

COMMITTEE ON DEVELOPMENT AND INTELLECTUAL PROPERTY (CDIP)

Sixth Session

Geneva, November 22 to 26, 2010

PROPOSAL FOR A CDIP NEW AGENDA ITEM ON INTELLECTUAL PROPERTY (IP) AND DEVELOPMENT

1. During the sixth session of the Committee on Development and Intellectual Property (CDIP), held from November 22 to 26, 2010, and while discussing agenda item 21, the Delegation of Brazil, speaking on behalf of the Development Agenda Group (DAG), requested the Secretariat to make available the following document on IP and development as a CDIP/6 document.
2. Accordingly, the above-mentioned document is contained in the Annex to this document.
3. *The Committee is invited to take note of the information contained in the Annex to this document.*

[Annex follows]

CDIP - NEW AGENDA ITEM ON INTELLECTUAL PROPERTY (IP) AND DEVELOPMENT

The Development Agenda Group (DAG) recalls that the 2007 WIPO General Assembly adopted the recommendations made by the Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) (document A/43/13 Rev.).

One of the decisions was to establish a Committee on Development and Intellectual Property with the following mandate:

- (i) develop a work-program for implementation of the adopted recommendations;
- (ii) monitor, assess, discuss and report on the implementation of all recommendations adopted, and for that purpose it shall coordinate with relevant WIPO bodies;
- (iii) discuss IP and development related issues as agreed by the Committee, as well as those decided by the General Assembly.

With the approval, at its last session, of the “Coordination Mechanisms and Monitoring, Assessing and Reporting Modalities”, the time has come for the CDIP to start discussing how to implement the third pillar of its mandate.

Against this backdrop, the DAG is proposing the inclusion of an additional standing agenda item in the CDIP entitled “IP and development-related issues”.

The DAG is open as to what subjects may be discussed under this agenda item and encourages all groups to present their views on the matter. As an initial contribution, the DAG suggests that discussions under this agenda item could contemplate, among other issues:

(i) Report on the discussions of the WIPO Seminar Series on “The Economics of Intellectual Property”

The seminars conducted by the office of WIPO’s Chief Economist on “The Economics of Intellectual Property” have addressed several issues that could be of relevance for the discussion on IP and development. The DAG suggests that Mr. Carsten Fink be invited to present, at the next session of the CDIP, the main thrust of the debates held during this series of seminars as well as to identify issues that his Office has been working on and that could be of interest to the future work of the Committee. ¹

¹ For information purposes, the WIPO Seminar Series on “The Economics of Intellectual Property” was launched on March 26, 2010, and the following issues were discussed so far:

“The Quality Factor in Patent Systems, on June 16, 2010.

The presentation puts forward a new methodology that aims at comparing quality across patent systems. An in-depth analysis of the operational designs of the novelty and inventiveness conditions compares patent quality between the European Patent Office, the United States Patent and Trademark Office and the Japanese Patent Office. The strong observed international differences in term of quality call for a sharp convergence of patent systems before worldwide mutual recognition and work-sharing practices are put in place.

Financial Patenting, Innovation, and Patent Litigation, on June 28, 2010.

(ii) WIPO's Contribution to the United Nations (UN) Millennium Development Goals (MDGs)

As a UN Specialized Agency, WIPO has a role to play in contributing to the implementation of the Millennium Development Goals (MDGs). At the last session of the CDIP, the Secretariat presented a "Report on WIPO's Contribution to the United Nations' Millennium Development Goals (MDGs)" (document CDIP/5/3). The DAG considers that some findings of this report, particularly paragraphs 6 and 7, reproduced below, deserve further consideration by the CDIP and may lead to future work in the area.

Paragraph 6: Among the MDGs, some appear to be more directly linked to the work of WIPO than others. In particular, reference has often been made to Goal 8, which includes, among its targets, direct references to making available the benefits of new technologies (target 5), to providing access to essential drugs in developing countries (target 4) and to developing further an open, rule-based, predictable, non-discriminatory trading system (target 3). For all such issues, intellectual property rights have a role to play and this has been repeatedly acknowledged in the reports of the MDG 8 Gap Task Force. IP rights also play an important role in a number of other MDGs, particularly all those for which science, innovation and technological development could be key to enhancing the capacity of countries to achieve the Goals.

Paragraph 7: In 2005, the UN Millennium Project, which had been commissioned by the UN Secretary-General to recommend a concrete action plan to achieve the MDGs, highlighted seven major intervention areas for meeting the MDGs, including one devoted to science, technology, and innovation. Highlighting the cross-cutting nature of innovation, which can contribute to fighting diseases, raising crop production, mobilizing new sources of energy, disseminating information, among others, the report noted that "meeting the Goals requires a special global effort to build scientific and technological capacities in the poorest countries—and to direct research and development toward specific challenges facing the poor." With respect to intellectual property rights, the report stated that "Intellectual property laws require a very delicate balance of market forces and public action—a balance unlikely to be the same for all countries" and called for IP norms to take into account the "levels of development and varying interests and priorities".

[Footnote continued from previous page]

The presentation discusses the dramatic growth of financial patenting which is among the classes of business method patents that have attracted great attention, and is the focus of the *Bilski* case being considered by the United States Supreme Court.

The number of such filings and awards has been accelerating, but unlike other areas, patent filings by academics have been very infrequent, which appears to be a consequence of a lack of awareness or interest on the part of faculty members, rather than any fundamental unsuitability of their research for patenting. The trends in financial patenting do not seem to mirror those in financial innovation. Moreover, financial patents are being litigated at a rate 27 to 39 times greater than that of patents as a whole.

Copyright and Transaction Costs, on September 14, 2010

"Transactions cost of copyright clearance can be prohibitively expensive for both the rights holder and the potential rights acquirer. These transactions costs can prevent valuable transactions from taking place. This presentation explores the nature of these transactions costs and addresses ways that they might be reduced." (source: WIPO website)

(iii) Preparation for the upcoming Conference on IP and Development

WIPO's Program and Budget for 2010/2011 contains, in the section on the Development Agenda Coordination Division, a reference to the organization of a "Major International Conference on Integrating Development into IP Policy-Making".

The DAG suggests that the process of preparation for the Conference be dealt within the CDIP, and that one day of informal consultations be held in Geneva before the next session of the CDIP with a view to start discussing the matter.

Members should discuss the date, venue and agenda for that Conference, which should be preceded by substantive and detailed preparation, requiring background studies of high quality.

Preparations for the Conference should be discussed under the new standing agenda item in the CDIP.

[End of Annex and of document]