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for Spectator Sports

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the Life Sciences

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AFRICAN DESIGNERS

Traditional
with a Twist

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Invitations: As members or observers (depending on the assembly), the States members of WIPO; as observers, other States and certain organizations.

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Invitations: As members, the States members of the Preparatory Working Group of the Committee of Experts of the Nice Union; as observers, the States members of the Paris Union, which are not members of the Preparatory Working Group, and certain organizations.

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An annual event for all persons interested in WIPO arbitration procedures, both as potential arbitrators and as potential party representatives.

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An event for all persons interested in receiving up-to-date information about the trends in WIPO domain name panel decisions.

Invitations: Open to interested parties, against payment of a fee.

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SPECTATOR SPORTS BREAKING RECORDS IN IP REVENUES



It is a summer for sport fans. The UEFA* Euro 2008 filled screens in June and the Beijing Summer Olympics will captivate audiences throughout the month of August. Euro 2008 generated €1.3 billion (US\$2 billion) from broadcasting rights, trademark sponsorship and ticket sales – 50 percent more than the 2004 total. The 2005-2008 Olympic cycle – covering both winter and summer Olympics – are expected to far outperform the US\$4.2 billion in revenues generated in the previous Olympic cycle.

Euro 2008

The Euro is challenging the Olympics to be the most watched sport tournament after the World Cup. No single Olympic event has drawn the 161 million viewers the Euro 2004 final between Greece and Portugal attracted. The European football championship is very popular in South America and Asia; it is reportedly impossible to find a taxi in the wee hours of the morning in Singapore when games are on. The official EURO 2008 website – which offers coverage in ten languages, including Japanese, Korean and Chinese – registered over one billion page views in the four months preceding the event. In June alone, 42 million visitors from 200 countries logged into the site with a peak of 4.3 million viewers in a single day and half a million per hour to follow live coverage on the Internet.

Statistics: Broadcast of the Athens Olympic Games

- The 300 events provided over 4,000 hours of live television coverage.
- Utilized more than 1,000 cameras and 450 video tape machines
- Employed 3,700 people.
- Worked with more than 12,000 accredited right-holding broadcast organizations to reach people in 220 countries.
- Total viewer hours 34.4 billion.

UEFA acknowledges that “The sums from TV rights and sponsors are much bigger than the sums generated from ticketing.” After the final tally, television broadcasting – the licensing of copyright-related rights – amounted to 60 percent of Euro 2008 earning. Marketing – sponsorship from trademark owners and products that carry the Euro logo – reached 21 percent.

Olympic Games

Sponsorships and broadcast licensing revenues are a boon for the Olympics, increasingly hard-pressed to cover the escalating costs related to organizing the event. The Beijing Olympics may even be profitable. The revenue from national sponsors – 7 of 10 are Chinese companies – is expected to surpass the US\$1 billion mark, almost twice that of the Athens Olympics. Add to that the US\$866 million

from the 12 international sponsors that are part of The Olympic Partners Programme (TOP), a long-term corporate partnership covering a four-year term in line with the Olympic quadrennium. There will also be further revenues from merchandise products carrying the Olympic logo and the Beijing Games mascots.

Broadcast revenues, which amounted to US\$1.494 billion in 2004, will top US\$1.737 billion this summer – this without the compromise of the Olympic Charter regulation that all television agreements be principally based on free-to-air broadcasting. To optimize revenues the International Olympic Committee negotiates directly with broadcasting organizations for television, mobile telephones and the Internet rights, cutting out third-party commissions.

Digital technology and the Internet have opened more options for broadcasting, further increasing revenues. In July the International Olympic Committee signed an agreement with Terra for the Internet and mobile platform exhibition rights within Latin America, a new and growing source of revenue for the organization.

* Union of European Football Associations

TECHNOLOGY, INNOVATION AND GRIT **Faster, Higher, Stronger in Disabled Sports**

Nowhere is the impact of technological innovation more evident than in the area of disabled sports. For years athletes with talent, determination and drive have been excluded from competitive sports by disabilities. But scientific innovation has come a long way in finding solutions using bio-mechanics and other technologies to serve these athletes.

The development of new materials and cutting-edge designs as well as major advances in engineering and surgical techniques have given disabled athletes unprecedented opportunities to actively participate in sport. These trends have put sport as recreation within the reach of many individuals with a disability, but also have boosted the ranks of elite athletes with disabilities and enabled previously unimaginable sporting feats.

The 13th Paralympic Games, which will be held in Beijing in September, demonstrate this advance in disabled sports. Some 4,000 Paralympians from 150 countries will participate in the Games, marking a ten-fold increase from the 400 competitors from 23 countries in the 1960 Games in Rome. The Games will include a wide range of sport – archery, athletics, boccia, cycling, equestrian, 5-a-side and 7-a-side football, goalball, judo, power lifting, rowing, sailing, shooting, swimming, table tennis, volleyball (sitting), wheelchair basketball, wheelchair fencing, wheelchair rugby and wheelchair tennis. Athletes from six different disability groups defined by the degree of function determined by the disability – those with an amputation, cerebral palsy, visual impairment, spinal cord injuries, intellectual disability and others which do not fit into these above groups – will participate in these events.

Major advances in the prosthetics industry and wheelchair technology have transformed the sport-



Images from the 2004 Paralympics in Athens.

ing arena for these athletes. Today specialized prostheses are crafted to meet the specific requirements for amputee athletes aiming to compete. Similarly wheelchair technology now allows adjustments to readily accommodate the varying needs of the athletes competing in different sports.

**Prosthetics –
flexible,
comfortable,
durable**

Prosthetic devices, such as artificial limbs or eyes, have existed for centuries, but early devices were crude, heavy, unwieldy and uncomfortable. Greater understanding of the biomechanical functioning of the human body along with the creation of lighter, stronger and more flexible materials and the emergence of increasingly sophisticated engineering technologies have resulted in prosthetics that offer greater movement, comfort, strength and durability. In fact, the pace of innovation in this area is so rapid and wide-ranging that even the prospect of bionic limbs is fast becoming a reality.

For Frenchman Ambroise Paré, who introduced amputation as a medical option in the 1500s and thereby paved the way for a more widespread use of prosthetics, today's startling advances in human-machine neural interfaces must have been unimaginable. The creation of electronic knees and arms whose movements are triggered by electrical signals generated by nerves in the remaining parts of limbs would have seemed like science fiction. Before long, the continuing commitment of researchers, scientists, engineers and manufacturers working with athletes with a disability in their search for optimal solutions will surely result in prostheses that can faithfully replicate the natural turns and twists of a human leg, arm or hand – moves that are essential in most sports.



These types of developments are not only revolutionizing the world of disabled sports but are also beginning to stimulate debates and raise questions among authorities that regulate the able-bodied sports.

Oscar Pistorius wins his case

Earlier this year, a South African double amputee sprinter, Oscar Pistorius, won his appeal against the IAAF (International Association of Athletics Federations) ruling that his carbon fiber prosthetics gave him an unfair advantage over able-bodied athletes in his bid to compete in the Beijing Olympic Games. Pistorius still has to achieve the qualifying time to compete in the Beijing Olympics, but his successful battle with the sporting authorities is undoubtedly encouraging for all disabled athletes.

Born with a congenital condition that left him with lower legs but no feet, Pistorius runs on carbon fiber blades: the Ossur Flex-Foot®, also known as Cheetahs. He has broken his own world record on 26 occasions and has recorded times better than those of the equivalent women's races in the 2004 Athens Olympic Games. To become the first sprinter with a disability to compete in the Olympics, Pistorius will have to run 400 meters in 45.55 seconds to be selected for the South African relay team.

Pistorius's prosthetic feet are engineered to enable a more natural gait and to maximize comfort. The carbon-fiber blades were invented by an American student, Van Philips, after a water-skiing accident in 1976, which resulted in his left foot being amputated. Frustrated with ill-fitting and unresponsive prosthesis, he devoted his energies to the search for a



Photo: Lieven Couderys

We are captivated by the determination and drive of athletes long excluded from competitive sports by their disabilities...

strong, flexible and light-weight solution. In 1982, he teamed up with Dale Abildskov, an aerospace composite materials engineer, and together they set about building a carbon fiber prototype. By cutting the carbon fiber into a "C" shape, it was possible to take full advantage of the strength and flexibility of carbon fiber, which helped simulate the spring action of a normal foot and allowed the user to run and jump.

In 1984, Philips established Flex-Foot Inc. to market his invention; and in 2000, he sold his company to Ossur, an Icelandic manufacturer. Philips retained ownership of the patent rights to his invention

and continues to work with Ossur to develop new and improved prosthetics.

Wheelchair sports

Another area in which patented technologies have had a significant impact is that of wheelchair sports. Growing interest and participation in these events since the 1970s, along with, once again, the greater availability of lighter-weight materials, fuelled the development of wheelchairs for specific sports, such as basketball, rugby, soccer, tennis and racing.

Unlike standard wheelchairs, those used in sport have rigid adjustable structures that do not fold, thus increasing their strength and solidity. Their unique camber offers greater stability when turning sharply, and reduces injuries from falling or tipping. Sports wheelchairs are made of composite, lightweight materials that are stronger and more versatile. Their lighter weight saves athletes from having to spend more energy to move around in them, reducing shoulder and wrist injuries and also making the chairs easier to transport.

