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RECENT ACTIVITIES OF WIPO IN THE FIELD OF INTELLECTUAL PROPERTY ENFORCEMENT AND FUTURE WORK OF THE ADVISORY COMMITTEE ON ENFORCEMENT (ACE)

prepared by the Secretariat

I. ACTIVITIES OF WIPO IN THE FIELD OF INTELLECTUAL PROPERTY ENFORCEMENT FROM MAY 2006 TO JULY 2007¹

1. In order for the Advisory Committee on Enforcement (ACE) to review the activities of the World Intellectual Property Organization (WIPO) in the field of enforcement of intellectual property (IP) rights, the Secretariat prepared a summary of activities relating to, or including, IP enforcement issues organized by, or held with the participation of, WIPO. Paragraphs 2 to 18, below, outline these activities and should be read together with the list of activities available on the Enforcement website of WIPO at www.wipo.int/enforcement/en/activities/activities_07.html. These activities were undertaken through the WIPO Enforcement and Special Projects Division, which serves as the focal point for enforcement activities in the International Bureau, in close cooperation with the other WIPO sectors concerned.

¹ The third session of the ACE was held in Geneva from May 15 to 17, 2006. In that session, discussions on WIPO's activities were based on document WIPO/ACE/3/2 which covered the period from May 2004 to April 2006.

A. Coordination and Cooperation in the Field of IP Enforcement

2. In line with the mandate and objectives of the ACE to foster cooperation and coordination of assistance in the field of enforcement, WIPO held, in accordance with requests by Member States, various consultation meetings and briefings, in particular with delegations composed of senior members of the judiciary and high-level government officials. WIPO also played a prominent role in coordinating international efforts to fight counterfeiting and piracy. Its cooperation was sought in a number of international enforcement initiatives, focusing on different aspects related to IP enforcement. A complete list of organizations with which WIPO established close cooperation in the field of IP enforcement is made available on the WIPO Enforcement website². The joint activities and coordination meetings for the period under review are listed in the Annex to this document.

3. One of the important developments in the international cooperation against counterfeiting and piracy is the partnership between governments, intergovernmental organizations and the private sector. In the framework of a joint initiative entitled “Global Congress on Combating Counterfeiting and Piracy”, WIPO, Interpol and the World Customs Organization (WCO), the International Chamber of Commerce (ICC), the International Trademark Association (INTA), and the International Security Management Association (ISMA) invited decision-makers and experts to meet in order to identify new strategies for addressing global counterfeiting and piracy and agree on their implementation. In this framework of cooperation, the Global Congress Steering Group convened several regional and international events on combating counterfeiting and piracy.

4. In cooperation with the Global Congress Steering Group, the Government of Romania sponsored and hosted in Bucharest on July 11 and 12, 2006, a Regional Congress on Combating Counterfeiting and Piracy to discuss progress and anti-counterfeit action in the region of Eastern Europe and Central Asia and to promote more effective enforcement cooperation among stakeholders in that region. Under the theme “Making a Difference through More Effective Cooperation”, the program featured a series of panels, each analyzing and debating the effectiveness of measures and efforts undertaken to reduce counterfeiting and piracy. The Congress adopted a declaration formulating recommendations for future regional and global action³.

5. The Third Global Congress on Combating Counterfeiting and Piracy was hosted by WIPO in Geneva on January 30 and 31, 2007. The Congress was convened as a high-level forum for shaping future enforcement strategies and actions and as an opportunity for dialogue and interaction between the public and private sector under the banner “Shared Challenges-Common Goals”. The Third Global Congress built upon the work that began with the First Global Congress in Brussels in 2004 and the Second Global Congress in Lyon in 2005, and brought together government ministers and policy makers, business leaders, senior law enforcement officials, judges, prosecutors, attorneys and stakeholders from intergovernmental and non-governmental organizations. It enabled participants to analyze progress and discuss practical strategies, the health and safety of consumers, and good governance in relation to worldwide trade in counterfeit and pirated products. The main themes of the Congress were raising awareness; improving cooperation and coordination; building capacity; promoting better legislation and enforcement; and a special session on

² <http://www.wipo.int/enforcement/en/cooperation.html>

³ Agenda and the text of the Bucharest Declaration at <http://www.ccapcongress.net>

health and safety risks associated with counterfeiting and piracy. Over 1,000 attendees from 105 countries pooled their experience with a view to enhancing international coordination and cooperation and seeking more effective solutions on how the various stakeholders should pursue their common goals of combating counterfeiting and piracy⁴.

