

2



## GOAL-LINE TECHNOLOGY

Getting it right

11

## FOSTERING FUTURE INVENTORS IN JAPAN

13



## WATER FROM AIR

A Life-Changing  
Innovation

## **2<sup>nd</sup> WIPO GLOBAL SYMPOSIUM OF INTELLECTUAL PROPERTY (IP) AUTHORITIES**

### **Sharing Knowledge and Work Among IP Authorities: What projects are under way and how could we collaborate?**

WIPO, Geneva,  
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The Symposium will provide heads of IP authorities, industry leaders and other stakeholders with an international forum to share ideas and experiences for improving services provided by IP authorities.

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The Second Global Symposium will build on the momentum of last year's event in which IP authorities presented a number of pilot projects using common tools, databases, networks, and platforms for sharing digital information, knowledge and work. It will give an update on the status of these ongoing projects and will explore the way forward in fostering international collaboration to strengthen global IP infrastructure.

# CONTENTS

- 2 **GOAL-LINE TECHNOLOGY** - GETTING IT RIGHT
- 6 **A TRIBUTE TO THE MAN BEHIND THE SWATCH:**  
MR. NICOLAS G. HAYEK
- 8 **COUNTRY FOCUS**  
**RWANDA TRANSFORMS ITS IP LANDSCAPE**
- 11 **FOSTERING FUTURE INVENTORS IN JAPAN**
- 13 **GREEN INNOVATION**  
**WATER FROM AIR** - A LIFE-CHANGING INNOVATION
- 16 **AFRICA UNIVERSITY**  
FIRST GROUP OF IP GRADUATES AWARDED MASTER'S  
DEGREES
- 18 **WHAT PLACE FOR CUSTOMARY LAW**  
**IN PROTECTING TRADITIONAL KNOWLEDGE?**
- 21 **HIGHLIGHTS**  
SCT's work advances  
Non-traditional marks: rules defined  
Technical Symposium focuses on access to medicines  
Experts break new ground in talks on traditional cultural expressions

# GOAL-LINE TECHNOLOGY GETTING IT RIGHT

As the drone of the vuvuzela fades and the world recovers from the 2010 FIFA World Cup™ extravaganza in South Africa, one issue that will be on the lips of many a football fan around the world is whether goal-line technology has a place in the “beautiful game.” England player Frank Lampard’s disallowed goal against Germany in Bloemfontein on June 28 and various other controversial refereeing decisions at the FIFA 2010 World Cup™ are fuelling a long-standing debate about whether to introduce technology that can determine when a ball has crossed the goal line. The question officials have to answer, especially when a ball hits the cross bar and bounces down, is on which side of the line did the ball land? This article takes a look at two of the technologies that are possible candidates to support referees in officiating football matches.

Technology is now widely used to support umpiring and refereeing decisions in a range of sports. In tennis, it is commonly used to verify line calls, in cricket to back-up leg-before-wicket (LBW)<sup>1</sup> decisions and in rugby to verify tries. But in the world of football, the jury is still out on whether technology has a role in adjudicating the game.

## A turning point?

FIFA, the world’s football governing body, has resisted the introduction of goal-line technology for some years. In March 2010, the International Football Association Board (IFAB), responsible for establishing the laws of the game, voted not to use the technology as they felt it was not good for the game. Following a number of controversial refereeing decisions at the 2010 FIFA World Cup™, however, FIFA has agreed to revisit the issue. Just days before the end of the tournament, FIFA General Secretary Jerome Valcke said, “I would say that it is the final World Cup with the current refereeing system.” He added, “The game is so fast, the ball is flying so quickly, we have to help them [the referees].”

Goal-line incidents have been the subject of great controversy and debate for many years. The most famous goal-line decision concerned the third goal scored by England (Geoff Hurst) in the 1966 World Cup final against West Germany. While 44 years ago the technologies available were limited, today the technological landscape is vastly different offering a range of possibilities that can assist referees in their decisions.

The two main candidate technologies for use in football are those produced by U.K. company

Hawk-Eye Innovations and German company Cairos Technologies AG.

## Hawk-Eye: Tracking balls in flight

The Hawk-Eye system (PCT<sup>2</sup> application – PCT/GB 2000/004507), first developed in 1999 by Dr. Paul Hawkins, an expert in artificial intelligence, and Managing Director of Hawk-Eye Innovations, makes it possible to track the trajectory of balls in flight with a high degree of accuracy. The system is based on the principle of triangulation using the visual images and timing data provided by high-speed video cameras placed at six different locations around the area of play. This ensures that the goal is detected at times when players are huddled together at the goal mouth (for example, corners). As long as the ball is 25 percent visible, Hawk-Eye can track it.

Images are processed by a bank of computers in real time and sent to a central computer programmed to analyze a predefined playing area according to the rules of the game. This information is used to determine whether a ball has crossed a line or other rules have been infringed. In each frame sent from each camera, the system identifies the cluster of pixels that corresponds to the image of the ball. It calculates for each frame the three-dimensional position of the ball by comparing its position at the same instant in time on a least two cameras placed in different locations. A succession of frames builds up a record of the path along which the ball has travelled. The system generates a graphic image of the ball’s path and the playing area in real time and this information is readily available to judges, television viewers and coaching staff.

<sup>1</sup> The LBW rule is designed to prevent the batsman from using his body to stop the ball from hitting the wicket (and avoid being bowled out) rather than using the bat to do so. An umpire will make an LBW ruling under a range of circumstances and primarily when the ball strikes the batsman’s body (usually the leg) when it would otherwise have continued on to hit the batsman’s wicket (the stumps and bails).

<sup>2</sup> PCT – Patent Cooperation Treaty administered by WIPO

*“As a player, and now as a TV commentator, I always dreamed of the day when technology would take the accuracy of line calling to the next level. That day has now arrived.”*

**Pam Shriver (TV commentator and former elite tennis player)**



The system is even more astute than regular TV replays. A ball travelling at 60mph (97kph) moves at one meter per video frame on standard broadcast cameras which operate at 25 frames per second. Hawk-Eye uses cameras that operate at 500 frames per second making it possible to detect if a ball has crossed the goal line even for a fraction of a second.

The Hawk-Eye brand and simulation has been licensed to Codemasters, one of the oldest British video game developers, for use in sports video games and consoles.

Hawk-Eye was first used by U.K. broadcaster, Channel 4 during a Cricket Test Match between England and Pakistan on Lord's Cricket Ground in May 2001. It is now regularly used by network broadcasters in many high-profile sporting events.

The International Cricket Council (ICC), the international governing body of cricket, first trialed Hawk-Eye in the 2008/2009 winter season to verify controversial LBW decisions. The umpire was able to look at what the ball actually did up to the point at which it hit the batsman but could not look at the predicted flight of the ball thereafter.

Hawk-Eye was first used in tennis at the 2006 Hopman Cup in Perth, Western Australia. Players were allowed to challenge point-ending line calls and have them reviewed by the referees using the technology. It has now become an integral part of the adjudication process in elite tennis tournaments.

In the football stadium, Hawk-Eye's development began in earnest in 2006 with trials first at Fulham Football Club (FC) and then at Reading FC. The system has been independently tested by the English Premier League and IFAB. The latter had stipulated that the technology must be accurate to within 5mm and provide the required information to the referee in less than 0.5 seconds. Hawk-Eye meets each of these conditions.

*“We think [Hawk-Eye's football system has] the right blend of simplicity and technology.”*

**FA Premier League Spokesperson**

In an open letter to FIFA's President, Sepp Blatter, Dr. Hawkins says, "It is clear... that the technology fundamentally works and could be available for use within football if further in-stadia testing and development were permitted by IFAB and if there were decisive signals of intent to justify the investment in further testing."

### **The Cairos System - A microchip in a match ball**

The second goal-line technology under consideration is that produced by German company Cairos Technologies AG in collaboration with Adidas. A number of international patent applications relating to this technology have been filed under the PCT.





