that he is particularly proud of contributing to: the development of the Patent Cooperation Treaty (PCT) over the past six years, with the adoption of electronic communication, and the launch of the Uniform Dispute Resolution Procedure (UDRP) within the Arbitration and Mediation Center to handle domain name disputes. Last year, WIPO received more than 2,000 complaints and there are more than 400 UDRP panellists. What has made it such a success? Gurry suggests three reasons: “First, it was an inherently international problem: litigation and national law was not adequate. Second, it was very urgent and had to be solved quickly or trade marks would be violated on a large scale. Third, the contractual system lent itself to enforcement.” The popularity of the UDRP – it has handled 14,000 cases since it was launched in 1999 – shows what can be achieved when WIPO is at its best.



Gurry in his Geneva office

WIPO's five priorities

Gurry says there are five main challenges that WIPO will focus on during his term: demand management for the patent system; the appropriateness of copyright in the digital and internet age; the development agenda; engaging WIPO in other areas such as health and climate change; and addressing the protection of traditional knowledge in developing countries. These challenges will be fleshed out in nine goals, which WIPO will publish later this month.

Some of these five priorities will be more important to developed nations, and some to developing ones, and

part of Gurry’s task will be to negotiate compromises so that all member states feel their needs are being addressed. “The important thing is that we establish a work programme with something for each section of the membership,” he says. “We want to see a balanced evolution of the IP system.” This will mean getting all the member states involved in discussions, and trying to come up with specific proposals that will appeal to both those who want stronger protection and those who prioritise greater access. “The member states would like WIPO to get back to its technical function,” says Gurry. “We need a process of trying to get consensus.” He says the main elements of the package will be put in place in his first six months.

One of his first priorities will be to place advertisements for four new directors who, he says, will bring “new skill sets”. These will be a chief economist (who will work on data collection), a chief information officer, a director of human resources (remarkably, for an organisation with 1,300 staff, WIPO does not have one) and a director for a new division

that will focus on engaging with other areas that affect IP. This last role will work with other groups and agencies such as the World Trade Organisation and World Health Organisation to “proactively” address the fourth of the five challenges Gurry identified – standing up for IP rights in debates over access to medicines, climate change technologies and the like.

Managing the patent crisis

Part of the difficulty for WIPO is the variety of stakeholders the agency has to work with. Technically, WIPO is answerable to its member states, who meet once a year at the General Assemblies to decide policy and budget and elect the senior posts. It also

Gurry's predecessors

Georg Bodenhausen (Netherlands, 1970-1973)

Georg Bodenhausen was at the helm of WIPO when it was formed. The Dutchman was a civil servant and was also the director of the United International Bureaux for the Protection of Intellectual Property (BIRPI) from 1963 to 1970. In tribute to the Dutchman, one of the WIPO office buildings in Geneva is named after him.

Arpad Bogsch (US, 1973-1997)

Under Arpad Bogsch’s leadership, WIPO made much progress and was transformed into a modern organisation wielding more influence in the world of intellectual property. Bogsch made various contributions to WIPO and is most famous for establishing the Patent Cooperation Treaty. He was appointed as the first deputy director-general from 1970 to 1973 and got the top job in 1973. He was also secretary general of the International Union for the Protection of New Varieties of Plants (UPOV), WIPO’s sister organisation.

Kamil Idris (Sudan, 1997-2008)

Under Kamil Idris WIPO saw its fair share of controversy yet progress was made in some areas. He was the first director-general from a developing country and development issues were at the heart of WIPO’s policy making under his tenure. His biggest achievement was the Development Agenda which took off in March this year. Idris was reappointed to a second term as director-general in 2003 and was expected to remain in office until 2009 but he decided to step down a year early. Also secretary general of UPOV.

has contact with many member states through their national offices, which work with the international registration procedures. The users of systems such as the Madrid Protocol and PCT do not have any such power, even though they may have more day-to-day contact with the Organisation and, indeed, provide most of the funding: in the 2008-09 proposed budget, contributions from member states amount to just Sfr34.8 million, while total fees paid by users are expected to be Sfr586 million (including Sfr485 million from the PCT and Sfr94 million from the Madrid System). Then, there are the 1,300 or so staff from all over the world, whose interests have to be considered, and who account for nearly two-thirds of the expenditure. Finally, as Gurry notes, there is a growing number of other agencies – from the WHO to WTO – as well as non-governmental organisations (some that represent IP owners and others that speak for consumers or other groups interested in the impact of IP policy) who want to be involved in WIPO's work and to whom the Organisation must pay attention.

