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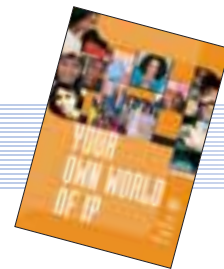
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## Table of Contents

- 2 **Intellectual Property as a Lever for Economic Growth –**  
The Asian and Pacific Region Experience (Part I)
- 5 **Accounting and Intellectual Property** (Part II)
- 8 **Establishing IP Institutions in the Least Developed Countries (LDCs)**
- 12 **PCT Focus: Patenting Technologies for Cleaner Air**
- 14 **IP Seminar for Science Parks and Business Incubators**
- 16 **IP & Business**  
Beyond Tradition: New Ways of Making a Mark
- 20 **European Community Joins International Trademark System**
- 22 **Committee Meetings**  
Progress Made On Broadcaster's Rights  
Enforcement Advisory Body Addresses Key Questions
- 24 **News Roundup**  
WIPO and UNU Sign Cooperation Agreement  
Turkish Patent Institute Celebrates its 10<sup>th</sup> Anniversary
- 25 **Calendar of Meetings**



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# INTELLECTUAL PROPERTY AS A LEVER FOR ECONOMIC GROWTH – The Asian and Pacific Region Experience (Part I)

## *A mighty flame follows a tiny spark.*

Dante

The transformation of creativity and innovation into assets of economic, social and cultural value is the *raison d'être* of the intellec-



Photo: FAO/175/66R. Fediuri

tual property system. It is also the subject of this article, the fifth in a series that looks at specific examples of how the intellectual property system can be used successfully in ways beneficial to society. Each article concentrates on one of the main regions of the world; this one looks at Asia and the Pacific and follows four others, two of which looked at Africa and two at Latin America.

One of WIPO's main concerns is to ensure that all its Member States are aware of – and make use of – the full potential of the

intellectual property system as a tool to create value and enhance economic growth. It considers creativity and inventiveness – the raw material of intellectual property – to be the only natural resource that all countries possess, regardless of their geography, climate or geological make-up. The ability and desire to innovate, find solutions to problems and express themselves through music and the arts are inherent in all peoples.

The intellectual property system can encourage people of all nations to use that ability and fulfill that desire by offering both recognition of their skills and talents and rewards for exercising them. It allows successful protection and commercialization of the fruits of human ingenuity leading to multiple benefits – for the originators of the intellectual assets through acknowledgement of their efforts and financial return, and for society as a whole through the positive effects of the invention or artistic work itself and through the contribution its commercial success makes to the health of the national economy in general.

### **Building an IP culture as a basis for national well-being**

This beneficial cycle can be set in motion only if a country is committed to, and dynamically fosters,

an “IP culture”. This means promoting an environment that encourages and values innovative and creative activity; that provides an accessible, easy and inexpensive means of protecting it; and that supports and encourages the commercial exploitation of the resulting intellectual property assets. The growth of a healthy national IP culture depends on the care and attention given to it by a country's leaders. One leader who sets a clear and striking example of such IP leadership is King Bhumibol Adulyadej of Thailand, who not only seeks to improve the lives of his people in fundamental ways through his inventive activities but also actively and visibly uses the patent system to protect his innovation. He is a key figure in establishing an IP culture in Thailand, making an invaluable contribution to heightening his people's awareness – and acceptance – of the IP system, and highlighting the benefits it can bring.

The King's inventiveness covers many areas, all aimed at benefiting his subjects and improving the quality of their daily lives. They range from water purification devices to the identification of alternative sources of energy. Patents on his innovations are always handed over to be developed and distributed for the public good.<sup>1</sup> The King's patent for a palm oil formula for use as equipment and vehicle fuel, for exam-

ple, has been the basis for some promising research in seeking an alternative, renewable energy source. A pilot project using “palm/diesel” car fuel was launched in 2001 at a petrol station run by the state-owned Petroleum Authority of Thailand.

The government has made a commitment to greatly increasing the country's palm oil production over the next few years, intending to more than double the number of acres of plantation to around 800,000 by 2007 – much of the yield being destined for biodiesel consumption. Pressed from the yellow fruit of the palm tree, the oil has traditionally been used for cooking and cosmetics. However, research is proving its performance as a fuel, both in its pure state or mixed, in varying proportions, with diesel.