The Cairos system involves embedding thin cables in the turf of the penalty area and behind the goal line. The electrical current that runs through the cables generates a magnetic field. A sensor suspended in the ball measures the magnetic fields as soon as the ball comes into contact with them and transmits data about the ball's location to receivers located behind the goal that relay the data to a central computer. The computer then determines whether the ball has crossed the goal line. If so, a radio signal is transmitted to the referee's watch within a split second.

Development began in 2006 and was first tested at the 2007 FIFA Club World Cup™ in Japan where it performed perfectly. At that time, Cairos teamed up with Adidas who "developed the suspension system for the ball, so that it keeps our chip safe inside the ball even when you kick the ball very hard," said Oliver Braun, Cairos' Director of Marketing and Communications. Adidas produced the test balls and those used during the FIFA Club World Cup in Japan.

One of the main concerns of those against using the new technologies is that of cost. They believe the costs of installation would be prohibitive and would create a two-tier system in football. Mr. Braun, however, explained that "Cairos bears the costs for the installation and will only charge the associations a percentage of what they pay the four referees for a match." As for Hawk-Eye, Dr. Hawkins, told Press Association Sport that his company would install its goal-line technology in every Premier League ground free of charge in return for rights to sell sponsorship around the system.

### The verdict?

Only time will tell if the events of the past weeks prove to be a turning point in the use of these or similar technologies in the world of football. While the technologies are not 100 percent fool-proof, they are proving to be a useful tool for enabling umpires to better adjudicate and verify inconclusive incidents and promote fair play. Whatever FIFA's ultimate decision, it is clear that these technologies do have the potential to reduce human error and to make goal-line controversies a thing of the past.

## The FIFA World Cup™ Trophy



The World Cup Trophy, one of the most recognizable trophies in the world, dates from 1970 and was crafted by Italian designer Silvio Gazzaniga. It is 36cm high, made of solid 18 carat gold and weighs 6.175kg. The year and name of each FIFA World Cup winner since 1974 is engraved at the base of the trophy.

The trophy, along with a number of other FIFA marks, is registered under WIPO's Madrid System for the International Registration of Marks, a cost-effective means of registering and subsequently managing trademark rights in multiple countries.

## Football, FIFA and intellectual property

Football, one of the world's favorite sports, has over 240 million players in 1.4 million teams in 300,000 clubs across the world.

The FIFA World Cup™ tournament is the world's largest single-sport event and one of the most effective global marketing platforms.

FIFA's comprehensive global rights protection program is underpinned by the registration of all official FIFA marks. This enables it to finance and stage its 12 major international tournaments including the World Cup.



FIFA right holders are guaranteed exclusive use of the official marks and an exclusive marketing association with the 2010 FIFA World Cup™. FIFA believes that, "without this exclusivity, attracting official sponsors for the event would be extremely difficult."

For them, "any unauthorized use of the official marks by another party therefore not only undermines the integrity of the FIFA World Cup™ and its marketing program, but also puts the interests of the worldwide football community at stake."

Almost all of FIFA's revenue is derived from the sale of commercial and broadcasting rights. Marketing and TV rights for the 2010 FIFA World Cup™ are reported to have been sold for US\$3.2 billion (30 percent more than in 2006). Some 63 percent of the total income was derived from the sale of broadcasting rights.

FIFA is a non-profit organization. Over 75 percent of its income is directly invested in the organization of competitions (including youth and women's competitions) and development projects. It is also used to financially support FIFA members (6 confederations and 208 associations), many of whom would not be able to operate without this support.

For the 2010 tournament, FIFA and the Local Organizing Committee launched, for the first time, a ticket fund through which 120,000 complimentary tickets were allocated to residents of South Africa. The initiative was designed to make 2010 FIFA World Cup™ matches more accessible to those who do not ordinarily have the means to purchase tickets. Tickets were awarded to individuals who had actively participated in staging the event, such as construction workers

who built the stadiums and others who had contributed to social development activities.

One of FIFA's aims has been to ensure that Africa as a whole benefits from the first FIFA World Cup™ held on African soil. To this end, it launched a range of continent-wide initiatives, such as 'Win in Africa with Africa' which, with a budget of US\$70 million, is designed to leave a lasting legacy in Africa. The initiative involved building football pitches; providing equipment; offering training programs for coaches, referees, managers, and sports executives; and running courses in sports medicine and media.

First televised in 1954, the FIFA World Cup™ is now the most widely viewed and followed sporting event in the world. The closing ceremony of the FIFA 2010 World Cup™ was broadcast live in 215 countries to a record audience of over 700 million viewers. The cumulative audience of all matches of the 2006 FIFA World Cup™ is estimated to have been over 26 billion. Figures for this year's tournament will be available at the end of the year.



Millions of people also followed the action online. FIFA's website, FIFA.com, recorded 150 million individual users, more than triple the traffic recorded during the 2006 event. With some 6.4 billion page views recorded, the website saw some 1 million hits per second. More than 220,000 followers to FIFA Twitter accounts were also recorded.

For the first time in FIFA World Cup™ history, the 31-day event was transmitted live at official "Fan Fest" sites in 16 cities around the world (10 in South Africa as well as in Berlin, Mexico City, Paris, Rio de Janeiro, Rome, and Sydney). This enabled some 6 million fans without stadium tickets to savor the World Cup experience and follow the live action of the 64 matches played on giant screens.

This huge logistical operation was coordinated by FIFA which, in addition to providing technical infrastructure, is reported to have provided some 50,000 square meters of official World Cup design materials to decorate the venues. The cost of organizing the 2010 FIFA World Cup™ is an estimated US\$1.3 billion. This is all made possible thanks to FIFA's judicious management of its official trademarks and other intellectual property assets.

# A Tribute to the Man behind the Swatch: MR. NICOLAS G. HAYEK

Photos: The Swatch Group Ltd.



The world-famous Swiss watch industry lost a leading figure recently with the death of Mr. Nicolas G. Hayek on June 28, aged 82. Mr. Hayek was born on February 19, 1928, in Lebanon and at the age of seven emigrated to Switzerland, where he became a Swiss citizen.

A pioneering and charismatic entrepreneur, Mr. Hayek, co-founder and former Chairman of the Swatch Group, is widely credited with reviving the Swiss watch industry in the 1980s when it was under threat from mass-produced, low-cost electronic timepieces. The innovative strategies he implemented in the early 1980s breathed new life into the entire Swiss watch industry, enabling it to regain its leading position worldwide. The industry, Switzerland's third largest exporter after the machine and chemical industries, sells nearly 95 percent of its production to overseas markets.

## A decisive force

Mr. Hayek was a decisive force in the launch in 1983 of the Swatch watch, an icon of popular culture.

In developing the Swatch phenomenon, Mr. Hayek's unique entrepreneurial talent combined "disposability, affordability and reliability" to deliver a range of colorful, trendy and low-cost plastic watches for every occasion. The Swatch's innovative mechanism has only 51 parts compared to the over 91 parts in a conventional watch. Its avant-garde designs made Swatch a fashion statement. Its low cost means that fashion-conscious

consumers can own several Swatches to suit mood and occasion. In a recent interview, Mr. Hayek said, "I am not making watches only to look at the time. I am making jewels! They are jewels!"

Today Swatch launches some 300 designs a year and is one of the largest users of WIPO's Hague System for the International Registration of Industrial Designs which offers a cost-effective way to protect designs internationally by filing a single application, in one language (English, French or Spanish) and in one currency (Swiss francs). About half of the designs Swatch launches each year are phased out after six months, making them highly collectible. A 1988 fake-fur Swatch is reported to have been recently valued at £18,500 (approx. US\$28,316).

## A master of marketing

Mr. Hayek was a master of marketing, introducing simple ideas to leverage the reputation, prestige and exclusivity of the Swatch Group's stable of 19 watch brands, including Breguet, Calvin Klein, Longines, Tissot and Omega. In a recent interview with the Indian daily MINT, Mr. Hayek outlined the company's approach to branding. "We have a unique message for each of our brands. This is a very strong part of how we operate." For example, the message for the Jaquet-Droz brand is "Eternity – the Ultimate Luxury." The Swatch Group is a regular user of WIPO's Madrid System for the International Registration of Marks, a user-friendly and cost-effective option for registering and managing trademarks internationally.