Wheelchair technology



While the first patent for a wheelchair was granted in the United States in 1869, wheelchairs were mass produced only in the late 1930s. In 1937, a patent was granted to two engineers, Harry Jennings and Herbert Everest, for a wheelchair with an x-brace frame which enabled it to be folded without having to move the drive wheels. This design, which allows the wheelchair to be more easily transported, remains the standard for manual wheelchairs today.

Going the Distance

Natalie Du Toit, a South African swimmer, is the first woman amputee to qualify for the Olympics. Unlike Oscar Pistorius, Du Toit does not use a controversial prosthetic limb, so did not have to fight for her right to participate.

Born in Cape Town in 1984, Du Toit competed internationally for the first time in 1998. In February 2001, she had an accident on her way to school when her scooter was hit by a car; her left leg was subsequently amputated. That did not stop her. In May she was swimming again in anticipation of the 2002 Commonwealth Games where she would become the first athlete with a disability to qualify for an able-bodied event: the 800 meter freestyle final. She went on to win two gold medals at the 2002 Commonwealth Games' Elite Athletes with a Disability and five gold medals and one silver in the 2004 Athens Paralympics.



"You're still the same as everybody else because you have the same dream." – Natalie Du Toit will go to the Beijing Olympics as part of the South African Swim Team.

Olympics. Du Toit will, of course, also be competing in the Beijing Paralympics in September.

As Du Toit put it to Telegraph reporter Simon Hart, "Going out there in the water, it feels as if there's nothing wrong with me. It doesn't matter if you look different. You're still the same as everybody else because you have the same dream."

The 1975 Boston Marathon was the first major race to include a wheelchair division. That year Bob Hall completed the race in 2 hours and 58 minutes. Today the course record for women, established in 1994, is held by Jean Driscoll (USA) who completed the race in 1 hour 33 minutes and 22 seconds. Since 2004 Ernst Van Dyck (South Africa) has held the course record for men: 1 hour 18 minutes and 27 seconds. Technology has had a major impact in enabling athletes to achieve these dramatic improvements in performance.

2008 Beijing Paralympic Games

When we tune into the Paralympic Games in September, we can only marvel at the courage, determination and dedication of these exceptional individuals who have reached the levels of sporting excellence that many able-bodied athletes can only dream of. The startling achievement of many sports scientists, engineers and surgeons also deserve recognition for their ingenuity and creativity in developing the technologies that enable human bodies to adapt to disabilities in ways previously unimaginable.

As the motto of the Olympic Movement attests, sport has always been about progress – *Citius, Altius,*



...and share the enthusiasm and joy of their families.

Fortius (faster, higher, stronger). Technology, perhaps more than any other factor, will determine the future evolution of sport and the rules that govern them.

The sporting achievements of remarkable individuals like Oscar Pistorius and Dame Tanni Grey-Thompson, a British wheelchair athlete who won a total of 16 Paralympic medals and held over 30 world records and is also six-time winner of the London Marathon between 1997 and 2002, bear witness to their outstanding courage, commitment and drive, and also serve as testimony to the ability of humankind to overcome adversity through ingenuity and creativity.

SCORING DOMAIN NAME WINS AT WIPO

A record 2,156 complaints against alleged cybersquatters were filed at WIPO's Arbitration and Mediation Center in 2007. The problem showed

no signs of abating in the first half of 2008. Complainants cover a wide spectrum: individuals – authors, entertainers, athletes – companies, and non-profit foundations. Trademark holders

from all sectors – biotechnology and pharmaceuticals, banking and finance, food and beverages, fashion, Internet, etc. – take advantage of the Center's expedited dispute resolution procedures under the Uniform Domain Name Dispute Resolution Policy (the UDRP). This article takes a closer look at the sports sector which has repeatedly found its way to the Center. One need only look at the recent UEFA EURO 2008 football championship to appreciate that sports have evolved into a truly global industry with multiple stakeholders.

Popularity increases cybersquatting

Sports-related domain name cases touch upon a wide range of sports – the more popular the sport, the more frequently it is the target of cybersquatters. Basketball, American football, golf, football (soccer), Formula One motor racing and hockey are at the top of the target list. Major sporting events, such as the Super Bowl, the Volvo Ocean Race, the UEFA Champions League and the Olympic Games, are also popular targets, and their organizers have successfully challenged domain name registrations through WIPO.

Disputes over domain names often start long before the actual events. For example, the Center has already administered cases pertaining to the 2010 FIFA (*Fédération Internationale de Football Association*) World Cup and the 2012 PGA (Professional Golfers Association) Championship. Other cases involved the names of competitions such as the Premier League, the Orange Bowl, the NCAA (National Collegiate Athletic Association) Final Four and the London Marathon. Among sports authorities, cases have been filed by the National Football League (NFL), National Association for Stock Car Auto Racing (NASCAR) and UEFA.

If many sports-related complaints are filed by event organizers, others are filed by participating sports teams who seek to reclaim their name on the Internet. The latter have included football clubs AFC Ajax (Amsterdam, Netherlands), Panathinaikos (Athens, Greece), Juventus (Turin, Italy), Real Madrid (Spain), Galatasaray (Istanbul, Turkey) and Schalke 04 (Gelsenkirchen, Germany), and also basketball's New York Knicks and American football's Carolina Panthers.

With sports teams figuring prominently among WIPO claimants, it should come as no surprise that individual athletes also have found their way to the Center. Examples include Kareem Abdul-Jabbar, Lance Armstrong (see *WIPO Magazine* 6/2005), and Wayne Rooney (see *WIPO Magazine* 6/2006). The Center has further processed cases relating to venues, such as Madison Square Garden in New York and Wembley Stadium in London. Cases covering the trademarked products of sporting good manufacturers – Nike, Adidas, Oakley, Speedo, Converse, etc – are also filed with some regularity.

Speed may be of the essence

The expedited and cost-efficient case resolution service offered under the UDRP is a key benefit for all parties filing cases for alleged cybersquatting, as is evident from several sports-related cases. For example, on the eve of SuperBowl XLII, the NFL filed a case that included among other domain names *superbowlxliipackages.com*. WIPO appointed a Panel that was able to render a decision transferring those domain names to the NFL prior to the event. Similarly, in 2004 when Madrid was one of five cities on the short list for the International Olympic Committee's host city bidding process for the 2012 Olympic Games, the organization responsible for promoting Madrid's bid to host the event obtained a transfer of several domain names, such as *madrid2012.com*, prior to the final selection.

As these examples demonstrate, the sports industry clearly benefits from the Center's dispute resolution services under the UDRP. Whether the case is more timeless, such as with NASCAR or UEFA, or topical, such as the 2010 FIFA World Cup, or those related to the upcoming Olympic Games, the UDRP option offers rights owners an opportunity to reclaim their online properties in an efficient and effective manner without needing to go to court. If one of the principal functions of trademarks is to prevent consumer confusion, the fans are also winners when domain names are transferred to the rightful owners.

Photo: South Africa 2010 Local Organising Committee



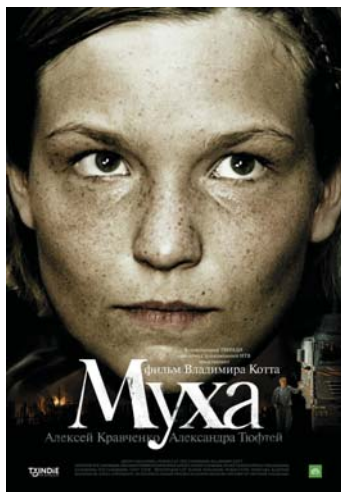
Moses Mabhida Stadium in Durban currently in construction for the FIFA World Cup South Africa 2010. The WIPO Arbitration and Mediation Center has already administered cases pertaining to the 2010 World Cup.

SPOTLIGHTS

Shanghai International Film Festival

While Beijing was starting to burn with the Summer Olympics heat in June, China's largest city, Shanghai, was welcoming a star studded international cast to the 11th Shanghai International Film Festival (SIFF). Famous directors and producers, glamorous actresses and suave leading men posed for cameras as they walked up the red carpet on opening night. The competition lineup included films from Argentina, China, the Czech Republic, Japan, Lithuania, New Zealand, the Republic of Korea and Russia.

A series of fora took place during the Festival, including the National Symposium on Copyright and Related Rights in the Film and Audiovisual Sector, organized by WIPO in cooperation with the State Administration of Radio, Film and Television of China (SARFT) and supported by the Ministry of Culture, Sports and Tourism of the Republic of Korea. The Festival offered an ideal opportunity to attract film and television producers as well as representatives of media distribution companies to participate in the Symposium.



“Mukha,” Russian filmmaker Vladimir Kott’s directorial debut, scored the top prize at the 11th Shanghai International Film Festival.

Shanghai as a film center

The booming, bustling, 1930s Shanghai was the birthplace and the center of Asian cinema. Its film industry was second only to Hollywood. Shanghai lost this prized position as other Asian countries built up their cinema industry. But Shanghai’s star is now on the rise – due mainly to the new market economic reforms of the 1990s. At the first SIFF in 1993, four of the 19 competitors received Golden Cup Awards and one a Special Jury Award. A total audience of 300,000 viewed 167 films from 33 countries. Today, SIFF is one of the few A-listed international film festivals in Asia. It is considered to be on a par with Cannes Festival and both are recognized by the International Federation of Film Producers Associations.

