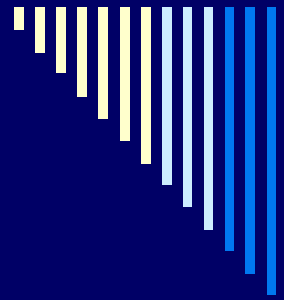


International Seminar on
Intellectual Property and
Development
Geneva, 2 and 3 May, 2005

Intellectual Property and Public
Policy: Public Health

Sisule F. Musungu
South Centre



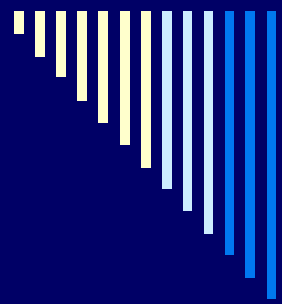
IP and Development in WIPO: The Context

- The WIPO Development Agenda and the Decision to Hold an International Seminar
- The WIPO Development Agenda and Public Health
- Implementation of the Doha Declaration on TRIPS and Public Health



IP, Innovation and Public Health: International Trends

- Trends Towards a Balanced and Evidence-based Policy Analysis – Examples
 - (A) The WHO
 - (B) UNCTAD
 - (C) The WTO
 - (D) The U.N Human Rights Bodies
 - (E) The U.K Commission on Intellectual Property Rights
 - (F) U.S. Federal Trade Commission (FTC)



Balanced and Evidence-based Policy Analysis: The WHO

The Commission on Intellectual Property Rights, Innovation and Public Health Established by the WHA:

“...to collect data and proposals from the different actors involved and produce an analysis of intellectual property rights, innovation, and public health, including the question of appropriate funding and incentive mechanisms for the creation of new medicines and other products against diseases that disproportionately affect developing countries...”

Source: WHO, WHA56.27



Balanced and Evidence-based Policy Analysis: UNCTAD

- The Sao Paulo Consensus (UN DOC. TD/410)

“[68] Issues of particular concern to developing countries and LDCs include:...

The implementation and interpretation of the Agreement on Trade-Related Aspects of Intellectual Property Rights in a manner supportive of public health”



Balanced and Evidence-based Policy Analysis: UNCTAD

- Sao Paulo Consensus Cont'd

“[101] UNCTAD should undertake analysis,...., of the development dimension on intellectual property and trade-related aspects of intellectual property rights (TRIPS)”

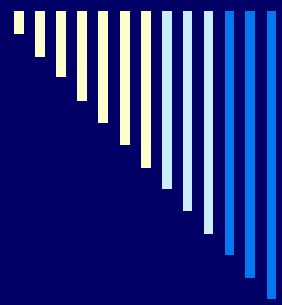
“[102] UNCTAD should also undertake analysis on trade and development aspects of open and collaborative projects, including open source software, focussing on the development dimension...”



Balanced and Evidence-based Policy Analysis: The WTO

The Doha Declaration

“We agree that the TRIPS Agreement does not and should not prevent Members from taking measures to protect public health. Accordingly, while reiterating our commitment to the TRIPS Agreement, we affirm that the Agreement can and should be interpreted and implemented in a manner supportive of WTO Members’ right to protect public health and in particular, to promote access to medicines for all.”



Balanced and Evidence-based Policy Analysis: The U.N Human Rights Bodies

- CHR 61st Session Adopted a Resolution on the Right of Everyone to the enjoyment of the highest attainable standard of physical and Mental Health(Res. 2005/24). Recalling the Doha Declaration on TRIPS and Public Health the CHR Stresses:

“[T]he importance of monitoring and analysing the pharmaceutical and public health implications of relevant international agreements, including trade agreements, so that States can effectively assess and subsequently develop pharmaceutical and health policies and regulatory measures that address their concerns and priorities, and are able to maximize the positive and mitigate the negative impact of those agreements, while respecting all international obligations applicable to them”