Swatch is now the biggest watch-manufacturing firm in the world, with more than 700 Swatch shops worldwide and earnings of at least CHF5 billion in 2009. An estimated 300 million Swatch timepieces have been sold worldwide.

Mr. Hayek launched his business career on August 1, 1957, as a management consultant. He quickly made his mark as a skillful entrepreneur and trusted business figure. In the early 1980s he was asked by a group of Swiss bankers to oversee the liquidation of ASUAG and SSIH, the two main Swiss watchmakers that were reeling from heavy Japanese competition. Mr. Hayek, however, was convinced that the Swiss watch-manufacturing industry had a future and could regain its com-



petitive edge. The merger between ASUAG and SSIH to form SMH (Swiss Corporation for Microelectronics and Watchmaking Industries Ltd.) in 1983 was a critical step in turning the industry around. Equally important was the launch of the low-cost, high-tech, creative and iconic Swatch watch – the “S” stands for “Switzerland” and “second” reflecting where it is made and the fact that its low cost means customers can afford more than one. With Mr. Hayek at the helm, SMH – renamed Swatch Group in 1998 – became, within a period of five years, the most valuable watchmaker in the world.



The company said in a statement, “Mr. Hayek’s extraordinary vision enabled him to realize and ensure the sustainability of a strong watch-making enterprise with high Swiss added value.”

Mr. Hayek’s dynamism and influence, however, went far beyond the watch industry. He helped create the SMART car, a small, stylish city car now produced by Mercedes Benz. He also had various other commercial interests including Belenos Clean Power, an alternative clean energy company based in Bienne, Switzerland. An advisor to the World Bank, the International Olympic Committee and many governments, he helped create opportunities and employment for hundreds of thousands of people. By his own admission, “in Europe, I think I have created around 250,000 jobs.” In a recent interview with MINT, Mr. Hayek’s message to young people was, “You create things by being an entrepreneur, creating new ideas and products and new jobs and wealth.” This, he said, was the best that young people could do for the future.

This modest, practically-minded man has, without doubt, left a impressive and lasting legacy. In a recent TV interview, he said, “We must never forget that we are all... very small entities in the huge universe. So we must not think we are more important than that.”

Under his stewardship the Swatch Group came to be known as the “crown jewel of the watch-making industry.” He was passionate about creativity and loved his work, noting in a recent interview, “I wrote a book once in which the first line was that I have never worked a moment in my life. I have merely enjoyed it. Every moment.”

## The Swatch Group and its brands

Collectively, the Swatch Group owns 19 watch brands encompassing “a fascinating world of diversity, beauty and quality” along with a high level of craftsmanship and industrial know-how. Each brand has its own distinct cachet and positions its products to appeal to different and complementary audiences.

Brands include: Breguet, Blancpain Glashütte Original, Jaquet Droz, Léon Hatot, Omega, Tiffany & Co. (in the prestige and luxury range); Tissot, ck watch and jewelry, Balmain, Certina, Mido, Hamilton (in the middle range); Swatch and Flik Flak in the basic range; and Endura in the private label segment. The latter produces customized watches for companies and brands and is also involved in producing models under license for companies in various markets. A number of the Group’s brands have also recently launched collections of branded jewelry designed, developed and produced by Dress Your Body (DYB), the Swatch Group’s jewelry production company.

The Swatch Group, the world leader in manufacturing finished watches, produces nearly all components needed for the watches it sells under its own watch brands and the multi-brand Tourbillon retail label, as well as for the Swiss watch-making industry as a whole. It also operates its own worldwide distribution network and is a key player in the electronic systems sector.

While not part of its core business, the company is involved in sports timing and measurement technologies. This plays a key role in terms of brand and group visibility. A number of Swatch Group companies are official timekeepers at various international sports events, including the Olympic Games.



# RWANDA TRANSFORMS ITS IP LANDSCAPE

Rwanda has, in recent months, made great strides towards the development of a modern legal and institutional framework for intellectual property (IP) and its use in supporting national development goals. In this article, **Ms. Kaliza Karuretwa**, Director General at the Ministry of Trade and Industry (MINICOM), in charge of the Investment Climate and Intellectual Property discusses how Rwanda's new IP law is helping to build momentum and support for IP as a means of advancing the country's national development goals.

Rwanda has had some form of legal framework for IP since colonial times. Following independence in 1962, patents, trademarks and industrial designs were governed by the Law of 25 February 1963; copyright by the Law of 15 November 1983; and unfair competition by various unfair competition regulations dating from the colonial era. While the policy and legal environment has evolved and incremental changes have been introduced over the years, Rwanda's drive to advance its current national development goals highlighted the need to overhaul the country's IP system. The enactment of a swathe of new laws in 2009 has effectively transformed Rwanda's IP landscape, replacing outdated laws and regulations with new legislation that supports Rwanda's aspirations in attracting foreign direct investment, establishing a viable technological base and fulfilling obligations under international treaties.

## A wired future

Rwanda's poverty reduction strategy has clearly identified science, technology and innovation as key national development goals. The government has invested a great deal in hard and soft information technology (IT) infrastructure, recognizing that "information is the lifeblood of development, the lifeblood of technology, of products and services, of Government, and of business. Information is value. It is therefore increasingly important that information is codified and that its value is recognized. Intellectual property defines the limits under which information in the form of creations and innovations can be owned and how it can be transferred."<sup>1</sup>

Science and technology are given priority when selecting candidates for government scholarships

at home and abroad. Education and information and communication technologies (ICT) are top priorities in advancing Rwanda's national development strategy. This is reflected in Rwanda's IP policy which states that "for a low-income country such as Rwanda, the extent of growth in the medium and long term will be determined by how our people access and utilize information, how technologies from abroad that suit the needs of our economy are accessed and how we innovate and create value within Rwanda. It is therefore vital that Rwanda has a functioning intellectual property system, to allow people to realize the full value of their creations, and to allow them to access the creations of others."

## Reforming the IP landscape

In recent times, governmental and non-governmental stakeholders have shown increased interest in Rwanda's ongoing national IP reforms and, in particular, how they will translate into tangible benefits for the community at large. There is growing recognition that IP is an important tool for Rwanda's development. Slowly but surely, IP is increasingly seen as a means to an end, and Rwandans are trying to fathom how best to use, what is for them, a relatively new tool.

Rwanda has recently embarked on a major overhaul of its legal, regulatory and institutional framework to create a more favorable operating environment for business. A number of new, business-friendly laws were passed in 2009, and a few more are on the table in 2010. These include the new Companies Act, the Insolvency Law, the Secured Transaction Law, the Electronic Transactions Law and Law 31/2009 on Intellectual

<sup>1</sup> Rwanda Intellectual Property Policy

Property which was published in December 2009. Parliament also approved Rwanda's future accession to the Patent Cooperation Treaty (PCT), the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks and the Hague Agreement Concerning the International Registration of Industrial Designs (1999 Act) last year (Official Gazette 43 of 26 October 2009).

## The top global reformer

The enactment of these laws has been a major factor in contributing to Rwanda's ranking as the top global reformer by the World Bank in its *Doing Business 2010 Report*, making it the first sub-Saharan African country to be so named. Rwanda is steadily positioning itself as a safe haven for foreign direct investments in the sub-region and the continent.

The new IP Law brings together substantive legislation on patents, copyright, trademarks, geographical indications (GIs), industrial designs, utility models and unfair competition. National legislation on traditional knowledge and genetic resources is currently under consideration with the technical support of WIPO and the African Regional Intellectual Property Organization (ARIPO), which also provided legislative advice in drafting the new IP Law.

A WIPO Member State since February 1984, Rwanda is soon to join ARIPO and is keen to tap into the substantive expertise of these two organizations to fast-track its use of IP and to boost its economic performance.