In addition to art and commercial films, SIFF presents independent films, short films and documentaries from diverse cultural backgrounds. Many may have already been screened overseas, but the Festival provides the first opportunity for local audiences to view the films in China. Backed by SIFF’s support for foreign investments and co-production deals, Shanghai is regaining its place in the cinema industry within China and beyond.

WIPO Symposium



The opening ceremony to the WIPO Symposium.

The first theme in the WIPO Symposium, “New Challenges for the Production and Distribution of Audiovisual Content,” addressed the challenges for global accessibility to copyright content in the digital environment, highlighting current issues in China including the structure of legal protection for audiovisual content. In the next session, “Maximizing the Value of Audiovisual Content: Contract and Licenses,” specialists from China, the U.K., Hong Kong, the U.S. and Korea addressed hot topics such as the principal rights owners in a film – producers, directors, cinematographers, etc. – and how to secure the widest possible grant of rights in order to maximize the value of the film.

Other presentations dealt with audiovisual licensing in Korea, including the role of the judiciary, emerging film business models and threats, the role of new technologies in digital film production and perspectives for the future on collective licensing in the Chinese film industry. The seminar closed with a panel discussion where speakers and participants exchanged views on issues such as pricing mechanisms for “video on demand” services; the legal ins-and-outs of protecting television show formats; statutory licensing systems for film creators in other countries, etc.

Throughout the Symposium, participants showed a real-world understanding of the grim effects of piracy on audiovisual revenues and the critical importance of effective IP rights enforcement. The Symposium thus made a timely contribution to the growth potential of China’s emergent film industry, as it seeks to provide a solid basis for remunerating its film creators while meeting mushrooming global demand for high-quality film content.

SHEDDING LIGHT ON THE LIFE SCIENCES

Patent landscaping for public policymakers

The life sciences offer tremendous promise for humanity – new medicines, better crops, a cleaner environment – while at the same time fuelling debates over such diverse questions as bioethics, access to medicines, food security, custodianship of the environment – even the very genetic identity of humanity. It is not, therefore, surprising that policymakers, consumers, industry bodies and others scrutinize developments in the life sciences closely and demand good quality, accessible information as the basis for effective regulation and sound policy decisions.



Photo: FAO/Robert Grossman

Rice is a staple in many developing and least developed countries. Policymakers therefore need to assess the potential impact of patents on sequences from the rice genome.

Patents offer pathways for generating, disseminating and implementing valuable new technologies for greater public welfare. But life sciences patents have been a source of controversy – consider recent debates concerning patents for stem cells, diagnostic tools and rice genes, or questions about the impact of patents on access to medicines and on transfer of environmentally friendly technology.

An essential function of the patent system is to deliver information to the public: informing the public is not an incidental benefit of the patent process but is built, by design, into the very foundations of the system. The patent system discloses:

- Legal information, including published details of what material is patented, with what legal scope, in what countries, in whose name, and when it passes into the public domain;
- Technological information such as a patent's so-called 'teaching' or technical disclosure, which is required to give a skilled reader all the information needed to put the new technology into practical effect.

Both of these aspects are important to life sciences policymakers, who are concerned not only with the substance of emerging technologies, but also with who holds exclusive rights over technologies, where and for how long.

This 'disclosure' in the past produced vast libraries of printed documents, which were costly and laborious

to use effectively. Recent advances in information technology and broader Internet access mean that patent information is now much more readily available.* Obviously, many important life sciences technologies are not published in patent documents. But the in-principle transparency of the patent system and greater practical accessibility make patent data a valuable resource for policymakers and analysts concerned with life sciences issues – for the content of patent documents, and increasingly for the guidance that can be extracted from collections of patent documents – not just point-by-point technical analysis but the prospect of reviewing the technology landscape.

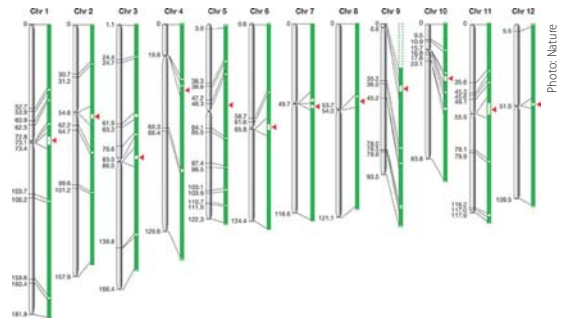


Photo: Nature

Rice Genome Sequence. A patent landscape can help answer questions such as: How much of the rice genome has been patented? By whom? What is the practical impact of this for farmers, breeders and agricultural researchers?

Patent landscaping: from raw data to knowledge

A patent landscape is an overview of patenting activity in a field of technology. A landscape normally seeks to answer specific policy or practical questions and to present complex information about this activity in a clear and accessible manner. Industry has long used patent landscapes to make strategic decisions on investments, research and development (R&D) directions, competitors' activities as well as on freedom to operate in introducing new products. Now, public policymakers are increasingly turning to landscaping to build a factual foundation before considering high level policy matters, especially in fields such as health, agriculture and the environment. Cheaper information technology, greater awareness of the patent system and a trend towards free access online to patent information have combined to put patent landscaping in reach of public sector policymakers as well. Landscaping can help answer questions such as:

* WIPO's PatentScope® Search Service (www.wipo.int/patentscope) allows full-text searching in over 1.4 million published international patent applications, and increasingly provides for tracking of related patenting activity at the national level as well as focusing on particular technologies of policy concern such as traditional medicines.

- How much of the rice genome has been patented? By whom? What is the practical impact of this for farmers, breeders and agricultural researchers?
- How much of public-funded medical research is being patented and by whom? Which public institutions are most active in patenting key life sciences technologies like stem cells? In what countries are patents in force and where are they not in force for essential medicines? What does this pattern of patent holdings imply for procurement of medicines? When will these patents lapse or expire?
- Who are the new players in vaccine technology? How can developing countries plan to secure access to the current and future technologies for vaccine production?
- What are the trends in research on neglected diseases? What do patenting trends reveal about the changing role of developing countries in medical research?
- What is the geographical coverage of patents on key technologies in medicine, such as HIV/AIDS antiretroviral drugs; for plant biotechnology, such as agrobacterium-mediated transfer; for the environment, such as the use of algae to absorb CO₂ – and where is technology already in the public domain? What technological and commercial opportunities do these offer developing countries? What are the implications for multilateral agreements in the fields of health, plant genetic resources and the environment?

- international pharmaceutical patenting activity from several key developing countries has risen sharply this decade, starting from a low base;
- the number of applications to patent cell lines has risen sharply since 2000; they are mostly filed by public institutions, not private firms;
- the number and diversity of international patent applications concerning avian flu and the H5N1 form of the influenza virus have grown rapidly in the last two years;
- the mix of public and private ownership of technologies on key food crops differs dramatically depending on the economics of the crop concerned – patents relating to corn are largely in private hands, while those concerning the potato are more likely to be held in the public sector.

Many valuable initiatives are under way to provide ever more reliable and sophisticated information products for life sciences policymakers. In April, WIPO organized a symposium on patent landscaping to further practical dialogue between life sciences policymakers and patent landscaping experts and to match policy needs with practical capacities. The initiative built on WIPO's past collaboration with its UN partners: the Food and Agriculture Organization (FAO) on patent activity relating to key food crops, and the World Health Organization (WHO) on patenting issues relevant to current public health issues. Symposium participants reviewed several continuing landscaping projects under WIPO's Life Sciences program:

Agricultural biotechnology – Working with the FAO, an expert team using inputs from India, Brazil, Europe and North America developed an overview of patent activities on gene promoters – key tools used in agricultural biotechnology. The landscaping contrasts the different technological and commercial patterns developed around several key food crops – soybeans, maize, potato and rice. This is intended to guide policymakers implementing the international system for benefit sharing resulting from the use of plant genetic resources in developing new agricultural products.

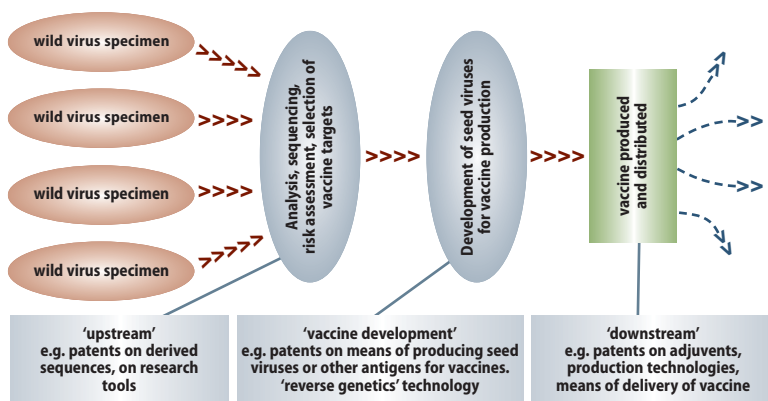
The rice genome – A landscape of patenting activity on rice in the U.S. was prepared by Cambia, an NGO involved in patent transparency issues. This landscape presented, in interactive graphic form, the scope of patents covering the chromosomes constituting the rice genome. It found that patent applications covered a wide spread of the rice genome (around 74%), many were “bulk sequence applications” published with claims to large numbers of sequences. But *granted* patents, with enforceable rights, covered only 0.26 percent of the rice genome. The most active players were multinational firms.