The palm oil project, carried out by the Prince of Songkhla University, benefited from support from the Chaipattana Foundation, set up on the King's initiative to focus on development activities that produce results that are relevant, effective and promptly carried out.

Findings on the project,<sup>2</sup> based on 2,000 hours of continuous running time of two engines, one using palm oil and the other diesel, showed that the viscosity of palm oil, about 10 times higher than diesel, and its high flash

point (the lowest temperature at which the vapor of a combustible liquid can be ignited in air), up to 289°C, can cause problems in starting the engine. However, improvements have been made to the injector – and are continuing on the chamber – in order to counter this. The capacity of the engine using palm oil compared very well with that using diesel. Wear on the engine using palm oil – as opposed to that using diesel – was less in some areas (e.g. the oil pump) than in others (e.g. the piston rings).

The move towards the use of palm oil is a positive development: not only is it a renewable energy source but it is cheaper than diesel, which has to be imported at a high (and fluctuating) price, as well as being less polluting with resultant health and environmental benefits. It can also be grown as a cash crop by farmers, providing an outlet for Thailand's palm oil producers. The project thus has the potential to benefit domestic producers, consumers and the environment – as well as the nation as a whole.

The King's inventive activity continues unabated; as recently as last year he was granted a patent for an artificial rain-making technique, involving seeding warm and cold clouds at different altitudes. The technique induces rain over a wider area than can be



Photo: FAO/196/66C. Bazzani

obtained using existing techniques and can target more precisely where the rain will fall. The technique is of particular importance to Thai farmers, particularly in the north of the country where precipitation is low. The Bangkok Post reported that other countries have sought details of the new technique.

### **New life for stagnant ponds**

This is the fourth patent to be awarded to the King – the first being for a water aerator. That particular patent made world intellectual property history as it was the first ever granted to a member of a royal family. This royal invention – the Chaipattana Aerator – was born out of the King's concern about the pollution of his country's rivers, canals and wetlands. In the 1980s, he initiated several projects designed to improve water quality – including the use of aquatic plants, such as water hyacinth, to filter and purify it. At the same time, he created a device, based on the “luk” or water wheel, to aerate wastewater. The aerator can either

>>>

1. The King, an environmentalist as well as an inventor, has, throughout his long reign, which began in 1946, manifested great concern and personal involvement in resolving the problems of his people. He has established over 1,000 Royal and Royally-initiated projects.

2. See, *inter alia*, “Palm Oil as a Fuel for Agricultural Diesel Engines: Comparative Testing against Diesel Oil”, Gumpon Parateepchaikul and Teerawat Apichato: *SONGKLANAKARIN Journal of Science and Technology* Vol. 25 No. 3 May-June 2003.



# ACCOUNTING AND INTELLECTUAL PROPERTY (Part II)



The Chiapattana Aerator operating on one of the Mellearts ponds in Woluwe-Saint-Pierre Park in Brussels.

As a result of the Eureka 2000 Exhibition, the Belgian Chamber of Commerce asked if one of the King's aerators (Chaipattana Aerator Model RX 2) could be installed at Woluwe-Saint-Pierre Park in Brussels. Officials of the Thai Royal Irrigation Department installed and tested the device, which was handed over in April 2003, in the presence of Her Royal Highness Princess Maha Chakri Sirindhorn and Her Majesty Queen Fabiola of the Kingdom of Belgium. The aerator met with much acclaim. Visitors to the park find its graceful and gentle progress over the lake – surrounded by a cloud of fine spray and the sound of the falling water – intriguing and charming. It is said that even the local fishermen became fans once they learned of the oxygenating benefits of the device and realized it would not scare the fish away and would, in fact, help protect them from disease.

This series will continue with an article examining examples of the use of the IP system as a tool for economic growth in other countries in the Asia and Pacific region.

be fixed or made to float over the surface of the water. A series of carefully designed, rotating scoops lifts the water one meter high and then lets it fall in a manner calculated to provide the greatest possible oxygenation. A patent for the device was issued in February 1993 (Patent No. 3127). In patenting his device, the King demonstrated clearly the importance he attaches to intellectual property, creating an example for his people of how ingenuity and creativity can be used to improve lives – economically, culturally and socially.