## Mapping the future

At the same time as the new IP law was being enacted, Rwanda began drafting an IP policy and strategy to fully integrate IP into its national development agenda. Developed with the support of WIPO and UNCTAD<sup>2</sup> and approved by the Cabinet in March 2010, this comprehensive policy serves as a guide for Rwanda's IP development efforts. It brings together all stakeholders from both the public and private sectors and emphasizes the important role of research institutions.

The policy's aim is to create "an environment in which the Rwandan sectors of business, Government and culture create ideas and innova-

tions that are protected in a way that ensures the greater prosperity of the Rwandan people, while making optimal use of international technologies to promote growth and productivity for the whole Rwandan nation."

Under the new IP Institutional Framework, MINICOM is responsible for the policy framework, supervision of the implementation of IP policy and the body in charge of IP registrations. The Ministry of Culture is responsible for protecting the moral rights of creators, promoting and providing services to artists and performers as well as promoting and protecting Rwanda's national culture and heritage.

The newly-created office of the Registrar General under the Rwanda Development Board is responsible for granting industrial property titles and for the registration of IPRs and their publication. It also provides technical information services on patents and utility models and on other technical matters to facilitate evaluation, selection, acquisition and assimilation of technologies by industry and research institutions. IP registration is now also offered online with a view to simplifying procedures and encouraging broader use of the system.

Photo: Minicom



## An optimistic future for artists

While Rwanda is home to many talented musicians, poets and sculptors, the country's artists have often been neglected and lack financial independence. There has been no meaningful effort to support or coordinate services to the artistic community, largely because of the absence of an adequate legal framework, which has made it difficult to take action. As a consequence, for many years Rwandan artists have played a minimal role in the country's economic development.

<sup>2</sup> United Nations Conference on Trade and Development





Recognizing the need to empower the artistic community, the government ensured that the IP Law of 2009 contained provisions that supported the development of the creative sector in Rwanda. Article 253 of that Law provides for the creation of one or more collective management societies. Rwanda's artists can therefore look to the future with optimism now that a framework is in place to help them earn a living from their art and to contribute to the country's economic and cultural dynamism. Sharing a common vision, the government and the artistic community are working together to turn this opportunity into tangible economic benefits.

MINICOM found enthusiastic partners in the Chamber of Crafts, Artists and Artisans of the Rwanda Private Sector Federation (RPSF) who were eager to take advantage of these emerging opportunities. On the occasion of World IP Day 2010, MINICOM organized, over three days, a series of events to build public awareness of the new IP legislation. These proceedings were opened by the guest of honor, H. E. Ms. Monique Nsanzabaganwa, Minister for Trade and Industry.

A separate two-day training session designed to engender the broad support of the artistic community highlighted the advantages of the new IP law, and paid special attention to the opportunities to be derived from the establishment of collective management societies under article 253. With WIPO's support, Rwanda benefited from the expertise of an international specialist on collective management organizations (CMOs) who shared his knowledge and highlighted best practices.

The workshops were held alongside an exhibition that showcased the beauty and rich diversity of Rwandan art.

## A new collective management society

The Rwanda Society of Authors (RSAU) was legally established and officially registered with the Rwanda Development Board in May 2010. Rwanda's first collective management society, RSAU comprises the Association of Musicians (IN-GOMA Music Association), the Association of Cinema Artists (IRIZA CARD), the Association of Writers (LA PLUME D'OR) and ISOKO Arts Rwanda. RSAU met for the first time in June 2010 at MINICOM and attracted 215 members (150 musicians, 45 writers and 20 film directors).

While RSAU is to be run entirely as a private entity, it benefits from the official commitment and support of the government.

## Future challenges

In spite of substantial advances in developing Rwanda's IP institutions, the country still faces significant challenges in successfully implementing its IP policy and vision. Raising awareness about the importance of innovation and technology transfer and the role of IP in achieving Vision 2020<sup>3</sup> are still major tasks for MINICOM. In this context, Rwanda continues to seek partnerships to fill the gaps identified in its IP needs assessment undertaken in consultation with its stakeholders. A key challenge is to inform partner institutions – such as the police, customs officials and the judiciary – about basic IP concepts and the IP Law. While these actors have many other responsibilities, time constraints as well as insufficient resources, they play a key role in promoting greater respect for IP rights.

Beyond the quick wins, such as those brought about by strengthening the national copyright framework, Rwanda intends to work with its development partners to further promote a culture of innovation and creativity, to foster technology transfer and to improve its national human resource expertise in the administration and enforcement of IP rights. One thing is clear – IP will play a key role in Rwanda's future.

<sup>3</sup> Vision 2020 is a strategy designed to transform Rwanda into a middle income country by the year 2020.

# FOSTERING FUTURE INVENTORS IN JAPAN

Invention contests for young students are commonplace worldwide, but when Tadashi Inoue, Dean and Executive Manager for Human Resources Development at the National Center for Industrial Property Information and Training (INPIT), spoke of his organization's "Patent Contest" during a presentation at the WIPO High-Level Forum held in Tokyo in March 2010, he piqued the interest of participants from all corners of the world. Given the interest in this initiative, WIPO's Japan Office interviewed Mr. Inoue and his team to get a detailed, behind-the-scenes look at the history and development of this interesting outreach project.

## Engaging teachers

In 1999, INPIT published a standard textbook on industrial property rights for use in Japanese high schools. It promoted use of the textbook at teaching conferences around the country and offered suggestions on how it could be used to integrate concepts of intellectual property (IP) into teaching curricula. Despite these efforts, the teaching of IP remained limited. There was a clear need to identify incentives to encourage teachers to engage with IP in their classrooms. Inspired by the "ROBO-CON" contest, in which robots created by teams of undergraduate students compete to complete a specific task quickly and accurately, it was decided to develop and organize a Patent Contest.

Following a trial run in 2002, the Patent Contest was officially launched in 2003 and has since become an annual event. The main objective of the contest is to raise awareness about IP and to increase understanding of the IP system among students specializing in science and technology at high schools, national colleges of technology and universities. The contest provides hands-on experience in the process of applying for a patent and practical experience in creating, protecting and commercializing IP. This is in line with the Intellectual Property Strategic Program formulated by Japan's Intellectual Property Strategy Headquarters and revised in 2009 by the Japanese Ministry of Education, Culture, Sports, Science and Technology (MEXT) to include IP in the national curriculum.

## Strong partnerships: a key to success

From 2003 to 2006, the Japan Institute of Invention and Innovation (JIII) acted as the Secretariat for the contest. INPIT took over this role in 2007 and is now responsible for managing, coordinating, promoting and running the contest

with an annual budget of approximately 11 million Japanese yen (approximately CH130,000 francs). INPIT's work is actively supported by a number of partners, namely, MEXT, the Japan Patent Office (JPO) and the Japan Patent Agency Association (JPAA). Some 20 staff members drawn from across the participating organizations make up the "Patent Contest Promoters Liaison Council" which meets five times a year to ensure that each stage of the contest is smoothly coordinated.

MEXT provides the link with educational institutions and assists in promoting the contest in schools nationwide. Teachers play a key role in encouraging the creativity of their students and in promoting understanding of the patent system. Winning students tend to have supportive teachers who are enthusiastic about including IP in the curriculum. As a consequence, the Secretariat is seeking to increase the IP awareness of teachers by actively promoting the Patent Contest across Japan's education community.

To enter the contest, students must have an invention, conduct a prior-art search using the Industrial Property Digital Library (IPDL)<sup>1</sup> and submit an application with a description of the invention, technical specifications, drawings (or prototype) and a list of the prior art. INPIT provides a series of relevant guides on inventing, conducting a prior-art search and preparing an application. These can be used by teachers to support those students entering the contest.

The applications submitted are screened to narrow down the list of candidates. The short-listed applications are then examined by a selection board of 11 specialists. The key criteria for selec-

"Patent your inspirations!" a poster for the "Patent Contest"



<sup>1</sup> IPDL is a free online-service providing access to the JPO's IP Gazettes: [www.ipdl.inpit.go.jp/homepg\\_e.ipdl](http://www.ipdl.inpit.go.jp/homepg_e.ipdl)



tion are the creativity (novelty) and industrial applicability of the inventions. These criteria are consistently applied throughout the screening process, although the final selection also takes into consideration the quality of the prior-art search conducted by the students.