6. Cooperation with Interpol, WCO and the private sector will continue in the framework of the Global Congress Steering Group for the preparation and organization of the Fourth Global Congress on Combating Counterfeiting and Piracy, which is tentatively scheduled to take place in Dubai, United Arab Emirates, in early February 2008.

7. Close cooperation with the WCO, in the field of training and awareness-raising activities, continued in the period under review. WIPO participated as an observer in a meeting of the WCO IPR Strategic Group, members of which provided specific expertise in several WIPO activities focusing on IP enforcement by law enforcement agencies, in particular by customs officials. WIPO also made a presentation at the Conference on International Law Enforcement and IP Crimes organized jointly by Interpol and the Royal Canadian Mounted Police in partnership with Underwriters Laboratories, which took place in Canada from June 19 to 21, 2007, and participated as an observer in the meetings of the Intellectual Property Crime Action Group (IIPCAG).

8. WIPO was represented in the Organisation for Economic Co-operation and Development (OECD) Advisory Committee meetings for the purpose of its counterfeiting and piracy project and gave advice on a number of legal issues. These meetings provided a forum for an exchange of views among the participating experts on methods, statistics and techniques used to measure the magnitude, scope and economic effects of counterfeiting and piracy and contributed to the study entitled “The economic impact of counterfeiting and piracy”. The Executive Summary of the first phase of the study was released in May 2007⁵.

9. Cooperation between WIPO and the World Health Organization (WHO) was intensified under the WHO-led initiative to combat counterfeit medicines and the establishment of an International Medical Products Anti-Counterfeiting Taskforce (IMPACT). The goal of IMPACT is to explore further mechanisms for strengthening international action against counterfeit medicines, including through legislation, regulation, enforcement, technology and risk communication. WIPO participated actively in the meetings organized by WHO, which aimed at building stronger and more effective international cooperation in this field, providing inputs and legal expertise. The IMPACT Juristic Experts meeting in Brussels on July 12 and 13, 2007, attended by representatives of national drug regulatory authorities, intergovernmental and non-governmental organizations, industry associations and others, discussed a number of recommendations as well as the background document “Draft Principles and Elements for National Legislation against Counterfeit Medical Products”⁶.

⁴ Third Global Congress outcome: http://www.wipo.int/enforcement/en/global_congress

⁵ <http://www.oecd.org/dataoecd/11/38/38704571.pdf>

⁶ http://www.who.int/medicines/counterfeit_conference/en/

B. Legal Assistance to Member States in IP Enforcement Matters

10. Upon request by Member States, WIPO prepared comments on draft laws and provided advice in areas of substantive IP law and IP law enforcement. The legal comments provided by WIPO analyzed the compatibility of the respective draft laws with the enforcement-related obligations under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS Agreement) as well as WIPO-administered treaties. In the period under review, the Enforcement and Special Projects Division of WIPO prepared comments on the enforcement provisions of four draft laws. In addition, the Division had discussions with a number of Member States on how to implement enforcement strategies and effective enforcement mechanisms. These discussions embraced suggestions on legislative and/or possible procedural amendments which would render the IP rights enforcement more effective at national level.

C. Training and Awareness-Raising

11. At its third session, the ACE noted with satisfaction the considerable number of enforcement-related training and awareness-raising activities undertaken by WIPO, or with the participation of WIPO⁷, and adopted a number of conclusions stressing, *inter alia*, the importance of continued education and awareness raising. In the period under review, WIPO continued and further intensified its activities in this field.