Concluding a comprehensive, definitive patent landscape in a major technological field such as HIV/AIDS treatments can be a massive endeavor, requiring considerable resources and expertise. It potentially entails an expert review of thousands of complex documents and fine assessments on their legal and technical content. A fully global landscape would strictly entail expert searches in over 100 patent offices worldwide. Any ‘finished’ report will be out of date within days, as further patent disclosures are published online. Keeping the landscape up-to-date for continuing reference can be just as resource intensive as its initial development. But the high cost and technical barriers are progressively declining. What once would have been a costly strategic landscape can now be prepared free of charge from a laptop with good Internet access.

Fortunately for life sciences policymakers, much practical guidance can be obtained from patent information systems without massive investment in resources, however the landscapes produced will be incomplete and limited in geographical coverage. Often what is needed for policy debate is an overview of broad trends, not detailed analysis. WIPO's input to life sciences policy processes has shown, for instance, that:



Mapping patent activity along the influenza vaccine development pipeline

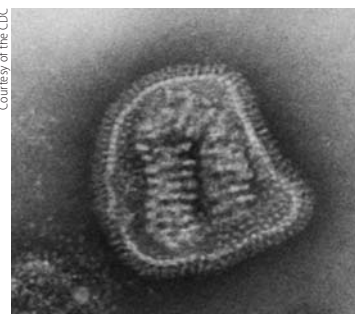


Landscapes on the influenza virus – To support work undertaken in partnership with the WHO on patent issues relating to the influenza virus, two complementary landscapes were developed, one by a team of public-interest IP attorneys and another by Cambia. These landscapes responded to policy concerns that patents were sought over strains of the flu virus, potentially complicating the sharing of viruses that is

critical for vaccine production and raising concerns about the sharing of benefits such as the accessibility of flu vaccines in the event of a pandemic.

Neglected diseases – Another landscape reviewed patenting activity directed towards neglected diseases classed as Type II, which are present in developed and developing countries

but in a major proportion in the developing world (such as tuberculosis and HIV/AIDS), and Type III, which predominantly affect developing countries (African Sleeping Sickness or Trypanosomiasis, African River Blindness or Onchocerciasis, Leishmaniasis, Leprosy and Rabies). This extensive review of patents on treatments, prevention and diagnosis for each of these diseases was undertaken by an Indian Government specialist institution, the Unit for Research and Development of Information Products (URDIP). It showed considerable recent R&D activity directed towards these diseases, undertaken by a wide diversity of public and private players. Newly established firms are applying medical biotechnology to Type III neglected diseases, suggesting new players and new innovation pathways in these critical areas (although these are early-stage technologies). The landscapes tracked linkages between patent filings and clinical trials, identified trends in the use of genetic resources and showed a complex pattern of comparative public sector and private sector activity. The survey not only provided valuable insights for policymakers, but also demonstrated new techniques for mining patent data.



Ultrastructural details of an influenza virus particle.

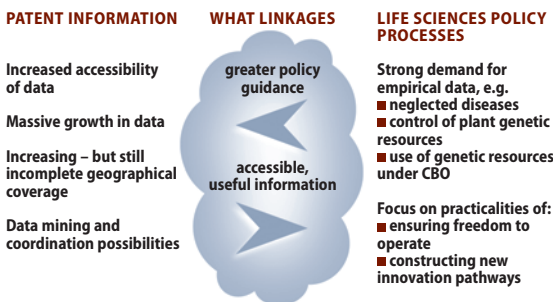
Courtesy of the CDC

Charting future directions

Good quality information about patenting activity is an essential input for some of the most critical international policy debates today. Yet patent information is unavoidably complex, constantly evolving, and difficult to capture in readily accessible form for a non-specialized audience. There are real risks associated with making judgments on the basis of limited patent landscapes without considering the full technical and legal context. Thus the demand for reliable patent landscaping in the life sciences is strong, and there are no shortcuts to meeting that demand.

One of the most challenging aspects of patent landscaping in the life sciences is the difficulty of working with and analyzing DNA and amino acid sequence listings. Patent offices and patent analysts labor with massive sets of sequence data. Progress in bioinformatics may enable sequences to link patent documents with other biotechnology data systems using sequence data – using the language of heredity to shed new light on the life sciences.

The WIPO symposium demonstrated that a key need is greater networking and pooling of resources among experts working in this field – both to ensure that the excellent initiatives under way in this field build upon one another and avoid duplication, as well as to promote the sharing of experience, know-how and landscaping techniques.



A positive feedback loop is developing: patent informatics are delivering increasingly focused and accessible information products for policymakers, who in turn can sharpen and distil their demands for patent information, leading in turn to increasingly more relevant and useful support. Patent landscaping is not a substitute for the policy debates and deliberations on the key life sciences issues of the day. But it can inform, support and strengthen the factual basis for discussions, so assisting the policymakers in those fields to set future directions on health, the environment and food security.

OAPI JOINS INTERNATIONAL INDUSTRIAL DESIGNS TREATY

The *Organisation africaine de la propriété intellectuelle* (OAPI) (African Intellectual Property Organization) on June 16 deposited its instrument of accession to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs. The Geneva Act is one of the three treaties that govern the Hague System for the international registration of industrial designs, which offers businesses in all participating countries a simple, affordable and efficient way of obtaining and maintaining their industrial designs portfolios.

OAPI's instrument of accession, deposited by OAPI Director General Dr. Paulin Edou Edou, will become effective as from September 16. "OAPI's participation in this system is designed not only to promote the flow of protection for foreign creations on the territories of our Member States," said Dr. Edou Edou, "but above all for our creators, who have few economic resources, to make use of the facilities offered by the system in order to obtain protection from the abuses to which they are frequently subject and to benefit fairly from their creative work."

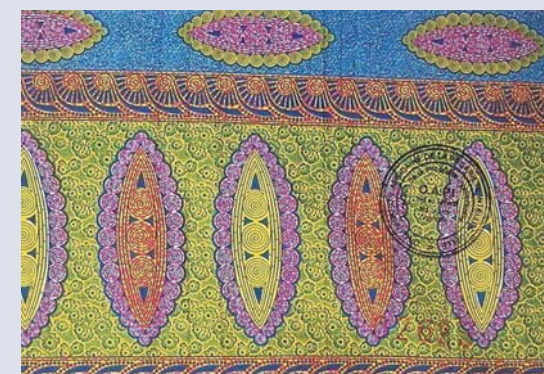
OAPI groups 16 member states, namely: Benin, Burkina Faso, Cameroon, Central African Republic, Chad, Congo, Côte d'Ivoire, Equatorial Guinea, Gabon, Guinea, Guinea Bissau, Mali, Mauritania, Niger, Senegal

and Togo. Dr. Edou Edou added, "these countries have only a tiny share of the volume of international trade and for their creators and businessmen, the Hague System offers the opportunity to extend the protection of their creations of form abroad without being subject to innumerable requirements, and this, at lower cost."

Carving out a role for the future

Under the guidance of Dr. Edou Edou, OAPI is carving out a new role for itself, in which accession to the Hague system is just a start. Elected in August 2007, Dr. Edou Edou's vision is to create an Organization that "serves as a laboratory of analysis able to grapple the most difficult and complex questions in the area of development and intellectual property." His goal is to modernize OAPI to make it a catalyst for further growth and development in its member states – a pivotal role defined in the Organization's mandate.

OAPI's research has shown that in most of its member states' scientific researchers do not think of their work in terms of IP and even less in terms of business development. The case is similar for business developers who do not look towards IP to find business potential or show any interest in institutional research. Scientific researchers, businesses



and IP titles seem to exist in separate worlds rather than as complementary pillars that work in harmony toward a country's economic development.

Over the next five years, OAPI plans to tackle the challenge of bringing IP to market. The Organization wants to promote the exploitation of IP and fill the economic void that results from the inability to bring IP to market or the inability to transform IP into an economic asset. The solutions already exist. OAPI is working to identify the most suitable to its circumstances and environment, and to use them to help turn IP titles into IP assets.

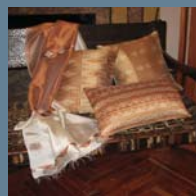
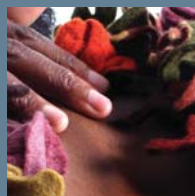
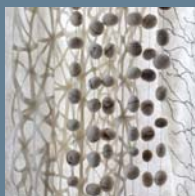
African designers have invested time, energy and expertise to create designs that have become popular the world over. OAPI registered some 149 such designs in 2007. The designs range from shoes to text material such as these by John Walkden et Cie S.A., a Beninese company.

INTERNATIONAL HOME DECORATION MARKET BECKONS AFRICA'S DESIGNERS

African design is growing in popularity, especially in the home decoration industry where demand is outstripping supply. The call is not for the masks and statues sold on sidewalks around the world. Interior decorators are looking to African designers for naturally-sourced, beautifully crafted, high-end objects. Many African designers have gained a reputation for the quality and the originality of their work and are making headway in the international market. WIPO Magazine contacted several of these designers – all part of the Design Africa program (see box) – to discuss their work and the intellectual property issues involved therein.



Ronel Jordaan Textiles



Muya Ethiopia PLC

Every African country has its own traditional designs and crafts inherited from previous generations and completely dissimilar to anything found elsewhere. The creators we interviewed were proud of the inspirational role of their tribal roots – and just as proud of the modern twist they had given those designs. Most use locally found products – wood, cotton, wool, clay, grass, dyes, leather, stone, etc – and traditional techniques to create home design products with international appeal.