The King's device has received international recognition. During the Brussels Eureka 2000: 49<sup>th</sup> World Exhibition of Innovation, Research and New Technology, it won several prizes and was selected by the judges to receive a WIPO Gold Medal. The International Committee of the event honored him as a "developer king who possesses high diligence, ingenuity and exceptional vision, in working arduously for the benefit of his subjects. He utilizes simple technology in his inventions which can be applied widely throughout the world."

## Advantages of Reporting IP

FOR MANAGERS

- Communicates the value of IP to investors
- Shows what IP the company owns
- Puts a value on the IP
- Explains how the IP relates to business segments

FOR INVESTORS

- Get information on how IP drives growth
- Receive adequate inputs for earnings/sales forecasts
- Can better estimate risks/revenues of an investment
- Can better understand the nature of a business
- Increase predictability while decreasing volatility

The first part of this article (published in the May/June issue of the WIPO Magazine) highlighted the mechanisms that permit a company to cover intellectual property (IP) under current financial reporting standards, and the potential for improvement of these mechanisms. The second part of this article will discuss the business impact of current reporting systems and show how a company can remedy the situation itself by issuing an IP report.\*

IP is valuable to a business whether or not there exists an adequate reporting system. As IP is not explicitly stated on the balance sheet and investments in creating IP are usually expensed as they occur, both the earnings and the book value of equity are understated by the accounting model. The consequence of this is twofold. First, the cost of capital increases, meaning that IP-intensive companies may find it even more difficult to pass the funding hurdle. Second, management is a much greater challenge since adequate information on all the assets and liabilities of a company are not available.

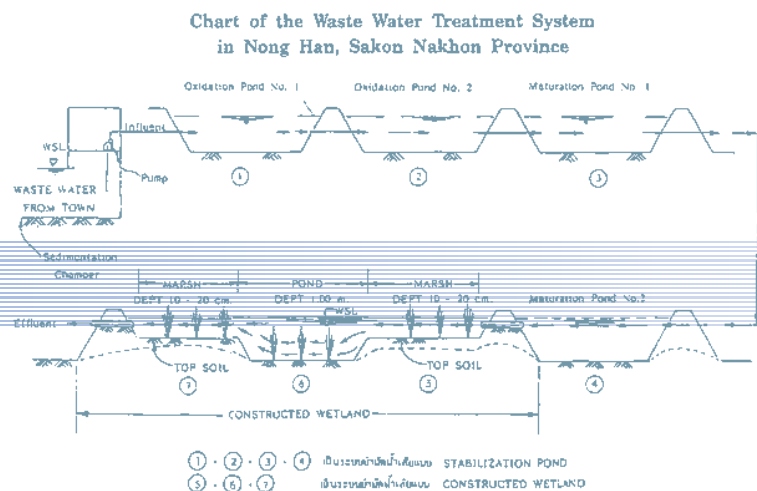
## Increase in the cost of capital

For investors "no news is bad news." Higher gains usually involve higher risk, however investors charge a premium in deals where the risk rate cannot be adequately determined, thereby increasing the costs of borrowing money for the creditor.

Investors' perception of the higher risk involved in IP-intensive companies is not caused by the underlying IP, but by a financial reporting system that provides insufficient financial information about such IP. Under current reporting standards, IP is absent from the discourse in accounting and financial circles. IP intensive firms may, therefore, find it difficult to pass the funding requirements of financial institutions. Since information about IP is not adequately communicated, there

is a lack of awareness and a degree of skepticism concerning the likelihood of getting financing on the basis of IP. This reinforces the investors' traditional reluctance toward funding companies on the basis of IP.

On the stock exchange, sectors that are strongly IP dependant, such as high technology or pharmaceuticals, are considered high risk investments and their stock is more volatile than the so-called brick and mortar, or tangible asset-based industries. In addition to the technological risk factors that are inherent in innovation, this can also be explained by inadequate capital market communication about IP. Since accounting is not tailored to IP, investors are provided with little or inadequate information on a firm's IP assets and liabilities. It is, therefore, difficult to adequately assess the risks and



\* Comments on this article may be sent to the Intellectual Property and Economic Development Department at [ipedd@wipo.int](mailto:ipedd@wipo.int).

benefits of an investment. The information vacuum on IP distorts widely-used performance measures. Valuation ratios, such as the price/earnings ratio, the price/sales ratio or the market/book value, may be distorted by the inadequate reporting of IP as they are calculated on the basis of the data provided in the balance sheet. Since IP is missing in the financial report, the calculations do not provide an accurate assessment of the business's profitability.