Despite their different perspectives, Gurry believes both users and member states think WIPO has not been sufficiently focused on its technical mandate and they would like to see renewed emphasis on that. Many users put enhancement and extension of the major treaties at the top of their priority list. There has been progress in many areas: the Madrid trade mark system now has 84 member states, and has added the US, EU and China in recent years. More than 160,000 entities worldwide own a Madrid System registration. The Singapore trade mark treaty, which harmonises some aspects of trade mark practice, is likely to come into effect next year. Meanwhile, the Hague Agreement on registered designs has grown to 53 members, including the 27-country EU and the 16 states of OAPI in French-speaking Africa which both joined this year. The Madrid System in particular has been adapted in response to users' demands, with more electronic communication, the repeal of the safeguard clause, the introduction of a statement of grant of protection and now discussions over removing the need for a basic mark. But there is more work to be done and maybe renewed leadership at the top of WIPO will help – particularly in expanding the membership of Madrid to important jurisdictions such as India and South Africa, as well as the countries of Latin America, where there is scant coverage at the moment.

How Gurry will be judged: five challenges for the new DG

1 Get the staff on board. WIPO's recent history has been dominated by gossip, accusation and innuendo, while it has failed to provide leadership on major IP issues. This has led to low morale and mistrust of the leadership among many of its 1,300 staff. If Gurry is to implement big changes, he will need to reinvigorate the staff and persuade them to support him.

2 Bridge the global divide. Issues such as access to medicines, traditional knowledge and counterfeiting have prompted a sharp divide between industrialised and developing nations over the past decade, making it almost impossible to reach agreement on even apparently simple aspects of WIPO's agenda. Gurry needs to find consensus where possible while member states will have to accept that they will not win all their battles. A good start would be to focus on areas where states with different interests can come together and agree: WIPO's work this year on legal privilege is a good example.

3 Address the patent crisis. The word "crisis" is so freely and frequently uttered by patent office leaders that it risks becoming a commonplace. The problems – growing backlogs, longer pendency, lack of harmonisation – are too difficult for any one organisation to solve but WIPO should take a lead in finding agreement between members, working with the trilateral if necessary, and using the PCT to promote harmonisation.

4 Develop some global policies. In areas such as traditional knowledge, access to medicines and anti-counterfeiting, WIPO has lost the initiative as other groups have extended their remit to IP issues. IP owners will be better served if WIPO, rather than say WHO or the CBD Secretariat, is the forum addressing their concerns and making decisions that affect their businesses.

5 Turn words into actions. For example, WIPO member states have agreed a development agenda after what seems like decades of discussion. It promises to improve IP protection in developing countries and inspire production of IP rights, but its terms and purpose remain vague. It needs to be implemented with some real programmes and measurable benefits.

The PCT is another success story: last year it received more than 156,000 applications, or 400 every day. But, as with national and regional patent offices, there is increasing concern that the PCT is creaking under the strain, particularly as new markets develop: in 2007, applications from China grew by 38% and those from Korea grew by 19%. Gurry, who has been engaged in running the PCT since 1999, acknowledges the problems: "There is a crisis in the patent system. And it needs to be addressed multilaterally." The crisis is about managing the numbers of applications and the resulting backlogs worldwide, and Gurry argues that action by individual countries or even groups such as the EPO/JPO/USPTO trilateral would be insufficient to tackle it, as demand has already grown in Korea and China, and is likely to do so in India and other emerging markets too. "The language of technology production has changed. No single office can cover all of them," he explains. "I don't see any other solution out there that is successfully dealing with demand man-

agement. The problem is international and the solution ought to be international."

But it is far from clear that users or member states are persuaded that WIPO is the right place for these initiatives. In the absence of a clear lead from Geneva, the biggest offices, including the EPO, JPO and USPTO, have proposed their own solutions and in some cases launched bilateral projects (such as patent prosecution highways) and Gurry will now have to put WIPO back into a debate in which it appears to have been sidelined. He will also probably come under pressure to renew discussions on harmonising laws. In the long term, he told *Managing IP*, WIPO will "engage in a discussion on priorities" and this could encompass both procedural and substantive harmonisation: "Both have their role. You can advance the solution based on the procedural arrangements. It should be possible to have one process up to but not including grant or refusal, but you would need to have some form of virtual or network search." In the shorter term, Gurry believes that the difficulties that exist in the PCT system need to be addressed: "The international search reports are not taken as seriously by some offices as they should be and not given full credit. We need to enhance the quality of the search and the reliance on it."