Seminars, colloquia and workshops on the enforcement of IP rights

12. In response to the large number of requests for assistance by Member States and as agreed at the Committee's third session⁸, WIPO continued to focus its training activities on the development of judicial expertise in the field of IP disputes and on enhancing cooperation and coordination at regional, subregional and national levels. WIPO organized, or participated in, seminars, colloquia, conferences and workshops that were attended, in particular, by judges and magistrates, customs and police officials, officials from IP offices, IP attorneys, representatives from the business community and consumer groups. Many of these events, particularly designed to meet the interest of judges and law enforcement officials, were organized with the assistance of Member States, and/or in cooperation with intergovernmental and non-governmental organizations and are listed in the Annex to this document.

Case books and studies on the enforcement of IP rights

13. In the period under review, WIPO continued its activities aimed at facilitating access to relevant case law to provide information on effective adjudication of IP-related disputes. To address this need, WIPO undertook to publish a series of annotated case law. A new case book prepared by Judge Marie-Françoise Marais, Counselor at the *Cour de cassation* of France, and Mr. Thibault Lachacinski, attorney, entitled "*L'application des droits de propriété intellectuelle – Recueil de jurisprudence*" focuses on court decisions in IP matters from countries with a civil law tradition. The case book will prove a practical tool especially for judges in both civil and criminal courts as well as lawyers, prosecutors, customs officials and right holders, in particular in French-speaking countries within the civil law tradition.

⁷ Paragraph 10 of document WIPO/ACE/3/17

⁸ Paragraphs 7 and 8 of document WIPO/ACE/2/13

14. The case book on *The Enforcement of Intellectual Property Rights* (WIPO Publication 791E) by Justice Harms, published in 2005, is in the process of being updated and analyzes an increased number of court decisions in different fields of IP enforcement, drawn from various common law and some civil law countries.

15. A comparative study on criminal enforcement of IP rights is under preparation. It will serve as a background document for the fourth session of the ACE. The study will analyze legal standards and trends related to criminal enforcement of IP rights in a number of countries, underscoring similarities and, where appropriate, highlighting differences between the legal systems.

16. Through its website, WIPO facilitates online access to case material (court decisions or decisions of administrative bodies in the field of enforcement of IP law). In order to further develop this service, WIPO invites members and observers of the ACE to submit additional information, where available⁹.

D. Exchange of information

17. For the purpose of providing a source of information on current global developments in the field of IP enforcement, the Enforcement and Special Projects Division makes available a quarterly enforcement newsletter. The newsletters are published on the WIPO Enforcement website¹⁰, and are also distributed by electronic mail to participants of the Intellectual Property Enforcement Issues and Strategies (IPEIS) Forum. Members and observers of the ACE are invited to submit to the Secretariat any relevant information which they wish to be included in these newsletters.

18. Following the request of a number of Member States to facilitate access to information on IP enforcement issues on their websites, the International Bureau set up in March 2007 the link *Portal to Member States online information* on the website of the Enforcement and Special Projects Division. Member States are invited to submit to the International Bureau any additional relevant information¹¹.

II. FUTURE WORK OF THE ACE

19. In its first session, the ACE agreed on a thematic approach for its sessions and the inclusion of expert presentations related to the selected theme¹². In this regard, the second session analyzed and discussed the role of the judiciary and quasi-judicial authorities, as well as of the prosecution, in enforcement activities (including related issues such as litigation costs)¹³, while the third session considered the issue of education and awareness-raising, including training, concerning all factors relating to enforcement, primarily those that are indicated in

⁹ <http://www.wipo.int/enforcement/en/ipeis>

¹⁰ <http://www.wipo.int/enforcement/en/news.html> The Division also contributes to the dissemination of basic information related to intellectual property enforcement: the WIPO Magazine featured a series of articles on intellectual property enforcement, including case studies and an update on WIPO's recent activities

¹¹ http://www.wipo.int/enforcement/en/member_states.html

¹² Paragraph 16 of document WIPO/ACE/1/7 Rev.