Preserving culture

Sara Abera of Muya Ethiopia PLC (*muya* is Amharic for creative) preserved an endangered indigenous hand weaving art by using it to create sophisticated wall hangings, custom textiles as well as linens, rugs, throws and other home decoration items. In so doing, she helped local artisans upgrade their skills, and even provided training for women in prison. Her designs gained instant popularity at showcases in Montreal and Toronto (Canada) and in Cape Town (South Africa). "International buyers started contacting us," she says smiling.

She speaks of her inspiration: "My surroundings, the colorful cloths, jewelry, wood carvings used in our households; I refer to more than 80 tribes living in Ethiopia, the undiscovered designs of handicrafts

which are new to the rest of the world." And her work: "My designs spring from the rich cultural heritage and traditions of Ethiopia, which go back for centuries and cover all aspects of handicrafts – hand weaving, pottery, jewelry, basketry, etc. This background is useful for product development; a transition process from the exotic to the contemporary designs."

And if her work is copied? "It is disheartening to say the least! Putting time and effort to create something unique while those who copy make no effort whatsoever!" Would IP protection help? "Yes, very much so! I have registered very few of my designs locally but have taken no action against copiers, as such action is beyond our financial capabilities and no one believes that justice can be done – that is to say we doubt the results."

Recreating nature

Ronel Jordaan Textiles produces incomparable cushions, hangings, throws and carpets – all carded, dyed and felted by hand from 100 percent Merino wool sourced in the Eastern Cape in South Africa, home of the company's founder and creative force, Ronel Jordaan. "One look at my rock pillows and you know my inspiration: nature. My work is unique because I use an unusual medium and my designs look so real," said Ronel.

Was it difficult to enter the international home decoration market? "Design Africa gave us training on how to do marketing in Canada and other countries. They organized meetings with wholesalers, and we had the opportunity to exhibit products in Montreal and Toronto. It was of great assistance in entering the international market."

Is copying a problem? "I've seen my work copied, but have taken no action. South Africa's exchange rate is not in our favor; other designers are aware that we are helpless and therefore copy. My livelihood is not threatened as I am creative and will always create new designs, but we do lose sales. African designers and creators could definitely benefit from protection – design or other – but we don't need it to be competitive on the world market."



Ronel's work is often described as exquisite and awe-inspiring; indeed, she was named the 2006 Soft Furnishing Designer



of the year by *Elle Magazine*. However, she claims her proudest achievement is empowering the women she trains in felting to create their own designs.

women from the commune," says Aïssatta. "Design Africa marketing seminars have helped me to tailor my designs to the international market and we've been participating in quite a number of international fairs – the most recent in Germany."

"I have yet to see our work copied. The pieces are unique and the hand work very intricate. If they were copied, the competition could ruin my livelihood and that of the women in the commune. If the competitors, who do not share my inspiration and creativity, were to simply copy my works – it would be a flaming gauntlet."

"I've thought of registering my designs at OAPI, but money is a problem. My hope is that OAPI's leaders will competently defend our creative works – even unregistered."

Telling the story

Tekura Enterprises Ltd. has already made a name for itself in the U.S., Germany, Italy and the U.K. for its stylish contemporary interpretation of traditional African designs. Clients instantly recognize

Mali Coopérative Djigouyaso



Le Ndomo



Diallo Designs



Tekura Enterprises Ltd.



Mali Coopérative Djigouyaso

Tackling poverty

Mali Coopérative Djigouyaso was set up in 2004 by volunteer business women with expertise in crochet, embroidery and sewing with the aim of assisting women in one of Bamako's poverty stricken communes. The Cooperative helps the women enter the workplace, training an average of 20 young women a year in manual techniques. The result: a high quality line of home accessories and clothing from 100 percent locally sourced cotton. Aïssatta Namoko creates the designs executed by the Cooperative.

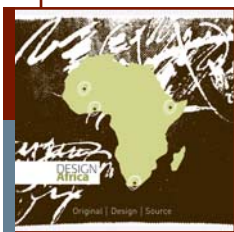
"I'm often inspired by things I see in magazines. I use my imagination to adapt them to the Malian textiles and emphasize quality and finishing to the

Tekura designs and the special finishing that identifies the company. Director/designer Kwekwa Forson explains, "There is a whole range of traditional craft that can inspire designs to meet the taste for contemporary and functional items. Every piece of craft has a story behind it. Our experience is that redesigning the traditional craft expands its uniqueness."

The potential is limitless. "African designers and creators can expand the range of product designs and sustain a regular flow of new designs. This will enrich the world market as well as create more opportunities for more artisans. It is about time more African professional designers came on the scene." And the benefits are immeasurable, "A big portion of African economies thrives on craft handed down from earlier generations. Designers can greatly influence the local economy by bringing out forms, shapes and colors based on the local craft."

And counterfeiting? "It would be difficult and time-consuming to start looking around for copiers. And





Development Project contributing to the boom

The Design Africa program was launched in 2006 by Canada's Trade Facilitation Office (TFO Canada) to assist African home decoration companies in reaching the international market place. Through seminars, training and hands-on guidance in creating designs with international appeal, the program helps small and medium-sized home decoration companies across Africa to build capacity and create linkages with international buyers.

The *Salon International du Design d'Intérieur de Montréal* (SIDIM) has been the key to introducing many of the African creators to the international market. The creations showcased at SIDIM exhibitions in Montreal and Toronto achieved instant success – interior decorators immediately recognized and appreciated the uncommon vision and striking designs. Design Africa's preparation for SIDIM events includes activities such as:

- field missions to participating countries to identify and select participants, including workshops and one-on-one meetings on exporting to Canada and related market/product development strategies to nearly 100 companies;
- provision of information and support to the participants in preparation of the exhibition (e.g. product selection, pricing, selection of marketing materials);
- match-making support in identifying and inviting key Canadian buyers to participate in the trade events and provide follow-up after the event.

Nineteen SMEs in five countries – Ethiopia, Ghana, Mali, Senegal and South Africa – are now part of the program. The criteria for selection: unique, relevant design of African inspiration, high-quality, handmade using local raw material (if possible organic), potential for strong branding based on high quality and social platform (the story behind the products) and commanding a price premium. The Design Africa brand serves as an example for creators on how to market their products internationally.

who is going to spend time litigating? We would rather market our designs as widely as possible to sell as much as we can. We depend on our uniqueness as branding. It would be great to protect designs, but how do you go about it while keeping your focus?"

"I do not know how designers and creators abroad get protection from copiers and how they are remunerated for their efforts, but the same mechanism should work for their African counterparts

so that they can be competitive. Otherwise there will be insufficient motivation to partner with other players in the industry."

The art that comes from the tree

The self-taught Senegalese artist, sculptor and designer Babacar Mbodj Niang, opened Nulangee Design in 2002. His unusual techniques – sculptured horn, braided iron, sewn wood and molded leather – yield sculptural de-

lights, both whimsical and elegant. His inspiration: "Art comes from the tree. Not having logic in my creation or any formal artistic education, it is the piece of wood that is in command of my work. From the pollen to the roots, it contributes to the creation."

Nulangee Design offers young people artistic and practical training in areas such as shoemaking, woodworking, horn carving and metal work. Students are taught to use the materials they find in their natural environment. "The value of African creations is in the materials we use. 'In Africa nothing is lost, everything is transformed.' We recycle everything into our creations – from garbage we make art," says Babacar.

"Our creations are very cultural, making their mass production difficult for copiers. I haven't seen Nulangee Designs copied, but I have seen the influence of our designs on the works of many other creators. When my own work is copied – it is just so badly done and of such poor quality, it makes me sick... and angry. Something must be done against counterfeiting so creativity can survive. Counterfeiting has no good in it, it kills creativity."

"In general I rely on copyright protection. I've registered works at OAPI but only for Senegal. If I had the means I would always do it. I am convinced of its necessity."

WIPO Magazine thanks Africa Design, Muya Ethiopia, Ronel Jordaan Textiles, Mali Coopérative Djigouyaso, Tekura Enterprises and Nulangee Design for the photographs of their works and their cooperation.



Diallo Designs

HOW TO SUCCESSFULLY BUY OR SELL A BUSINESS WITH IP ASSETS

Want to evaluate the IP of a business before you buy it? Want to sell a business at an increased price for its IP? Here **NORIC DILANCHIAN**, Managing Partner at *Dilanchian Lawyers and Consultants* in Australia, provides guidance on how to avoid the obstacles.

Paul Kerin, Professor of Strategy, Melbourne Business School, wrote that “hundreds of studies have found that about 50 percent of takeovers destroy the acquirer’s share value.”¹ Though appalling, this high failure rate comes as no surprise to insiders in the mergers and acquisitions game. So what knowledge do buyers and sellers of businesses need to gain to raise their game and improve these statistics?



When the deal is signed, everyone is all smiles, but 50 percent of takeovers go wrong – why?

Both buyer and seller must be smart about all the assets in the business in question. What does this mean for intellectual property (IP) assets? Being smart requires buyers and sellers to use legal and other professional advice at the earliest stage. This is the case for large corporations, SMEs and micro businesses. However, is the legal advice received always practical and useful? How can a buyer or seller make this assessment?

What not to do is simple. A buyer who signs a contract with only a couple of hours of prior enquiry will be exposed to under-assessed – or even unidentified – risks buried in the detail. The list of IP assets in the contract, for example, may lack clarity. So what is the procedure to follow?