Whither WIPO? IP leaders greet Gurry's appointment

Roger Burt, IBM Europe and president, Trade Marks Patents and Designs Federation:



We welcome the appointment of Francis Gurry as director general of WIPO. His extensive knowledge and experience of intellectual property and the PCT system, in particular, will be a great advantage. We look forward to the PCT system, under his stewardship, prospering and continuing to provide a cost-effective route towards international patent protection.

Jack Chang, GE and chair, Quality Brands Protection Committee:



The balance of IP protection and public interest has become a hot issue in developed and developing countries, generating debate on whether stronger IP protection helps encourage or discourage innovation and economic growth. As a leading international IP organisation, we would like to see WIPO continuously promote IP protection. Secondly, QBPC has been well recognised as a model of collaboration between public and private sectors in China to improve the IP environment via an approach based on cooperation and has been sharing best practices with sister organisations in other emerging markets. We would encourage WIPO to coordinate and leverage the industry groups' resources and experiences to promote public-private collaboration in key emerging markets. To do so, WIPO needs to strengthen interaction with rep-

utable industry groups. Lastly, in addition to Dr Gurry's relentless efforts to promote global patent system harmonisation, we look forward to WIPO's leadership in facilitating international cooperation among counterfeit source, destination and transition countries/regions through intelligence sharing, coordinated cross-border enforcement and public awareness. The mantra must be "say no to counterfeiting and piracy". QBPC looks forward to working with Dr Gurry and WIPO.

Jane Collins, Syngenta and chair, MARQUES:



MARQUES is delighted that such a distinguished person in the field of IP has charge of WIPO. We hope that he will foster relations with trademark owners and we welcome meeting with him on a regular basis for consultation. We have worked actively as an NGO in the various WIPO working groups and forums for many years and we have supplied many speakers at WIPO events around the world and have assisted in lobbying activity. We will continue to do so if asked.

Anjan Das, head of technology, innovation, IPR and life sciences, Confederation of Indian Industry:



CII takes this opportunity to congratulate Francis Gurry on being appointed director general of WIPO. In fact, CII was instrumental in organis-

ing Gurry's first visit to India in 2001 when he spoke on a CII Platform about IP at Hyderabad. CII has had the privilege of interacting with Gurry on several occasions and is confident that under his leadership WIPO will achieve new heights. To keep pace with the growing importance of IP in the knowledge economy, there is a need for more proactive and intensive capacity building initiatives (with special focus on SMEs), infrastructure development and building international consensus on various issues faced by Indian industry. WIPO, governments and proactive industry associations like CII have to intensify their efforts to create a suitable ecosystem to leverage the power of IP and create wealth for the nation at a much faster pace. We would expect WIPO to work out suitable mechanisms for effective protection and enforcement of GIs, traditional knowledge and traditional cultural expressions (folklore) as well.

Wubbo de Boer, president, OHIM:



The change at the helm at WIPO comes at a time when IPR registration offices are facing increasing demands to cooperate more closely. International arrangements such as the Madrid and Hague systems for the international registration of trade marks and designs are examples of areas where OHIM and WIPO already work together. However, the message from industry is clear: they want the international protection of rights to be more straightforward and problem-free. I look forward to working

Three steps to realignment

Perhaps the most pressing challenge facing Gurry is to inspire the WIPO staff – the secretariat – many of whom have lost faith in the Organisation and even openly criticised it in recent years. He insists "there is a widespread response from the staff to improve the Organisation at the outset" and has a three-fold plan for strategic realignment that he aims to complete within three years. The first stage involves changing the culture of the Secretariat from one of entitlement to one that is service-oriented. This will include addressing professional and ethical behaviour and cost cultures. Second, the secretariat will be restructured to align it to the new strategic goals and eliminate redundancies. Third, horizontal business processes (such as human resources) will be introduced.