¹³ Paragraph 18 of document WIPO/ACE/1/7 Rev.

requests for assistance by Member States.¹⁴ It was agreed that the fourth session should consider an exchange of views on coordination and cooperation at the international, regional and national levels in the field of enforcement.

20. In order to allow a more focused discussion and taking into account that civil remedies had already been dealt with in more detail in previous meetings, the Secretariat invited a number of experts to make presentations on coordination and cooperation in the field of criminal enforcement of IP rights. This session will thus aim at providing a global comparative analysis of relevant issues, such as, *inter alia*, the scope and definition of IP crimes; investigation and initiation of criminal proceedings; jurisdiction and, where appropriate, the coordination of proceedings; evidentiary issues; sentencing options and the level of penalties.

21. Since the discussions in the fourth session will not, due to time constraints, embrace coordination and cooperation related to IP crimes via the Internet, the Committee may wish to consider the topic of coordination and cooperation related to IP crimes via the Internet for the discussions during the fifth session of the ACE. For that purpose, the ACE could build upon the presentations and discussions at the fourth session, thus addressing an issue of escalating concern of both Member States and the private sector.

22. Delegations wishing to propose other themes for discussion in the fifth session of the ACE within its mandate¹⁵ are invited to submit their suggestions to the Secretariat.

23. *The Advisory Committee is invited to take note of the information contained in this document and to consider the proposal referred to in paragraph 21, as well as other proposals, if any, submitted under paragraph 22, above.*

[Annex follows]

¹⁴ Paragraph 21 of document WIPO/ACE/2/13

¹⁵ Paragraph 114(ii) of document WO/GA/28/7 reads: "The mandate of the Committee in the field of enforcement, which excludes norm setting, was limited to technical assistance and coordination. The Committee should focus on the following objectives: coordinating with certain organizations and the private sector to combat counterfeiting and piracy activities; public education; assistance; coordination to undertake national and regional training programs for all relevant stakeholders and exchange of information on enforcement issues through the establishment of an Electronic Forum."

ANNEX

OVERVIEW OF COOPERATION AND COORDINATION, EDUCATION, TRAINING
AND AWARENESS-RAISING ACTIVITIES RELATING TO OR INCLUDING
INTELLECTUAL PROPERTY ENFORCEMENT ISSUES ORGANIZED BY,
OR HELD WITH THE PARTICIPATION OF WIPO FROM MAY 2006 TO JULY 2007

Joint activities and coordination meetings with international intergovernmental and non-governmental organizations:

- Eastern Europe and Central Asia Regional Congress on Combating Counterfeiting and Piracy sponsored by the Government of Romania and hosted in cooperation with the members of the Global Congress Steering Group (WIPO, Interpol and the WCO, ICC, GBLACC, INTA, ISMA); Bucharest, Romania, July 11-12, 2006;
- WCO/Interpol/WIPO/WHO National Seminar on the Fight against Counterfeiting and Piracy, Dakar, Senegal, November 8-10, 2006;
- European Patent Office (EPO) IP Enforcement Week, supported by WIPO, the European Commission, the German Federal Patent Court and the Academy of European Law (ERA), Munich, November 13-17, 2006;
- G-8 IPR Expert Meeting on Combating Piracy and Counterfeiting, Moscow, Russian Federation, November 14, 2006;
- Participation in the European Patent Office (EPO) “IP Enforcement Week” Conference, Munich, Germany, November 16-17, 2006;
- Third Global Congress on Combating Counterfeiting and Piracy, jointly convened by WIPO, Interpol and the WCO, with the support and cooperation of GBLAAC, INTA, ICC and ISMA, International Conference Center, Geneva, January 30-31, 2007;
- WCO International Conference on Fight Against Counterfeit Drugs: *Counterfeit Medicines Kill*, in cooperation with WIPO and WHO, Baku, Azerbaijan, February 8-9, 2007;
- Anti-counterfeiting Workshop for representatives of the Mediterranean countries organized by Euromed Audiovisual, Berlin, Germany, February 8-9, 2007;
- Organisation for Economic Co-operation and Development (OECD) Informal Advisory Group Meeting on Counterfeiting and Piracy Project, Paris, France, February 19-20, 2007;
- G-8 Anti-Piracy and Anti-Counterfeiting Expert Meeting, Berlin, Germany, February 22, 2007
- Seminar on fighting piracy and counterfeiting, organized by the Technical Assistance Information Exchange Instrument (TAIEX) of the European Commission, in cooperation with the Bucharest Chamber of Commerce and Industry, Bucharest, Romania, March 5, 2007;
- “German Association for the Protection of IPRs (GRUR) meets Brussels” Workshop on enforcement of IPRs in the digital environment, Brussels, Belgium, March 7, 2007;
- Cooperation with Max-Planck Institute on technical training assistance and IP enforcement studies, Munich, Germany, April 10, 2007;
- Global Congress Steering Committee Meeting, Brussels, Belgium, April 16, 2007;
- G-8 Meeting on Business Strategies to Prevent Counterfeiting and Piracy; G-8 IPR Expert Meeting; Berlin, Germany, April 18-19, 2007;
- World Customs Organization (WCO) Strategic Group Meeting: Action Plan and Framework of Standards for Protection of IP by Customs, Brussels, March 8, 2007;
- OECD Advisory Group Meeting, Paris, France, April 26, 2007;
- Meeting of the Board of the Max-Planck Institute, Munich, May 22, 2007;
- Meeting with WCO Secretary General, Brussels, May 23, 2007;

- Meeting of the Global Congress Steering Committee to prepare for Fourth Global Congress, Dubai, United Arab Emirates, June 10-11, 2007;
- 2007 International Law Enforcement Intellectual Property Crime Conference, June 19-21; 13th Meeting of the Interpol IP Crime Action Group (IIPCAG), Niagara Falls, Canada, June 22, 2007;
- Asia-Pacific Economic Cooperation (APEC) Workshop on Intellectual Property Rights Enforcement in the Digital Era, Nha Tran, Viet Nam, July 4-6, 2007;
- IMPACT Meeting of Jurists and Experts on Legislation to Combat Counterfeit Medical Products, Brussels, Belgium, July 12 and 13, 2007.

WIPO Seminars, workshops, conferences, colloquia and symposia:

- WIPO National Symposium for the Jordanian Judiciary, organized by WIPO in cooperation with the Jordanian Supreme Judicial Council, the Department of the National Library and the King Abdullah II Center for Intellectual Property, Amman, Jordan, June 19-21, 2006;
- WIPO Asia and the Pacific Sub-Regional Colloquium for the Judiciary on the Protection of IPRs, organized by WIPO in cooperation with the Department of Industrial Policy and Promotion, Ministry of Commerce and Industry, Government of India, in association with the Indian Law Institute (ILI) and with the assistance of the Japan Patent Office (JPO), New Delhi, India, June 29-30, 2006;
- WIPO National Seminar on the Role of the Intellectual Property Courts in Enforcement of IPRs, organized by WIPO in cooperation with the Intellectual Property Corporation of Malaysia (MyIPO), Ministry of Domestic Trade and Consumer Affairs, Island of Langkawi, Malaysia, July 18-19, 2006;
- WIPO National Workshop on the Enforcement of Intellectual Property Rights (IPRs) for Police and Customs Officials, organized by WIPO in cooperation with the Caribbean Open Trade Support Program and the Government of the Commonwealth of Dominica, Roseau, Dominica, July 27, 2006;
- WIPO–OECS Colloquium for the Judiciary on the Protection of IPRs, organized by WIPO in cooperation with the Organization of Eastern Caribbean States (OECS) through the Judicial Education Institute of the Eastern Caribbean Supreme Court, Roseau, Dominica, July 28-29, 2006;
- WIPO Asia-Pacific Regional Symposium on the Enforcement of IPRs, August 28-29, 2006; WIPO National Seminar on the Enforcement of IPRs for Customs Officials, August 30, 2006; Ulaanbaatar, Mongolia;
- WIPO National Workshop on the Enforcement of Intellectual Property Rights, Islamabad, Pakistan, September 12-15, 2006;
- WIPO National Seminar for Judges on Copyright and Related Rights, Bamako, Mali, September 18-20, 2006;
- WIPO National Seminar for Judges on Enforcement of IPRs, Quito, Ecuador, September 21-22, 2006;
- WIPO/Japan Patent Office (JPO) Training Course on the Enforcement of Intellectual Property Rights, Tokyo, Japan, October 10-20, 2006;
- Third WIPO Colloquium for Romanian Judges, organized in cooperation with the European Patent Academy and the Swiss Federal Institute of Intellectual Property, Geneva/ Berne/Munich, November 8-17, 2006;
- WIPO Sub-regional Workshop on the Enforcement of Intellectual Property Rights, organized in cooperation with the French National Institute of Industrial Property (INPI), the Dubai Department of Economic Development (DED), and Dubai Customs, Dubai, United Arab Emirates, November 27-28, 2006;

- WIPO/ *Organisation Africaine de la Propriété Intellectuelle* (OAPI) Sub-regional Workshop on the Enforcement of Intellectual Property Rights, for the attention of magistrates and lawyers from French-speaking African countries, Niamey, Niger, November 27-30, 2006;
- WIPO Seminar on Border Measures against Counterfeit Goods, Oran, Algeria, December 2-3, 2006;
- WIPO High-Level Roundtable on the Enforcement of IP Rights, Beijing, China, December 11, 2006;
- IP Week 2006: Regional Anti-Counterfeiting Forum, organized jointly by WIPO, the Jordan Intellectual Property Association (JIPA) and the Association for the Protection of Industrial Property in the Arab World (APPIMAF), Amman, Jordan, December 11-12, 2006;
- WIPO National Seminars on Industrial Property for Judges and Attorneys, organized in cooperation with the Moroccan Ministry of Justice and the Moroccan Office for Industrial and Commercial Property (OMPIC), Casablanca, Morocco, March 1-2, 2007;
- WIPO National Seminar on IP and Border Measures in Connection with the Fight Against Counterfeiting, organized in cooperation with the Moroccan Office for Industrial and Commercial Property (OMPIC), Casablanca, March 5-6, 2007;
- Colloquium on Intellectual Property for Turkish Judges, Geneva, April 24-27, 2007;
- *Atelier régional de l'OMPI sur la propriété intellectuelle à l'intention des directeurs des instituts et écoles de la magistrature des pays arabes, en coopération avec l'École supérieure de la magistrature d'Alger (ESM), Alger, Algérie, 7-9 mai 2007;*
- *Séminaire-Atelier sous-régional sur les moyens de faire respecter le droit d'auteur et les droits voisins à l'intention des magistrats et officiers de police judiciaire, organisé par l'OMPI et l'Organisation internationale de la francophonie (OIF) en coopération avec le Gouvernement du Sénégal, Dakar, 21-23 mai 2007;*
- WIPO National Colloquium for the Judiciary on the Enforcement of Intellectual Property Rights, Island of Langkawi, Malaysia, July 23; Roundtable discussion with Enforcement Division, Kuala Lumpur, July 25, 2007;
- 2007 China Forum on Criminal IP Protection, Shenzhen City, China, July 24-25, 2007;
- Enforcement lecture in the WIPO Academy Summer School program, July 26, 2007;
- WIPO National Intellectual Property Rights Training for Enforcement Officers, Kuala Lumpur, Malaysia, July 26-27, 2007.

[End of Annex and of document]