Three transaction stages

To be of use to the buyer or seller who is about to make a deal, enquiries should be structured in three stages: pre-contract, contract and post-contract. We will develop these three stages with a focus on IP assets² in non-franchise businesses, a source of grievance for many buyers and sellers.

Pre-contract stage: maximizing the sale price for sellers

Before a business is even put up for sale, experienced lawyers can assist sellers in a number of ways in maximizing the sale price. Depending on the business, the following extensive services may be recommended:

- prepare a confidential “selling document,” (e.g. a disclosure statement or marketing or profile document);
- prepare a data room or files categorizing all key business documents;
- develop deal points to raise in negotiations;
- take steps to improve perceptions regarding the value of specific assets, for example by ensuring best practice protection for IP assets; and
- compare offers to determine which is the best.

Why a “selling document”

In the absence of a vendor’s statement or selling document, extra money and time must be spent providing prospects with information on demand to attract and maintain their interest. In some transaction, the “supply on demand” approach can save costs. However, in more complex cases the lack of a readily available “selling document” can lead to higher risks, increased stress levels in negotiations, erosion of the buyer’s trust, increased costs, legally actionable misrepresentations and oversights due to haste. A selling document prepared at an early stage will help avoid or minimize such problems.

¹ Paul Kerin, Professor of Strategy at Melbourne Business School, “Doing what comes naturally” BRW (Business Review Weekly – www.brw.com.au), 27 January – 2 February 2005, p. 10.

² All businesses have IP assets as they all have goodwill or a name or brand. IP assets are limitless in their categorisation. They include software source codes, secret know-how, customer lists, IP rights in distribution and franchise agreements, domain names and lists of trade marks, copyrights and patents.



“... where IP assets are involved, early, creative and disciplined outside the box legal thinking secures value.”

IP protection best practice

Protection of IP assets builds value for sellers. Before going to market, astute sellers build the quality and level of legal protection of IP assets to at least a minimum or base level of best practice. Ideally this work should be done at least 6 to 12 months before a sale. Best practice includes use of up-to-date IP registrations and documentation. This affects copyright, trade marks, trade secrets, industrial design and patent assets.

Lower levels of protection may lead the buyer and its advisers to discount the price sought by the seller. The effective solution for a seller involves preparation of an intellectual capital register, business documentation and IP registration or codification.

Pre-contract stage: risk management for buyers

In business transfers buyers usually have greater legal needs than sellers. The first step for a buyer's legal advisers will be to audit the business, then logically

group areas as to how they affect the business now and how they will affect it in the future. This “due diligence” process (a concept which originates in U.S. law) is rarely comprehensive, holistic or integrated – it is purely legal. Its scope, by definition, does not cover technology, culture, management and organizational structure. To “get” the whole picture, buyers additionally

need experienced commercial and practical opinions and counsel. This is a challenge for many legal advisers. Here is why.

Myopic professional view

Let us assume that legal advice deals with 10 percent of the issues involved in a business that is up for sale and accounting 15 percent. This leaves 75 percent of the business for the buyer's team of managers, consultants, shareholders or other principals to sort. This is a relatively high share! To reduce the load, it would be more useful for the buyer and its team to receive advice that takes a holistic or inte-

grated approach rather than slavishly following the legal, accounting or management labeling of issues.

But a multi-disciplinary approach is not easy to achieve. To implement it, legal advisers would have to build on their education, complementing it with accounting, human resource management and other qualifications. Few do! Certainly, the multi-disciplinary approach is not always necessary, but it can greatly reduce buyer failure rates.

Going beyond legal due diligence

Parts of the 75 percent can, and probably should, be referred to specialist technologists, financiers or management consultants. However, even if the work is outsourced, a buyer's risk will increase if the jigsaw puzzle of delivered miscellaneous advice is not pieced together cohesively to create a whole picture of the target business.

All issues forming the 10 percent, 15 percent and 75 percent must be logically grouped through communication and close work between disciplines. Here are some reasons why.

- For the buyer the absence of proper grouping of important considerations would lead to missed signs and warnings regarding the business now or in the future.
- For the advisory team differences in the perspectives, jargon and procedures of lawyers, accountants and consultants create obstacles in communication between and outside such specialist fields of work.
- For both the buyer and the advisory team, if all issues are not addressed, pieces of the puzzle may be missing at the time the buyer signs the contract for purchase.

Extrapolating on Professor Kerin's statistic, it seems reasonable to postulate that 50 percent of takeovers are signed by buyers who do not have a complete picture of the target business. Given this record, it is preferable for sellers and buyers to implement a multi-disciplinary process to risk management³ rather than just applying under-defined (and mostly legal) due diligence. Properly implemented, it can broaden and deepen the scope of pre-contract enquiries and become an important factor in mitigating risks. The aim is to rigorously apply and integrate this process with other elements such as:

- intellectual property auditing;
- asset evaluation;
- strategic planning;
- enterprise structuring; and
- knowledge management.

Photos.com



Buyers need experienced commercial and practical opinions and counsel. This requires communication and close work between disciplines.

³ See AS/NZS 4360:2004 Risk Management, SAI Global.

This type of pre-contact report reduces risk and provides to a buyer long-term record keeping and decision making benefits.

In closing, in the pre-contract stage, where IP assets are involved early, creative and disciplined “outside the box” thinking by professionals secures value for both buyers and sellers. Early enquiries deserve a great deal of emphasis and may take four to six months to finalize.

Contract stage – transaction structuring and customization

All business transfers require transaction structuring and contract customization. This is where good lawyers can be particularly useful. In the IP area alone, the lawyer may need to structure and customize the transaction and contract for the buyer or seller to cover the following:

- use of a confidential information agreement or confidentiality provisions in the agreement or memorandum of understanding;
- review of consents and other considerations for moral rights and privacy law compliance;
- tax and other revenue law implications of any apportionment in the contract of the sale price between the various assets being sold, that is apportioning values to specific brands, copyrights, patents or other IP;
- warranties, indemnity, personal guarantees and other security arrangements given by the seller’s directors or principals relevant to title and other risks to the IP assets; and
- non-competition restraints on the seller and its principals, for example preventing hiring of former employees, starting a similar business or soliciting customers of the business.

In the typical hot-house, time-pressured and mission-critical environment of business sale and purchase transactions, these considerations are among many which require efficient treatment.

Post-contract stage – services for avoiding issues

At the post-contract stage, IP is at the root of six common reasons for business failures. These can also affect franchises. Once the deal is done and the transaction finalized, buyers should be cautious of these six pitfalls.

1. Failure to address all IP issues properly or fully in the completed contract – issues keep arising after completion of the contract.

Tools for the process

To help avoid IP issues in business sale and purchase matters and commercial transactions generally, lawyers can develop the following materials:

- Template contracts, clause libraries, and management documents.
- Checklists, questionnaires, and instruction sheets specifically for business sale and purchase matters.
- Intellectual property auditing workbooks.
- Intellectual property register.

Case Study: The stats of a failed acquisition

What’s wrong with this picture?



Photo: Rosemont

1. In 2000 Southcorp Ltd’s had a slate of over 25 well-known wine brands included Penfolds, Lindemans, Wynns, Seppelt, Seaview and Devil’s Lair.
2. In early 2001 Southcorp paid A\$1.49 billion in a cash and shares deal for the single-branded Rosemont Estate business. The following year Southcorp posted a net loss of A\$923 million.
3. In early 2005 the Foster Group Ltd made a bid which valued all of Southcorp at A\$3.1 billion for the whole company.

Did Southcorp pay too much for Rosemont? Commentators have noted the very high level of the purchase price for the Rosemont label (item 2) relative to the many labels Southcorp owned at the time (item 1). Paying too much is often the price of inadequate pre-purchase assessments as recommended in the accompanying article.

2. Failure to formally issue written assignment notices – for example the assignment of a business sale agreement, an option, a guarantee for a debt, a trade mark or patent.
3. Failure to prepare updated and comprehensive IP and domain name registers, leading to missed deadlines, lost registrations and certificates and wrong addresses on official registers.
4. Failure to act on gaps in IP protection such as those evident from a pre- or post-purchase partial or full IP audit.
5. Failure to appoint appropriate IP specialists to deal with IP issues such as improving the template license or terms of trade.
6. A general failure to employ best practices for IP protection, record keeping and general management after the purchase.

Failure 6 is often an outcome of a lack of alignment and integration between the businesses management, commercial, technological and legal processes and systems. This takes us full circle back to the need for pre-contract communication between different disciplines.

COMMITTEE MEETINGS

Implementation of the WIPO Development Agenda Moves Forward

The second meeting of the Committee on Development and Intellectual Property (CDIP), held from July 7 to 11, moved forward in discussing the implementation of the 45 recommendations in the WIPO Development Agenda adopted by the General Assembly in 2007 – 19 of which were earmarked for immediate implementation by WIPO and 26 for which the CDIP is required to develop a work program.

The meeting built on the achievements of its inaugural session in March, and agreed on the indicative figures for human and financial resource requirements associated with the implementation of adopted recommendations 2, 5, 8, 9 and 10 in the list of 26 recommendations. The CDIP also discussed implementation of adopted recommendations 20, 22 and 23 in Cluster B of the list of 26. They agreed that the proposed activities, as modified following discussions, would be sent to the Secretariat to assess associated human and financial resource requirements and would be submitted to Member States prior to the CDIP's third session.