Gurry also promises "regular staff meetings" and is "looking at what might be best and most appropriate" in the way of communication tools. In terms of the senior appointments, the four new director roles will be advertised immediately while the four deputy director general and three assistant director general roles, which are decided by the member states, are all due to be elected in November next year. Gurry's previous deputy director general role will not be filled until then. "We will start the consultation for the November 2009 appointments early next year," he says. Asked what part leadership rival José Graça

Aranha will play in WIPO's future, Gurry says: "José is a good colleague and I'm looking forward to working with him."

A future for multilateralism

Gurry is taking over as head of WIPO when there is unprecedented interest in intellectual property combined with record demand for IP rights. Ironically, these changes have come about as WIPO's relevance in the IP world has fallen and other organisations have stepped into the breach. Yet, for all its problems, WIPO has a vital role to play in developing policies, harmonising different systems and supporting its member states in dealing with demand. And, despite the disagreements and difficulty of meeting everyone's expectations, no other body can hope to address the range of issues and interests that WIPO can. In a globalised economy, IP rights are necessarily international and the IP world needs such a body to be functioning and effective. The shift in value to intangibles and the emergence of globalisation have an inevitable impact on IP, says Gurry: "It's neither good nor bad, it's just happening." And such social and economic change have already affected, and will affect much more, the principles and practices of IP protection: "It produces a lot of challenges of a fundamental nature for IP. The question is whether the multilateral system can deal with them," he says. Now is the time for WIPO to come in from the cold. ■

with Francis Gurry in tackling the new challenges facing the international IPR community and wish him well in his role as director general of WIPO.

Jon Dudas, director, USPTO:



Director general Francis Gurry is an experienced and earnest leader, and we have been pleased by how seriously member states treated this election and are supporting the transition.

While the organisation faces many challenges, we are hopeful that WIPO and its member states are at the beginning of a successful rebuilding process. We are optimistic that under Dr Gurry's leadership, WIPO faces a future of bright opportunities.

Mike Kirk, former executive director, AIPLA:



I am extremely pleased that Francis Gurry has been elected to become director general of WIPO. He understands the challenges facing the

global IP community and I am confident that, under his leadership, WIPO will begin to effectively address them. Francis understands that patent offices have reached a critical point with the staggering workload they face and he is clearly on the right path in advocating a multilateral solution centred on the PCT.

For the longer term, I believe Francis will bring sorely needed stability to WIPO and will begin to restore respect for, and confidence in, its role as the organisation to nurture and pro-

mote the international protection of intellectual property in a balanced way, taking into account the needs of both creators and users of intellectual property. This will take time, and no-one should expect an overnight transformation, but I am certain his election will be warmly received by the staff and that they will support his efforts. Another clear benefit will be that WIPO will again be the UN agency that will appropriately take the lead role in establishing norms for providing strong and balanced protection for intellectual property. In this regard, I am hopeful that he will be able to complete the substantive patent law treaty that has gotten sidetracked in recent years in the unnecessarily politicised climate that has infected the Organisation.

Herb Wamsley, director, IP Owners Association:



We think Francis Gurry will be an outstanding director general. He spoke at an IPO annual meeting in New York City last year and he's very

well known among the in-house patent community. We applaud his appointment and we're excited that WIPO will be addressing many important issues. We'd most like to see WIPO re-open the subject of patent law harmonisation and work actively toward developing a multilateral treaty. We hope that can happen within the next year. Harmonisation is one of several issues that WIPO is accepting public comments on until October and we're planning to write and give strong support to resurrecting the subject.

WIPO in figures

- 41** Years since WIPO founded
- 4** Number of directors general since 1967
- 184** Number of member states
- 250** Number of accredited observers
- 24** Treaties administered by WIPO
- 20,000** Number of participants in WIPO distance-learning courses in 2006
- 1,320** Estimated number of employees by December 31 2009
- Sfr646.8 million** Expected income for 2008/09
- 184,700** PCT filings expected in 2010 - almost double the number in 2000
- Sfr1,483** Average revenue to WIPO per PCT application in 2007
- 495** Headcount for the PCT system (2008-09)
- 43,600** Madrid applications expected in 2011, compared to 24,230 in 2000
- Sfr781** Average fee expected from Madrid registrations and renewals in 2011, compared to Sfr898 in 2003
- Sfr1,139,475** Contribution from each Group 1 country (France, Germany, Japan, UK and US) in 2008
- Sfr90.8 million** Amount allocated in 2008-09 budget for cooperation with developing countries
- 2002-03** The last time WIPO had a deficit

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