### Management is hampered

The scarcity of information provided on IP influences the managerial process. Since tangible assets and liabilities occupy the bulk of the space on the balance sheet, the focus of management is on these business items that, in today's knowledge-driven economy, are no longer the main determinants of the success of an increasing number of businesses. As expressed by Roger Carlile, a partner at KPMG, "Companies today are spending a majority of their time managing a minority of their assets (the tangible ones)." He further explained that "with the pressure on management for bottom-line results, it is difficult to persuade CEO's to spend money on installing processes for managing IP company-wide if they cannot see any value."<sup>1</sup>

The lack of visibility of IP on the balance sheet makes it very difficult for management to shift the focus to developing and honing

their IP strategies. A study conducted by the management consulting firm McKinsey & Company found that companies in the United States of America (U.S.) create, on average, a maximum of 0.5 percent of their operating income from licensing IP. McKinsey, however, calculates that firms could earn up to 10 percent of their revenues from the sale or licensing of IP.<sup>2</sup> Rivette and Kline estimate that 67 percent of US companies own IP that is in no way commercially exploited, underlining the gravity of inadequate communication.<sup>3</sup>

*What can companies do to remedy the situation for themselves?*

**Communicate!**  
**Communicate!**  
**Communicate!**

While mathematical language used in accounting is precise, clear and brief, it takes away the nuances and detail that is so relevant for adequately communicating the value of IP. Discussions on accounting reform continue, however companies that rely heavily on the use of IP are advised to **disclose information** on the IP they own or have access to through licensing, franchising, merchandising or leasing on a **voluntary** basis.

An IP report, issued together with the accounting reports, is a good interim solution to overcome the current communication gap. The



advantages of issuing an IP report by far outweigh the related costs. The process of creating an IP report may result in a new management perspective. An IP report is a potentially powerful tool that can be used to significantly improve a firm's self-perception and, also, contribute to improving its position in the eyes of investors and other players in the market.<sup>4</sup>

The points in the guideline below should prove useful for the creation of a simple IP report. An IP report **should not disclose** any trade secrets or other information that should be kept secret. It should not merely list the IP, but seek to **explain** how a firm's IP relates to its business strategy. For example, how it provides the firm with exclusivity in the market or access to scarce resources or to new markets.

### Guidelines for preparing an IP report

An IP report must provide a narrative summary and relate income streams to IP. The summary should analyze the basic business model, plan and strategy and show how IP contributes to the bottom line of the business. It should explain how the business makes money and the role that the company's IP plays in generating revenues.

Points to keep in mind when preparing the report:

- Income streams should clearly show the returns from the IP-protected business segments. For example, how do trade secrets or patents contribute to the new/improved/superior/better functionality or features of the company's services or products as compared with that of competitors? How do trademark(s) contribute to the company's image, recognition, reputation or branding strategy, in developing customer loyalty, or attracting new customers? Are industrial designs used to protect the unique look or packaging of products? Do trade secrets, such as know-how or business ideas, make the company unique?
- The report should also relate the company's IP to its position in the market place. It should show how the ownership of IP helps to gain/secure/improve market share or profits, how IP is being used as a barrier to entry to keep competitors out of a particular market, or how IP provides a form of market exclusivity.
- The report should also show how the IP of competitors poses a threat. Does the company have 'freedom to operate' and use its new ideas, concepts, inventions and innovations, without being required to get prior permission (which

## Suggestions for Further Reading

International Intellectual Property Institute: Accounting Standards in the New Economy: Executives Address Reporting the Value of Intellectual Property, Washington D.C., May 1 2002, [www.usa-canada.les.org/membersonly/committees/professional/financial/IPIAccounting.pdf](http://www.usa-canada.les.org/membersonly/committees/professional/financial/IPIAccounting.pdf)

Lev B./Zarowin P.: The Boundaries of Financial Reporting and How to Extend Them. *Journal of Accounting Research* 1999/37.3