Balanced and Evidence-based Policy Analysis: IPR Commission

- In its Final Report the Commission recommended in Chapter 2 that:

“Countries need to adopt a range of policies to improve access to medicines. Additional resources to improve services, delivery mechanisms and infrastructure are critical. Other macroeconomic policies need to be in harmony with health policy objectives. **But so also does the IP regime. Countries need to ensure that their IP protection regimes do not run counter to their public health policies and that they are consistent with and supportive of such policies.**”



Balanced and Evidence-based Policy Analysis: U.S. FTC

- In its 2003 Report titled: To Promote Innovation: The Balance of Competition and Patent Law and Policy, the FTC Concludes, *inter alia* that:

“[A] Questionable Patents can Deter or Raise the Costs of Innovation”.

“[B)] In Industries with Incremental Innovation, Questionable Patents can Increase “Defensive Patenting” and Licensing Complications”.



IP, Innovation and Public Health: The Role of WIPO

- WIPO'S Current Overall Vision

“[M]aintenance and further development of the respect for intellectual property throughout the world. This means that any erosion of the existing protection should be prevented, and that both the acquisition of the protection and, once acquired, its enforcement, should be simpler, cheaper and more secure....

Source: *MEDIUM-TERM PLAN FOR WIPO PROGRAM ACTIVITIES - VISION AND STRATEGIC DIRECTION OF WIPO*



IP, Innovation and Public Health: The Role of WIPO

- WIPO'S view on Patents and Access to Medicines (The Myths Brochure)

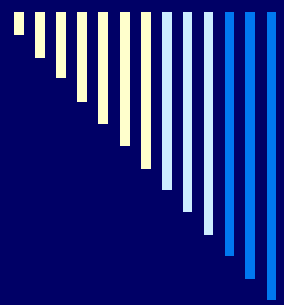
“Without patents, existing anti-AIDS drugs would not have been produced. Without patents, new and better drugs that are needed to overcome the increasing resistance of the AIDS virus would not be developed.”

Source: *Striking a Balance: Patents and Access to Drugs and Health Care*, WIPO Secretariat. Available on WIPO's website at <http://www.wipo.int/about-ip/en/studies/>. (Last Accessed 28 April 2005).



IP, Innovation and Public Health: The Myths Brochure

- In the Myths Brochure, *Striking a Balance: Patents and Access to Drugs and Health Care*, WIPO says that It is a myth, among others that:
 - (1) "Problems in access to health care and the availability of life-saving drugs are primarily due to the patent system."
 - (2) "High drug costs are primarily due to the patent system, which allows companies to keep prices artificially inflated."
 - (3) "The patent system favors corporate interests over the greater social good."
 - (4) "The patent system deters sound competition."

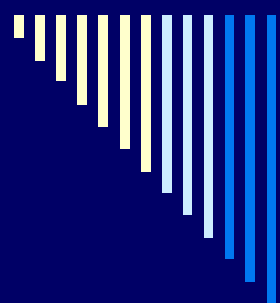


The WIPO Development Agenda: The Way Forward on IP and Public Health in WIPO

□ Overall Vision

“WIPO must, as a matter of course, examine and address all features of existing intellectual property rights, including the economic and social costs that IP protection may impose on developing and least developed countries, as well as on consumers of knowledge and technology in both the North and the South. WIPO, moreover, must be open to, and actively consider, alternative non-intellectual property-type systems for fostering creativity, innovation and the transfer of technology, while recognizing the benefits and costs of each system.”

Source: *Submission by the Group of Friends of Development to the First Session of the IIM (Document IIM/1/4).*



The WIPO Development Agenda: The Way Forward on IP and Public Health in WIPO

- Norm-Setting: Principles and Guidelines to Safeguard the Protection of Public Health
- Technical Assistance: Principles and Guidelines to Ensure Public Health-sensitive Policies and Laws
- Evidence-based, Objective Analysis: The Idea of a WIPO Evaluation and Research Office