## A winning formula

From 2003 to 2009, the number of applications submitted to the Patent Contest increased five-fold, rising from 56 to 262. A total of 1,302 applications have been submitted since 2003. Nearly 60 percent of these originated from high school students, 19 percent from universities and 21 percent from national colleges of technology. Ninety-four of the award-winning applications were submitted by groups of co-inventors.

Winners receive financial support to file patent applications for their inventions (in their own name). This includes free consultations with patent attorneys, payment of the filing fee (by JPAA), and an exemption (based on the Patent Act) from the patent examination and maintenance fees for the first three years (if the patent is granted).

Patents have been granted for some 50 inventions submitted by winners who went on to file patent applications. As inventions are not disclosed in the screening/selection processes, inventors of non-winning entries can decide to pursue the patenting process at their own cost.

## Success is infectious

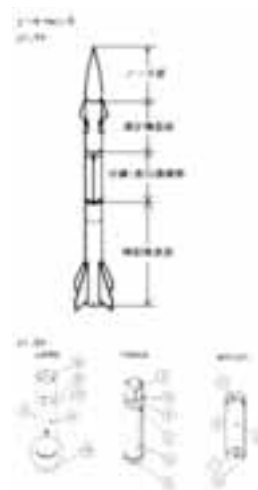
The success of the Patent Contest has spawned a similar initiative for industrial designs. INPIT's "Industrial Design Contest" was launched in 2009 and is open to a wide range of students (not only those specializing in science and technology as for the Patent Contest). It aims to increase interest in, and understanding of, the process of creating industrial designs. Before entering this contest, students must acquire a better understanding of the industrial design system by attending a seminar, watching relevant video content and/or reading a standard textbook on the industrial design system.

The first Industrial Design Contest in 2009 attracted 90 applications from which 27 winning designs were selected. At least one of the winning entries was filed by a high school student and is expected to be commercialized.

## Future challenges

An interesting aspect of the Patent Contest is that the specialists who conduct the first screening of applications offer written comments for each entry. This ensures that even unsuccessful candidates learn from their experience and gain insights into why their invention did not meet the criteria of novelty and industrial applicability. It also offers them an opportunity to correct faults or avoid making similar mistakes in the future.

The success of the Patent Contest and the increasing number of entries submitted, however, means the workload has increased significantly. This presents the organizers with quite a challenge given the limited resources available.



**Rocket separation / discharge mechanism: award winning entry of the "Patent Contest" 2008. A patent was successfully granted in the Spring of 2009 (No. JP4291409).**

The organizers face an additional challenge relating to the geographical concentration of applications. The bulk of these entries comes from the Kyushu district in southern Japan, largely, it is thought, because schoolteachers in this district have a strong interest in the patent system and have actively encouraged their students to participate.

The organizers are determined to increase the number of entries from other regions, including the Tokyo metropolitan area. This will involve a range of awareness-raising activities to further publicize the contest and to promote understanding of the IP system among teachers and students across Japan.

In spite of these challenges, it is clear that these inspiring initiatives are playing a key role in boosting understanding of the use and benefits of the IP system among the next generation of Japanese innovators.

# WATER FROM AIR

## A LIFE-CHANGING INNOVATION

An essential and life-sustaining element, water is drawn from many sources – the ground, reservoirs, plants and the sea. Although some 70 percent of the Earth's surface is covered by it, much of it is saline and inaccessible. In 2006 an estimated 1.1 billion people lacked access to safe drinking water and an estimated 1.8 million fell victim to waterborne diseases. While significant progress has been made toward the Millennium Development Goal of halving the number of people without access to safe drinking water worldwide between 1990 and 2015, major challenges remain, particularly for those in isolated, rural areas.

Marc Parent, a French inventor and entrepreneur, believes his pioneering technology, which harvests the humidity in the air by using the power of the wind, offers a solution to this widespread problem. *WIPO Magazine* sat down with this inspiring inventor to learn more about his groundbreaking technology.

*“This invention will allow many people to have access to . . . clean and healthy water everyday, simply by using the energy of the wind.”*

Humans have used windmills for millennia to convert the wind's energy into power. While somewhat eclipsed in the 20<sup>th</sup> century, windmills are once again becoming a common feature of the landscape in the move towards greener, more sustainable forms of energy. Marc Parent's invention adds an innovative dimension to these iconic machines and their use. It looks like a standard windmill and works like a classic windmill insofar as it harnesses the energy of the wind to generate power. But it is singularly different in that it does not pump water; it actually produces it.

**“You give us wind,  
we give you water.”**

This potentially life-enhancing innovation makes it possible to produce water by harvesting the air's humidity through a process of condensation. “It's a relatively simple technology that builds on principles of physics that have existed for thousands of years,” Mr. Parent explained. “First we harness the energy of the wind to make electricity, which is used to motor an air conditioning system in which the humidity of the air is condensed to produce water.” The machine sucks air into a system that cools a series of plates on which the humidity of the air condenses, forming water which flows into a collecting tank. “This is nothing more than a machine that makes rain,” he said.

Many parts of the world have low levels of rainfall and limited fresh water resources, but they do have high levels of humidity and wind. These are ideal conditions for Eolewater's Water Making System (WMS); one machine can produce around 1,000 liters a day given a wind speed of 35km/h and average humidity levels. The technology requires no external input apart from the wind, produces no waste and is completely ecological.

### Cool magic

Fascinated by cooling systems – it's “like magic; you plug something in, on one side it's hot and on the other it's cold” – Mr. Parent was drawn to the refrigeration business. On a daily basis he was faced with the challenge of draining the build-up of condensation from the cooling systems he maintained. When he relocated to the Antilles, the house he lived in had no fixed mains water supply, so he set about finding an alternative solution. Four prototypes and 10 years later, after spending countless evenings, weekends and holidays in his garage, he developed the WMS.

Mr. Parent's vision is to be able to bring water to those most in need. “The goal is to develop a so-



Photos: Eolewater



lution that makes clean water available every day to people who currently don't have access to it," he affirmed.

## Water quality

As there are no guarantees that the water extracted from the air is pure, the WMS is equipped with a filtering system to remove any impurities. "The wind is like a river," Mr. Parent explained. "If someone upstream throws something into the air – pesticides, or some other product – these can be carried by the wind for thousands of kilometers. We cannot say that the air is pure anywhere so we treat it as though it were potentially polluted... the filters are installed at the base of the device which produces raw water comparable to that found in wells."

## Intellectual property

Mr. Parent recognized the need to protect his invention almost from the outset. "At first I thought that this must already exist somewhere so I began doing some research," he said. On returning to France he contacted the Marseille branch of France's IP office (the *Institut national de la propriété industrielle* (INPI)) to search their patent database but found that nothing comparable had been protected. So he began sketching out the lines of his technology to show clearly how it works. Short of cash, he drafted his first patent application single-handedly. "It wasn't easy, but it passed," he said.

This, however, is not something he would recommend, underlining the importance of obtaining specialist advice to draft a patent application and noting, "if an idea is not well explained it can lose all its value... You need legal specialists, because a patent is halfway between technology and the law... It is a mix of the two and you can't improvise."