Licensing Executive Society: Transcription Notes of the F-16 Committee Meeting: Reporting Intellectual Property, Washington, D.C., May 2, 2002, [www.usa-canada.les.org/membersonly/committees/professional/financial/F\\_16.pdf](http://www.usa-canada.les.org/membersonly/committees/professional/financial/F_16.pdf)

Moehrle Stephen R./Reynolds-Moehrle Jennifer: Say Good-bye to Pooling and Goodwill Amortization, *Journal of Accountancy* 2001/9 [www.aicpa.org/pubs/jofa/sept2001/moehrle.htm](http://www.aicpa.org/pubs/jofa/sept2001/moehrle.htm)

Sullivan P. H.: Value Driven Intellectual Capital. How to Convert Intangible Corporate Assets into Market Value. New York 2000. John Wiley

White G.I./Sondhi A.C./Fried D.: The Analysis and Uses of Financial Statements. New York 1994. John Wiley

Woodward C.: Accounting for Intellectual Property, London 2003, PriceWaterhouseCoopers, [www.pwc.com/gx/eng/ins-sol/publ/ipvalue/pwc\\_2.pdf](http://www.pwc.com/gx/eng/ins-sol/publ/ipvalue/pwc_2.pdf)

may involve making a payment) to develop a new, improved, product or service, or to add new features to an existing product or service?

An IP report offers an ideal opportunity for management to demonstrate business skills in handling and earning income from IP by outlining the company's strategy to exploit the commercial benefits of IP. It will help investors to

understand how the company's focus on research and development is aligned to its IP strategy and commercial goals. Through the IP report, management can show how IP can be leveraged to create greater revenue, to develop new relationships and to find business partners.

1. Interview with Roger Carlile in *Intellectual Property: Managing all-important intangibles of the information age*. (see [www.jang.com.pk/the-news/investors/may99/temp/temp6.htm](http://www.jang.com.pk/the-news/investors/may99/temp/temp6.htm)).  
2. Elton J./Shah B./Voyzey J.: *Intellectual Property: Partnering for Profit*. McKinsey Quarterly 2002/4, (see [www.mckinseyquarterly.com](http://www.mckinseyquarterly.com)).  
3. Rivette K. G./Kline D.: *Rembrandts in the Attic. Unlocking the Hidden Value of Patents*. Cambridge MA 2000, Harvard Business School Press.

4. Lev demonstrated how relevant capital market communication on a drug approval impacted the share price of pharmaceutical companies. When the drug approval was released without any further statements the share increased by 0.51 percent, when it was accompanied by qualitative information the share rose by 1.13 percent and when quantitative information was added it went up by 2.01 percent. In Lev B.: *Communicating Knowledge Capabilities*. New York University 1999, [pages.stern.nyu.edu/~blev/research.html](http://pages.stern.nyu.edu/~blev/research.html).



# ESTABLISHING IP INSTITUTIONS IN THE LEAST DEVELOPED COUNTRIES (LDCs)

The number of countries now classed as least developed countries (LDCs) has risen to 50, with 23 of the 24 original members still in the same category (the exception is Botswana). Over the last 33 years the number of LDCs has more than doubled; the number rose from 41 in 1990 to 48 in 1995, a substantial increase. Thirty-four of the 50 LDCs are in Africa, 15 are in Asia and the Pacific, and one is in the Latin American and Caribbean region. Sixteen of the 50 LDCs are landlocked; this and other geographical aspects of most LDCs result in high transport costs, which have a significant adverse impact on their overall economic development. Island LDCs face particular problems resulting from their small size, insularity and remoteness from the major economic centers.

The WIPO Division for LDCs in cooperation with other programs provides measurable and tangible assistance for LDCs through the WIPONET Project (now in its operational phase), the WIPO Worldwide Academy, and in the areas of collective management of copyright and related rights, traditional knowledge, and small and medium sized enterprises (SMEs). However, there is still little use of the intellectual property (IP) system in the LDCs and few have established IP institutions. For those who are seeking to build and network such institutions, there is no ready-made material they can refer to. Over the next year, the WIPO Magazine will publish a series of articles aimed at the LDCs and addressing their IP needs in the area of IP institution building. This article provides some background on the current situation in the LDCs and explains what is meant by IP institutions.