The CDIP also discussed adopted recommendation 1 in the list of 19 recommendations and agreed to the proposed activities outlined in document CDIP/2/2 with some modifications, (see Annex I of Summary of the Chair at

www.wipo.int/edocs/mdocs/en/cdip_2/cdip_2_summary.doc). Further, the CDIP discussed implementation of adopted recommendations 3, 4, 6, 7 and 11 and agreed to the proposed associated activities, as contained in Annex I.

The CDIP reviewed and commented on activities being implemented under adopted recommendation 12 in the list of 19. It was agreed that the Secretariat would make the necessary modifications and would provide the next session of the CDIP with a progress report on the implementation of these 19 recommendations. The Committee also noted that there was a need to coordinate the CDIP's activities with that of other relevant WIPO bodies in implementing the adopted recommendations. To this end, the CDIP decided to begin discussions on a mechanism to monitor and assess such coordination at its next session.

The draft report of the second session of the CDIP will be posted on WIPO's website for comment by Member States and observer organizations and will be formally adopted at the third session of the CDIP in 2009. A report outlining the deliberations of the CDIP sessions will be presented to the September 2008 WIPO General Assembly. The report will recommend adjustments to the revised program and budget for 2009 to allow im-

plementation of agreed recommendations. It will further call on the General Assembly to make resources available in a manner consistent with WIPO's program and budgetary processes.

Address by WIPO Director General-Elect

Speaking at the invitation of Ambassador C. Trevor Clarke, the Chairman of the CDIP, WIPO Director General-Elect Francis Gurry emphasized his commitment to the effective implementation of the WIPO Development Agenda, pledging to personally supervise this important initiative in the future.

Mr. Gurry said, "I would like to repeat my assurance of the importance which I attach to the Development Agenda. It is a major achievement for this Organization to have adopted by consensus a Development Agenda." He said that the Development Agenda is "a major opportunity to address the role of intellectual property in development and the contribution of intellectual property to narrowing the knowledge gap and the digital divide." He further added "it is my firm view that the successful implementation of the Development Agenda is vital to the future success of this Organization." Mr. Gurry underlined the important chal-

lenge of establishing a work program that “ensures an appropriate implementation of the Development Agenda.”

“The development dimension must be taken into account horizontally across the Organization,” he added. Mr. Gurry said that he intended to personally supervise the work of the Development Agenda, “not only to signal its importance but also because it is appropriate to ensure the coordination of all of the Organization’s

activities with respect to the Development Agenda.”

Mr. Gurry, who is currently Deputy Director General of WIPO, made specific reference to proposals that seek to improve access to and efficient use of technological information contained in patent documents and scientific papers by research institutes and universities in developing countries. He further alluded to the need to enhance the infrastructure and capacity of IP of-

fices of developing countries to enable them to participate more fully in the knowledge economy. He also assured delegations that the appropriate budgetary resources would be made available to support the implementation of the proposals contained in the Development Agenda.

The CDIP was attended by 101 member states, 8 inter-governmental organizations and 37 non-governmental organizations. ■

SCP Agrees on future work

WIPO Member States attending the Standing Committee on the Law of Patents (SCP) from June 23 to 26 began a comprehensive review of issues relating to the international patent system. Discussions in the SCP meeting focused on a report on the international patent system prepared by the WIPO Secretariat to facilitate the process of establishing a work program for the SCP. The report provides an overview of current international patent issues, and attempts to cover the different needs and interests of all Member states.

The report touches on three broad areas, namely, the economic rationale of the patent system and its role in innovation and technology dissemination, legal and organizational aspects of the patent system and issues that are particularly relevant to broader policy considerations and development concerns.

Many Committee members recognized that the report covered a wide range of issues relating to the patent system and constituted a good basis for discussion. However, mindful of the mandate given to it by the WIPO General Assembly in 2007 and thus working towards a work program, the SCP identified a non-exhaustive list of issues for further elaboration and discussion. The Committee agreed that the report should remain open for written com-

ments until the end of October 2008 and for discussion at the next session of the SCP in early 2009.

The SCP also requested that the WIPO Secretariat prepare preliminary studies on four issues for discussion at its next session. The studies, which are not to be considered prioritized over the other issues identified in the above-mentioned non-exhaustive list, include: dissemination of patent information (including, *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.

The Committee also recommended that the Director General consider including provision in the revised Program and Budget for 2009 for a Conference on issues relating to the implications – including public policy implications – of patents on certain areas of public policy, such as health, the environment, climate change and food security.

The meeting was attended by 85 Member States and 24 observer delegations and was chaired by Mr. Maximiliano Santa Cruz of Chile.

INTER-REGIONAL FORUM ON DEVELOPMENT AND SERVICE-ORIENTED IP ADMINISTRATION

“Intellectual property administrations and offices have a major role to play in transforming the vast development potential of IP into concrete and tangible benefits for the countries.” **Deputy Director General Narendra K. Sabharwal**

A WIPO Inter-Regional Forum on Development and Service-Oriented Intellectual Property (IP) Administration, which took place in Geneva on July 1 and 2, was the first of its kind to take an in-depth look at the needs and expectations of IP administrations of all countries. Intensive discussions

focused on IP-related institutional and policy challenges, opportunities and reforms in the context of overall national development strategies with a view to making a positive and tangible contribution to social, cultural and economic development.

The Forum covered ten broad themes of vital interest to IP administrations to meet the challenges and seize the emerging opportunities in the field of IP and in making such administrations more responsive to and consistent with the attainment of national development objectives. Among the core issues discussed was the need to heighten awareness of IP and its critical role in promoting

development. Participants also discussed the importance of a development dimension in the formulation of IP policies and strategies, in line with the WIPO Development Agenda. Information technology in IP management and the role of IP administrations in international negotiations were also addressed. The Forum also underscored the significance of sub-regional, regional and international cooperation in meeting the institutional challenges in the creation and management of IP assets.

The Forum focused on practical measures to improve and expand the range of value-added services available to all stakeholders, including the public, to forge relations with the IP user community and to ensure that IP administrations are better able to support national development objectives. Participants also explored new approaches to the challenges currently facing IP administrations, in terms of workload, organizational efficiency and the delivery of value-added services.

Participating in the closing session, WIPO Director General-elect Francis Gurry reconfirmed that WIPO would continue to support capacity building initiatives and underlined the need for WIPO to be responsive to the specific needs, expectations, policies and strategies of member states in the use of IP for development. In this context, Mr. Gurry identified the strengthening of WIPO's cooperation with Member States and the effective implementation of the WIPO Development Agenda as areas of utmost priority.



IN THE NEWS

Formulation and Implementation of IP Development Plans

Some 30 senior IP officials from 24 countries in Asia and the Pacific region participated in a capacity building workshop, held in Singapore from June 2 to 4, on the formulation and implementation of IP development plans. Jointly organized by WIPO and the Government of Singapore, the workshop discussed IP development plans from conception to implementation.

The aim of IP development plans is to address the specific IP needs of a country in the context of a time-bound, objective-oriented and result-based framework of

technical assistance. When formulated in close consultations with national authorities and on the basis of a thorough assessment (audit) of IP needs and requirements, taking into account national IP policies and development objectives, IP development plans enable more targeted, systematic and effective technical assistance from WIPO.

Such plans, which include concrete targets and deliverables as well as mechanisms for monitoring and evaluation, permit countries to better coordinate and assess progress in strengthening hu-

man, institutional and infrastructural capacities; ensure effective cohesion of assistance programs and optimal use of resources; and

help develop partnerships and synergies by providing a common reference point for intensifying cooperation. WIPO aims to employ such plans increasingly in delivering legal and technical assistance to developing and least developed countries. ■



Courtesy: Ministry of Foreign Affairs of Singapore

Representatives of the Asia-Pacific Economic Cooperation (APEC), the Association of Southeast Asian Nations (ASEAN), the Pacific Islands Forum Secretariat (PIFS) and the South Asian Association for Regional Cooperation (SAARC) participated in the workshop.

Green Apple®?

Your iPod, iPhone and MacBook may soon run on solar re-powered batteries. The U.S. Patent and Trademark Office has just published a patent application by Apple (US 20080094025) for a thin film of solar cells to be integrated into portable devices. The multiple cell solar film is designed to produce the desired voltage to run a handheld device even if a number of the cells are obstructed.

But where will they put it? The limited space on portable devices is the principal reason why none – so far – have been solar powered. Apple's novel approach is to place the solar film, protected by shock absorbent materials, behind the LCD screen of the portable devices.

Green Apple devices, paired with the company's innovative design, may provide just the right boost for sales in a slowing global market. ■

2008 IDEA Award

The results of the 2008 International Design Excellence Awards (IDEAs) are in and for the first time the jury has bestowed two Best in Show awards. One went to SizeChina, a design research project that assembled data from a representative cross-section of people from mainland China to create the first-ever digital database of Chinese head and face shapes and the other – no surprise here – to Apple's iPhone.

The competition attracted 1,517 entries from 26 countries. Students were among 2008's big winners, taking 33 of the 206 jury awards – 6 of the 35 gold prizes. 2008 also marked the inaugural year of IDEA/Brasil, organized by *Objeto Brasil* and endorsed by Industrial Design Society of America, to spur interest in design from Brazilian corporations as well as to heighten global awareness of Brazil's rich design heritage.