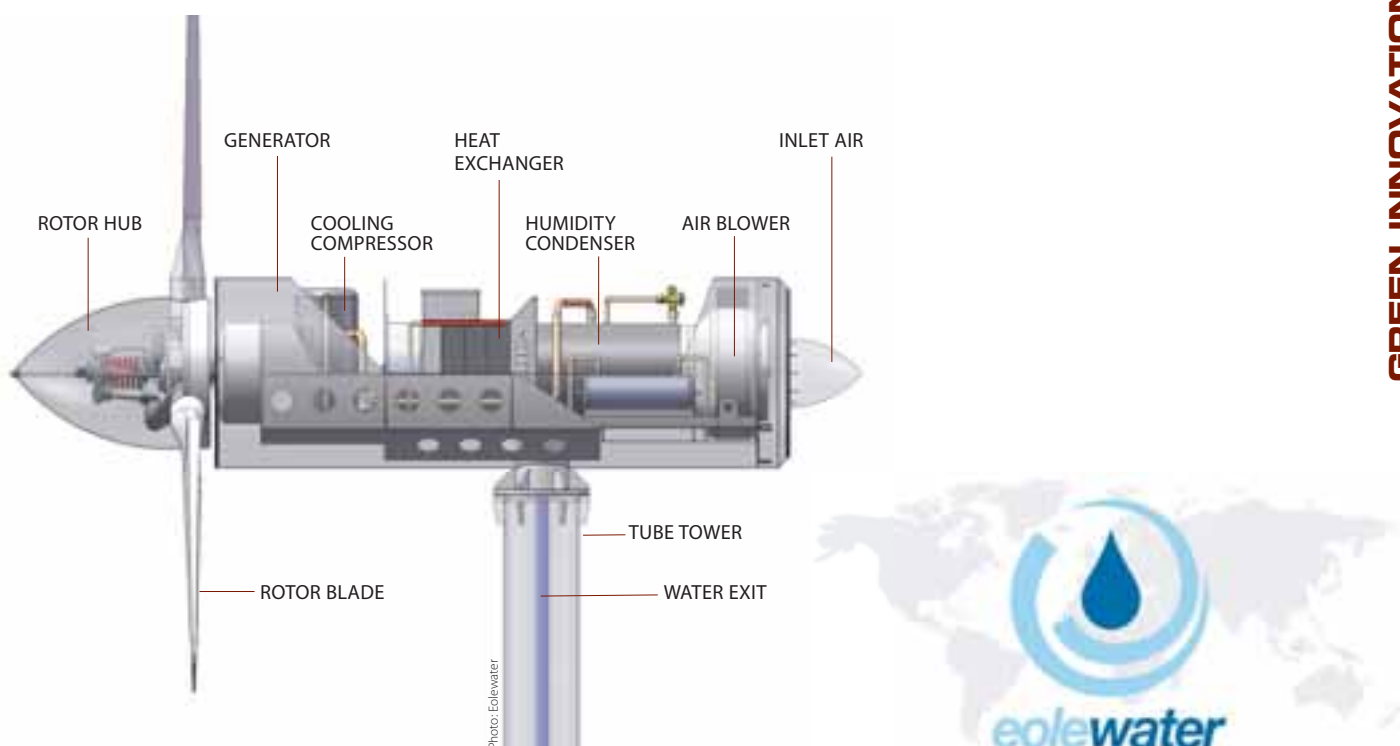
After filing his first patent in 2000 (in France only), he soon realized that he needed to fine-tune the technology. While it had worked well under the constant atmospheric conditions of the Antilles, he encountered some difficulties with France's intermittent wind conditions. As a consequence, he developed a more complex system that can both produce water and generate electricity using solar panels to drive the machine in the absence of wind. He subsequently filed an international application using WIPO's Patent Cooperation Treaty (PCT/FR2006/002602) – after consulting with an IP expert.

Marc Parent is unequivocal about the importance of IP to his company, Eolewater, especially in terms of attracting investment partners. "Intellectual property is indispensable," he said, "it is the key to the vault." This cannot be done single-handedly, he stressed; finance and industrial partners are needed. Investors, he discovered, were only interested if they could see that the machine worked and if they were sure the technology had been patented. "Without patents there are no investors, no commercialization," he said. "Without a patent it is not possible to make an innovative solution like this operational. Without a patent you can't attract investors, or clients to buy the right to manufacture this machine in different countries. They won't do it without the assurance, the certainty of having an exclusive right in the technology."

## The challenges

Eolewater faces a number of challenges in commercializing its technology, not least because its end-users – "the people who need water, the poor who don't have access to potable water" – don't have the means to buy it. Water in short supply is a highly charged political issue. This was something Mr. Parent had not foreseen at the outset. "Water is complex; it is very political," he said. "I thought that because the idea was good it was going to take off, but that is not the case because the end-user doesn't have the means to buy the technology. It needs to be financed by governments and aid agencies."





*“Water is not a luxury reserved for the rich; water is the source of life.”*

The company is seeking to identify and work with national partners who share a similar worldview and a common interest in bringing clean and safe water to those most in need. “We need partners who have the same spirit and ethics and where money is not the first priority. We all have to earn a living, but money isn’t everything,” he said. “This technology is something that needs to serve the public interest.”

As an added challenge, the company has to establish itself as a credible partner. “We need to prove that we are a serious company and that the technology functions,” he said. As there is nothing comparable on the market, they need to prove it is technically sound and economically viable. “We need to keep proving ourselves,” he noted.

Eolewater also faces the challenge of scaling up its operations and the water-generating capacity of its machines. The aim is to manufacture the machines on an industrial scale, under license, in an acquiring country. While the company would retain control over production, on-site manufacturing would improve affordability and generate value for the local economy.

## The future

The company is well aware of the need to continue to invest in and improve its technology, and to continue filing patents. This is an imperative, given the pace of technological development. Mr. Parent said that inventors need patents to keep ahead of the game, “You always have to do better, to progress,” he said.

The company has a number of projects in the pipeline and Mr. Parent clearly recognizes the need for his company to commercialize its technology. Not only will this safeguard the company’s long-term sustainability, it will ensure that clients have access to the most efficient and cost-effective technology. He noted that while “the creative side is fascinating,” he wants to see the technology being used by those who need it.

For Marc Parent, innovation is a vocation. He said, “It is a passion and a duty. I can’t let go because, first of all, I am stubborn and I know there is a need and it’s important. It is not a gadget; it works... There are people who could come and drink water from these machines if they existed.”

# AFRICA UNIVERSITY

## First Group of IP Graduates Awarded Master's Degrees

This year, 40 men and women became the first professionals to be awarded Master's degrees in Intellectual Property (MIP) from a higher education institution in sub-Saharan Africa. The students, who included university lecturers, lawyers, young professionals and graduate students as well as IP stakeholders, were awarded degree certificates from Africa University in Zimbabwe at the institution's 16<sup>th</sup> Graduation Ceremony in June. **Andra Stevens**, Director of Information and Public Affairs at Africa University, reports on this milestone event.

Through a combination of distance learning, face-to-face, on-campus and practical training, two groups of graduate students successfully completed the Master's program in IP – 22 students had enrolled in 2008 and 26 in 2009. Professor Fanuel Tagwira, Vice Chancellor of the University, said, "the Master's Degree in Intellectual Property (MIP) is an immensely important initiative, and we are excited to see it attracting a growing number of students and new partners."

Fourteen African countries were represented among the 40 students who graduated this year. Together, they form a complement of leaders and trainers to help African nations exploit the full potential of their IP assets in promoting social and economic development. The one-year MIP program is being offered by Africa University in collaboration with the African Regional Intellectual Property Organization (ARIPO) and WIPO.

Japan recently announced it will fund five full scholarships for candidates who enroll in the MIP program in 2010. Professor Tagwira noted "these developments indicate that the program is not only relevant, but that its prospects for long-term sustainability are very good."

### Reinforcing Africa's IP foundations

Professor Tagwira also applauded the contribution of WIPO and ARIPO saying that "none of this would have been possible" without their ongoing support. He said, "Both WIPO and ARIPO showed great foresight and were proactive in providing access to training in Africa." The Vice Chancellor observed that the training received by the 40 graduates "provides African nations with the beginnings of a foundation from which to understand, protect and fully exploit the development potential of intellectual property assets."

### Students engage in IP awareness

"The training I received from Africa University and WIPO has been of tremendous help as I have come to appreciate the importance of IP awareness," said Aleck Ncube, a Zimbabwean who enrolled in the program when it was launched in 2008.