## Global changes and institution-building

The global economy is undergoing a series of changes driven by rapid technological progress and policy liberalization. These changes involve new technologies and new management techniques, different forms of enterprise linkages and relationships between indus-



Photo: FAO/19698/Buzzani

try and science, and heightened information flows between economic agents. They are transforming international economic relations in patterns of trade and comparative advantage, flows of capital, technology and people, and the generation and ownership of information and property rights. While the industrialized countries are directly behind these technological changes, developing countries and LDCs are also directly affected as economic actors in the global economy.

The evolution in technology has brought industrialized countries economic prosperity and social



progress, however the share of LDCs in world output is now less than one percent. In fact, the assets of the three or four richest people in the industrialized countries are more than the combined gross domestic product (GDP) of the 50 LDCs, which have a population of more than 750 million people.\* In nominal terms, the average GDP per capita in LDCs is one-sixth of that in the developing countries and one-hundredth of that in the industrialized countries. Even in terms of purchasing power parity, GDP per capita in LDCs is only three-tenths of that of developing countries and a twenty-fifth of that of industrialized countries.

The environment in which LDCs are operating today is very different from that in which most development strategies and institutions were formed. Therefore, there is a need to adapt to change, choose the right path to change, and change quickly.

## Relevance of intellectual property

In recent years, intellectual property (IP) has attracted a lot of public interest, arousing a good deal of debate and becoming a prominent subject in discussions on knowledge diplomacy. Both the protection and the dissemination aspects of the core IP trade-off are part of this new prominence. For some countries, the IP system is a crucial factor in their prosperity in this era of the knowledge economy. Others view it as a kind of new protectionism compensating for declining forms of trade protection such as tariffs, non-tariff measures and subsidies. IP also raises vital economic, social and moral issues concerning the patenting of life forms, and matters of biodiversity.

Despite the increasing recognition of IP in the political and economic environment, intellectual property institutions are not well

known in the LDCs. IP agencies are, in fact, among the oldest national and international governmental institutions in most developed countries, but they are among the least known and the least studied in the LDCs. Intellectual property and its main constituent parts such as patents, trademarks, copyright and designs have been examined in great detail by legal scholars and economists and in specialist technical forums in developed countries, but not in LDCs.

A general approach to IP agencies as development institutions has been missing in LDCs. This is especially the case for those LDCs seeking to understand for the first time the basic institutional outlines of the field. At the international level there is an obvious gap in the economics literature, where the recent focus on trade and intellectual property has raised institutional issues but has yet to provide a basic look at IP institutions as governmental regulatory and development institutions. In most policy and institutional realms in LDCs, such as social, industrial, trade or health policy, basic institutional studies are readily available. This is not the case, however, for intellectual property, particularly in the form of studies that are easily accessible to government leaders, administrators, or politicians.

## Evolution of LDCs over last 33 years

Forty-three of the LDCs are WIPO Member States. From 1990 to 2004 the following LDCs joined WIPO, namely Bhutan, Cambodia, Cape Verde, Chad, Comoros, Djibouti, Equatorial Guinea, Eritrea, Ethiopia, Gambia, Guinea, Lao People's Democratic Republic, Mozambique, Myanmar, Nepal, Samoa, Sao Tome and Principe.