For more information see www.idsa.org/IDEA2008/index.html

LETTERS AND COMMENT

Kerala State (India) IPR Policy - rights creation on Traditional Knowledge

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Readers of your article *Digitizing Traditional Culture* (Issue 3/2008) may be interested to learn of the Kerala IPR Policy 2008 which proposes legislation to prevent misappropriation of Traditional Knowledge (TK) and knowledge associated with biodiversity. The Policy outlines the Government's concern about protecting its rich traditional wealth, comprising TK practices, tribal medicines, Ayurveda practices and biodiversity, which attribute to and forms the basis of livelihoods of many TK practitioners and which, in the absence of legal property rights, may be appropriated by private businesses.

Codification of TK into Digital Libraries is not a complete solution to misappropriation. Hence the Policy document finds that the possible solution could be to *create rights* on Traditional Knowledge and make its potential right holders aware of their rights. The Policy proposes to commit all traditional knowledge to the realm of "Knowledge Commons" and not to the "Public Domain". *While the Policy envisages creating property rights on traditional knowledge, all the right holders will be deemed to be holding their rights under a "Commons License", wherein the right holders shall permit others the use of the knowledge in their possession for non-commercial purposes. It is further stipulated that any development made using this knowledge licensed under the above obligation should be put back to the realm of "Knowledge Commons", say "Traditional Knowledge Commons", and hence denying the scope of patenting thereof.*

The word "Commons License" used here is based on the fundamental concept of "Creative Commons" employed by open source advocates, but its scope varies significantly from that of "Creative Commons License". *Specific provisions for such "Traditional Knowledge Commons License" will be worked out to ensure free, non-commercial reproduction and codification of the Traditional Knowledge. It is a kind of*

"deemed licence" which immediately applies on the user of TK, the moment he decides to employ it for any purpose.

The custodians/preservers of the TK (viz. tribal community, family etc) will be acknowledged as the right holders, but they are obliged to subject the TK possessed by them for the non-commercial purposes of all. ***Hence the knowledge is revealed for documentation, and enabling further research thereof.*** However these right holders can license the TK under their possession to others for commercial purposes on negotiated terms and conditions in accordance with the provisions of "Commons License".

In respect of such TK, where it is the livelihood of numerous practitioners strewn across Kerala, the ***State will be deemed to have rights over such Traditional Knowledge.*** Even though State holds the ownership on such TK, ***all the actual practitioners*** of this TK ***will have an autonomous license*** for right of commercial use from the State. But these Licensees are not empowered to sub-license this right of commercial use to anybody else, and right for transferring licenses will solely be enjoyed by the State.

Kerala Traditional Knowledge Authority (KTKA) will be set up for registering right holders and for recommending legal action against the ***violators of the rights and "Common License"***.

Though the Policy envisages to put the developments made on TK back to the realm of "Knowledge Commons", ***path breaking inventions*** like development of a ***new drug molecule*** or the process thereof which involves substantial developmental cost ***need not form part of*** the "Knowledge Commons" in the strict sense even if TK may form the basis of its origin. ■

From R. S. Praveen Raj,
Scientist – IP Management
& Technology Transfer,
National Institute for
Interdisciplinary Science
& Technology (NIIST),
India

P2P in Mexico

Following your article *Pursuing the P2P Pirates – Balancing Copyright and Privacy Rights* (Issue 2/2008), I would like to highlight Mexico's experience in this area. In Mexico different musical firms have used the same legal tactic mentioned in the article, that is denouncing Internet providers in criminal trials for the purposes of obtaining data from Internet users. It should be stated that in Mexico there is no national regulation protecting personal data and so users are at a disadvantage regarding these questionable practices insofar as these tactics are used for industrial property protection.

Despite the above, lawyers from such firms have encountered major problems in trying to institute civil proceedings against Internet users denounced by their service providers. The first problem is the fact that it is almost impossible to prove that the person that signed the Internet contract is the same person that has used said means to infringe copyright, since on many occasions it may be a family member, dependant or employee that is responsible for such conduct, without there being objective responsibility for the holder of the Internet account. The second is proving that the person distributed or benefited from the transfer of archives, and the third is the notable lack of civil procedure expertise in these lawsuits, including missing deadlines and forgetting to exercise basic rights. ■



From Sergio A. Bravo Valle, National Deputy Director of Litigation, Alvarez Puga and Associates, S.C., Mexico.

Intellectual Property Rights and the curriculum of Law Schools

I read with interest your *Book review: Teaching of Intellectual Property – Principles and Methods* (Issue 2/2008). IP is an extensive and complex subject. It relates simultaneously and compulsorily to the protection of the social and economic order, at both the national and international level, as a human right needed for sustainable development. For Brazil, as a developing country, this systematic inter-relation is all the more important.

The State is responsible for bringing into harmony two difficult, but necessary functions of IP, namely the defense of private property interests (contractual), which seeks profit and produces economic development; and the defense of social interests, which is about access to knowledge, education, culture, health and life with dignity. Since these rights correspond

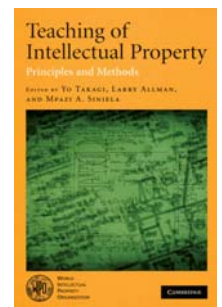
to a financial onus on the State, it is necessary that it acts in partnership with initiatives in the private sector for the execution of all its constitutional obligations.

In these circumstances, it is necessary that law schools join in the endeavor, recognize IP as an important subject in its own right, and educate future professionals in the very diverse fields of IP. Some educational institutions in Brazil are already in the forefront. But it needs to go further. IP should be included in the mandatory curriculum of all graduate schools. This way, everybody wins: business, society, the State and the judicial community.

The compulsory inclusion of IP would also correct some problems, such as the fact that the subject currently tends only to be ap-

proached from the aspect of commercial law, keeping out the human and holistic approach; or from the aspect of constitutional law, keeping out the economic and holistic approach. Both approaches ignore the necessary international foundation, which establishes a minimum harmony so that all those interested in developing, trading and consuming the results of intellectual production may work across national borders.

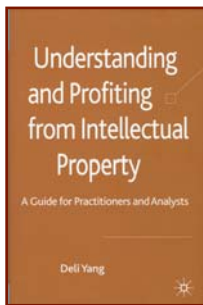
This is a daring project for all those law school directors and coordinators willing to aim beyond a standard preparation of graduates, towards a more proactive attitude regarding the national economic and social system, in order to further sustainable development.



From Professor Maristela Basso, University of São Paulo, and Professor Patrícia Luciane de Carvalho, University of Curitiba, Brazil.

UNDERSTANDING AND PROFITING FROM INTELLECTUAL PROPERTY

By **Deli Yang**



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www.palgrave.com
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978-1-4039-9172-0
Price: £55

Ms Yang is currently Reader in International Business at Bradford University School of Management in the U.K., and subtitles her book *A Guide for Practitioners and Analysts*. She explains that the aim is to “investigate intellectual property in the context of international business,” so that business practitioners (including business managers and IP owners) and IP analysts (corporate analysts and academic researchers) may understand and benefit from IP.

Part I (IP Fundamentals) outlines the nature of the various types of IP, including both industrial property and copyright, as well as the systems, national and international, under which it operates. Part II (IP Environments) examines IP in the context of political economy, education and culture in developed and developing countries. The next part (IP Management) deals with the management of IP assets, personnel and products/services. The final part (IP Strategies) is possibly the most advisory, and goes into the global commercialization of IP, considering matters such as marketing concerns, contracting and licensing IP, combating piracy and counterfeiting and using the most suitable partnerships to maximize benefits from IP.

The author has undertaken a formidable task with serious scholarship (viz. her copious references to other works) and analytical intent – no less than the whole socio-economic and political scope of IP in the national and international business context. Her dilemma, as she realizes, is that, though analyze she must, her material does not always permit definitive judgments. She is commendably cautious about using an economist’s tools to extrapolate hard evidence, commenting that the use of empirical study to determine the effects of IP on foreign direct investment is hampered by “lack of data on international FDI flows and measurement standards, and the inadequacy of econometric models.” Such caution should also be extended to her direct comparison between the World Trade Organization’s

perceived strength in its ability to enforce its dispute settlements and WIPO’s perceived weakness therein: their respective terms of reference and their corresponding structural and functional differences are such that WTO may enforce – but with the risks that greater political empowerment brings.

Another grey area for analysis is the effect of philosophies and religions on attitudes to IP. Motivations are immensely difficult to unravel. For example, the author suggests that an individualistic Western society will more easily resort to litigation, whereas the collectivist ethos and emphasis on social harmony in China discourages it as the very last resort. Which comes first, the chicken or the egg? As Ms Yang indicates earlier in her book, the reward system for creators in the Soviet Union and pre-reform China are now history, and she gives the increase in the number of lawyers in China as from 19 in 1979 to 70,000 in 2000; moreover, there is now increased spending power there for lawsuits. A counter-argument could also be that litigation as a very last resort is advice not infrequently given by lawyers in market-economy Western countries.

Ms Yang has enlivened what could have been a dry, specialists-only book by including diagrams, statistics and illuminating case studies. It is enlightening to learn that in the 18th century, Millar won a case claiming perpetual copyright based on common law (shades rise again in the perpetual copyright demanded in some quarters today!), but that this was overturned by a ruling that the base law (the Statute of Anne of 1710) prevailed; also interesting are the measures to protect the recipe of Coca Cola when it is reconstituted in various parts of the world. This is a well-researched and thought-provoking read for both the academic and business communities.

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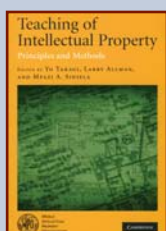
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