Photo: Africa University



Mr. Ncube is on the faculty at Zimbabwe's National University of Science and Technology (NUST). Since completing his training in mid-2009, he has been working with colleagues to set up an IP Education Unit within the NUST Technology Park Department. Mr. Ncube noted that, until recently, researchers could utilize NUST's facilities or use the institution as a base as they developed new technologies and then leave without sharing any of the benefits derived from their work with the University. His current efforts are aimed at ensuring that both innovators and the institution gain from having access to knowledge and inventions developed by students and faculty researchers at NUST.

For Mr. Ncube, the successful commercialization of research output in Africa is crucial to the development of the continent, especially in the context of dwindling public funding for higher edu-

cation institutions. "The impact of my input," he stressed, "is that the efficiency of the Technology Park Department will be greatly enhanced and the University is expecting to see an increase in creativity and inventive processes from its faculties. The major aim is to make academics and students aware of the value of their intellectual creativity and to derive benefits from it."

His fellow student, Bruce Mwiya, who followed the MIP Program at Africa University from the Copperbelt University in Zambia where he was Assistant Dean in the School of Business, said that the initiative "comes at a time when Africa needs to change its approach to economic development. Africa needs to start the teaching of intellectual property in all academic and professional programs so that all fields are aware of how IP can be harnessed for development at the individual, corporate institutional and national level."

In Ghana, fellow MIP graduates John Assan Benson and Elizabeth Ama Boakye are also engaged in outreach programs they hope will result in the utilization of IP to reduce unemployment and slow the "brain drain" in their country. Leading consultants of Intellectual Property Assets Rights Management (IPARM), an IP consultancy and management organization, they are targeting the media as well as training institutions. In March 2010, they organized a two-day seminar covering topics such as branding and IP asset protection and commercialization for more than 450 college students at Takoradi Polytechnic in Ghana.

Mr. Benson and Ms. Boakye hope that their efforts will mobilize large numbers of Ghanaians to pursue training in IP and use that training to stimulate national development. "Ghanaians cannot afford to sit back and watch the world accelerate economic progress with IP in the new digital era," said Benson.

In their various countries, the graduates of the MIP program at Africa University are undertaking awareness-building and training efforts that range from workshops with institutions of learning and business enterprises, to talk shows on TV and radio that engage policymakers. These efforts are shaping a better understanding of patents, trademarks, trade secrets, copyrights and related rights, utility models, industrial designs, traditional knowledge, traditional cultural expressions and genetic resources.

## About the MIP Program

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The Master's Degree in Intellectual Property (MIP) is jointly offered by Africa University, ARIPO and WIPO.

The program runs for 12 months from May to April and is structured in three parts, as follows:

**First Part:** Distance Learning (3 months) – students take a selected number of IP courses via distance learning;

**Second Part:** Residential (5 months) – students follow courses on site at Africa University in Mutare (Zimbabwe). The course includes a three-week practical training session at ARIPO headquarters in Harare;

**Third Part:** Research and dissertation (4 months) – students write on a selected and approved topic.

The MIP program is designed to enable young professionals to acquire the skills needed to play a leading role in the field of IP. The curriculum is taught by leading academics, legal practitioners and IP experts from the region and offers a comparative approach to IP systems at national, regional and international levels. Students come primarily from academia, research and development institutions or government bodies, to which they generally return upon graduation to serve as trainers in the field of IP.

Twenty fellowships are offered to highly motivated individuals from Africa with a view to contributing to the development of human resources in the field of IP in developing countries. An additional 10 places are reserved for self-sponsored students.

Additional information on the MIP program is available on-line from: Africa University ([www.africau.edu/academic/faculties/iplg/wipo/mip\\_advert.html](http://www.africau.edu/academic/faculties/iplg/wipo/mip_advert.html)), WIPO ([www.wipo.int](http://www.wipo.int)) and ARIPO ([www.aripo.org](http://www.aripo.org)).

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However, Mr. Ncube is taking the work even further. In July, he will begin a Fulbright African Research Scholar Fellowship at the Franklin Pierce Law Center in New Hampshire, with funding from the U.S. State Department. Based at the International Technology Transfer Institute (ITTI), Mr. Ncube will conduct research on the landmark Bayh-Dole Act of 1980 which is credited with revolutionizing the way U.S. universities handle inventions and innovations.

"I am interested in finding out how American universities have been successful in commercializing their research output," he said. He is also keen to learn more about how companies partner with universities in the commercialization, export and transfer of new technologies.

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# WHAT PLACE FOR CUSTOMARY LAW IN PROTECTING TRADITIONAL KNOWLEDGE?

Traditional knowledge (TK) is a cornerstone of the cultures, livelihoods and human rights of indigenous peoples and local communities. These communities have consistently argued that any legal regime for the protection of their knowledge should be grounded in their own customary laws and practices. But this raises a number of challenging questions; for example, can customary law exist alongside national legal systems? What happens when there is a conflict between these legal systems and which law will prevail? In this article, **Patricia Adjei**, a WIPO Indigenous IP Law Fellow, from Australia, draws from her personal experiences to discuss challenges and opportunities for securing effective respect and recognition of customary law in regulating the use and protection of traditional knowledge and traditional cultural expressions (TCEs).

There is growing recognition within international circles that “due recognition or consideration” needs to be given to customary law. This is evident in international human rights law in which states are urged to “give due recognition, consideration and respect for customary law in the development of law and policy affecting indigenous peoples’ rights to their lands, territories and resources” and which calls for protection of their rights over their TK and intellectual property (IP). It is similarly reflected in text-based negotiations within WIPO’s Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) and the Draft Protocol to the Convention on Biological Diversity (CBD). What this actually means in practice, however, is unclear.

## What is customary law?

Customary law refers to the laws, practices and customs of indigenous and local communities which are an intrinsic and central part of the way of life of these communities. Customary laws are embedded in the culture and values of a community or society; they govern acceptable standards of behavior and are actively enforced by members of the community.

As these laws are peculiar to the specific cultures in which they have evolved, the global landscape of customary laws and practices is rich and highly diverse. While there are similarities from which common principles may be drawn, customary laws are often quite distinctive and as such do not lend themselves easily to a “one-size-fits-all” approach.

## Working through the challenges

Customary law is typically holistic in nature and often sits alongside human rights law, land rights and IP law to protect TK. For many practitioners, such as anthropologists, lawyers and environmentalists working on TK and TCEs, “meshing” customary laws with national laws that protect TK is often puzzling and always challenging.

When customary law meets national legal systems a raft of questions arises. For example, how does customary law interact with prevailing legal systems and how does it apply to third parties? How are rules of evidence and proof of custom governed? What are the procedures for its interpretation? To what extent are effective remedies for breaches of rights over TK and TCEs found in customary law? What is the role and treatment of customary law in international judicial forums and in alternative dispute resolution procedures?

While developing a workable interface or fit between customary law and national legal systems presents challenges, it is now widely recognized that these two distinctive systems can co-exist in harmony. Such legal pluralism, however, when differing sets of laws operate at the same time, does require a great deal of creativity on the part of national governments responsible for adapting existing laws and drafting and implementing new legislation.

Challenges arise when customary laws are incorporated into national legal frameworks; for exam-

ple, when a court is faced with a situation in which copyright ownership conflicts with the principles of ownership defined in customary law.

Some commentators have suggested that such challenges may be addressed by documenting and codifying the norms and principles of customary law to provide the basis for drafting new *sui generis* legal mechanisms that merge customary law with the prevailing national legal systems. The extent to which such national legal systems recognize customary law, however, will largely depend on the political will of the implementing government. The merits of this approach are currently under discussion within the IGC.

low a number of strict customary laws to protect the use of their stories and music. For example, anyone from outside the community wishing to use a song or a dance must first consult with the elders of the specific island concerned to obtain permission to do so. These laws are known to most communities and passed down from generation to generation, not necessarily in written form.

While customary law and the Australian common law system operate in parallel in the Torres Strait Islands, when there is a conflict between laws, the common law system prevails over customary law. The common law system does not as yet recognize any customary laws before a court and, as

Photo: MASWAC



**Donny Woolagoodja, Senior Artist, Chairman of the Mowanjum Artists Spirit of the Wandjina Aboriginal Corporation with Andrew Leslie of Viscopy, a non-profit rights management organization for the visual arts. Art work features the Wandjina spirit of the Mowanjum community.**

A crucial step towards securing effective respect and recognition of customary laws is for policy-makers and lawmakers to develop an understanding of how to overcome the practical and legal obstacles that arise when customary law interfaces with existing legal systems, both in the countries in which custodians of TK and TCEs reside as well as in those countries in which their TK and TCEs are documented, stored and used.

## Parallel legal systems

TK and TCEs are developed, maintained and used within indigenous communities. Many communities observe their customary laws regardless of whether the protection of TK and TCEs is provided for in the national legal system.

In Australia, many indigenous communities follow their own customary laws alongside state and federal laws, such as in the Torres Strait Islands, in the far north of Queensland. Indigenous islanders fol-

such, it cannot be used by the indigenous islanders to defend their interests against third parties. This situation arises in relation to national laws in many countries.

If customary laws were to be recognized in the common law system, this might open the way to more effective protection of TK and TCEs. While desirable from the viewpoint of indigenous communities, this is a challenging prospect as it would mean states would have to recognize the customary laws within communities and potentially apply them to third parties outside these communities.

## Growing recognition

While the need to give due consideration to customary laws in the protection of TK and TCEs is increasingly recognized, it is not yet clear what this means in practice. Ultimately, it will fall to national governments to decide on the extent to



which their respective legal systems evolve to incorporate customary laws.

At present, indigenous communities have little or no legal recourse to redress situations that are contrary to their customary practices. In some instances, communities have endeavored to protect their interests by using protocols and contracts. These voluntary arrangements foster greater respect for indigenous communities by encouraging third parties to engage with and consult communities about their customary laws in relation to the use of TK and TCEs.

## Australian indigenous arts boost recognition

The Australian indigenous arts industry is using this approach to promote respect and acceptance of customary laws in dealing with indigenous communities and their TK and TCEs. For example, if someone wants to sample a particular song from an indigenous community, the music protocol<sup>1</sup> encourages that third party to obtain permission and acknowledge that community. It may even go so far as to provide for the sharing of copyright royalties with that community.

Certain Australian arts organizations, such as the Arts Law Centre of Australia and television networks including National Indigenous TV and Special Broadcasting Service (SBS), also use contracts and protocols to protect TK and promote respect for customary laws.

## Mowanjum language groups face tough challenges

While contracts and protocols support recognition of the customary laws of indigenous communities, they do not prevent misuse of TK or TCEs by third parties. Take, for example, the misuse of the Wandjina spirit by a non-indigenous artist near Sydney, Australia. This incident clearly illustrates the challenges confronting indigenous communities in this regard.

The Wandjina spirit is the creation spirit that belongs to the Mowanjum language groups who live in Derby, Western Australia. According to their laws, these three language groups are the only Aboriginal peoples in Australia permitted to paint and use the Wandjina spirit.

This, however, did not stop a non-indigenous artist in Eastern Australia from using the image of

the spirit to create a huge sculpture. While this act has caused the Mowanjum community great distress, in the eyes of the common law system the artist has not committed an infringing act.

Under Australian copyright law, non-indigenous people can reproduce indigenous symbols or figures without it being deemed illegal. Under the common law system, the non-indigenous artist's act would only be considered an infringement if it were considered to substantially copy a pre-existing artistic work that qualified for copyright protection. As there is no recognition of the customary law of the Mowanjum community – which prohibits the use of their creation spirit by outsiders – within the common law system, the community is powerless to defend its interests.

TK and TCEs can only be protected under current IP laws if they meet the requirements of those laws. Incidents such as those experienced by the Mowanjum community point to a pressing need for an international legal framework that secures respect and recognition of customary law to prevent such misuse.

## Focusing on the future

The capacity to gain insights into another culture and to understand and appreciate its customs and the rationale of its laws can be very challenging. It is particularly testing for practitioners trained and versed in formal legal systems to remain neutral when attempting to understand and incorporate customary laws into these legal systems. But such an objective approach is a necessary first step in examining how customary laws can be used to protect and nurture TK and TCEs within communities. This is particularly important in light of the fact that TK and TCEs are increasingly recognized as having significant potential in designing and implementing sustainable development policies.

While all communities are governed by different laws, there are similarities between them that can be extrapolated to establish common principles around which legal practice might be developed. There are clearly many challenges ahead, and the debate continues to roar, but there is at least widespread recognition of the need to work towards effective solutions that protect the interests of indigenous communities and safeguard them against the misuse and misappropriation of their TK and TCEs.

<sup>1</sup> Australia Council for the Arts protocol, "Music: Protocols for producing Indigenous Australian music" [www.australiacouncil.gov.au/research/music/reports\\_and\\_publications/music\\_protocols\\_for\\_producing\\_indigenous\\_australian\\_music](http://www.australiacouncil.gov.au/research/music/reports_and_publications/music_protocols_for_producing_indigenous_australian_music)

# HIGHLIGHTS

## SCT's work advances

WIPO's Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) met from June 20 to July 2, 2010, to consider issues relating to industrial design law, the protection of state names against registration or use as trademarks, grounds of refusal for trademark registration, and collective and certification marks. Delegates expressed broad support for advancing work on possible convergences in indus-

trial design law and practice. The Committee also agreed to discuss the issue of trademarks and the Internet at its next meeting in November 2010. On the issue of the protection of names of states against registration or use as trademarks, it was agreed to circulate a questionnaire on Member States' law and practice in that field to establish a basis for possible future work on the issue. ■

## Non-traditional marks: rules defined

A Working Group of the Singapore Treaty on the Law of Trademarks, meeting in late June 2010, defined the rules governing the representation of non-traditional marks – such as hologram, motion, color, position and sound marks – in trademark applications. This important step is the first explicit reference to non-traditional marks by an international treaty and indicates widespread acknowledgement that the subject matter for brands goes beyond the traditional signs for which protection is usually sought. These rules are to be formally considered for adoption by the Singapore Treaty Assembly in September 2010. While the actual number of non-traditional trademark registrations remains modest, this development is a clear sign that the IP community is responsive to the evolving needs of the branded goods industry. ■

## Technical symposium focuses on access to medicines

A technical symposium organized by the World Health Organization (WHO), the World Trade Organization (WTO) and WIPO on July 16, 2010, spearheaded a factual analysis of core issues relating to how populations in developing countries can obtain the medicines they need.

The one-day event on "Access to Medicines: Pricing and Procurement Practices" held at the WTO's Geneva headquarters provided a platform for international agencies to share information, practical experiences and views on the pricing and procurement of medicines, two key determinants of access.

The event was organized in the context of ongoing cooperation between the WHO, WTO and WIPO, which includes the implementation of the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property. ■

A summary of discussions and presentations is available at [www.wto.org](http://www.wto.org) and [www.wipo.int](http://www.wipo.int)

## Experts break new ground in talks on traditional cultural expressions (TCEs)

The first meeting of an intersessional working group (IWG) mandated by WIPO's Intergovernmental Committee on Intellectual Property, Genetic Resources, Traditional Knowledge and Folklore (IGC) in May 2010, took place from July 19 to 23, 2010. This new format – the first such mechanism for the IGC's negotiations – resulted in an intense and productive drafting session on TCEs, considered to be the most mature of the three subjects covered by the IGC.

Technical experts from WIPO Member States, indigenous communities and non-governmental organizations worked

side by side and actively contributed to discussions in informal and open-ended drafting groups which each worked on specific articles. Revised versions of all the articles were presented to, and discussed by, the IWG as a whole and will be considered by the IGC in December 2010.

The IWGs are designed to support the IGC's negotiations by providing legal and technical advice and analysis. They have no mandate to take decisions or adopt texts, but the work of the first IWG will contribute richly to the evolution of the IGC's work. ■

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