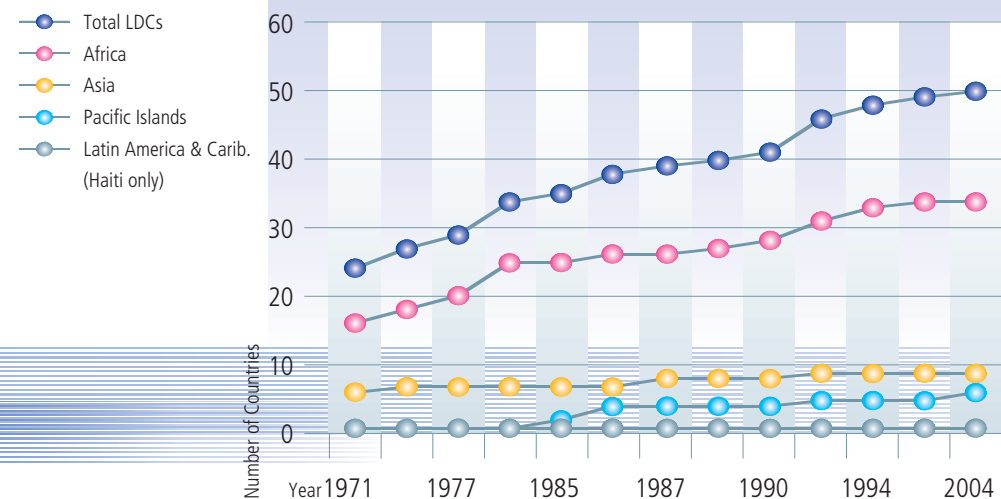




Photo: FAO/ESA/Ed. Orloff

### The core of IP institutions

As operating institutions, IP agencies fundamentally exist to give practical expression to the central IP policy trade-off between protection and dissemination. In an overall sense this means regulating and administering a trade-off between protecting creations and inventions of the mind and disseminating such creations for the greater good of society. The first aspect of our conceptual portrait of IP institutions is a fairly basic notion centered on the protection and dissemination of these creations and related clusters of interests.

Ideas about fairness, as well as views of global versus national or regional economic welfare are at the center of the international and national expression of the IP policy trade-off. Such a trade-off must, however, be made through a complex set of national and international agencies and institutions which, in turn, are pressured by business interests, IP professionals, various users of IP and governments. The protection role, as well as the resulting contribution to socio-economic development, is central to the existence of IP agencies. In this context, WIPO provides a forum where LDCs cooperate with other countries and organizations to build their IP systems with a view to achieving the central objective of a well-balanced trade-off between protection and dissemination.

In the light of the above, the overall purpose of this series of articles on IP institution-building in the LDCs is to provide some background on the nature and structure of existing IP offices that could be used as examples or models for building future IP offices in LDCs. The purpose is not to duplicate the nature and structure of these offices, but rather to learn from their experience, from the way they adjusted or re-invented themselves to face the tide of change that took place in international social, economic, political, cultural and technological relations in the 1980s, 1990s and the beginning of the new century.

The articles will identify and discuss areas of IP institution building such as the major components of IP institutions and structures; national IP institutions as knowledge-based organizations, the nature and structure of knowledge-based institutions; self-sufficient IP structures and sources of financing; networking; and partnering among institutions. Wherever appropriate, information will be provided on pertinent WIPO programs in assisting LDCs.

## What are institutions?

The term "institution", as referred to in this series of articles, is used in its broader sense to refer to rules, enforcement mechanisms, networks, partnerships and organizations. As distinct from policies, which are the goals and desired outcomes, institutions are the rules, including behavioral norms, by which agents interact and organizations implement rules and codes of conduct to achieve desired outcomes. Policies effect which institutions evolve – but institutions also effect which policies are adopted. Institution builders can be diverse, and can include policy makers, business people or community members. Formal institutions include rules written into law by government, rules codified and adopted by private institutions, and public and private organizations operating under public law.\*

As countries develop, the number and range of partners that market participants deal with increase and market transactions become more complicated, requiring more formal institutions. Conversely, public and private agencies may build formal institutions to enable them to undertake a more diverse set of activities. Good policies are only the beginning; they are not enough in themselves. The details of institution building, through networking, partnering and rule making, matter both for growth and for poverty management.

Building institutions takes time and the process within each country may stall or reverse as a result of political conflict or economic and social conditions. We have witnessed this in many LDCs over the last 40 to 50 years because of indigenous and exogenous factors. Many lessons have been learnt

about the process of change and the importance of norms and culture in particular countries. Institution building is generally a cumulative process, with several changes in different areas building up to complement and support each other. Today, IP institutions work or function in close cooperation with other institutions. They should not be seen as a distinct or self-contained domain, but rather as an important and effective policy instrument relevant to a wide range of socio-economic, technological and political concerns. The development of the skills and competence needed to manage IP and to leverage its influence needs to be focused, particularly in the LDCs.

The institutional arrangements with regard to IP that we observe in operation today in different countries vary, as they depend on a number of national, regional and international factors. In this context, there is no reason to suppose that any individual country has managed to exhaust all the useful institutional variations that could underpin a healthy and vibrant IP system. Even if we accept that some countries require certain types of institutions, their requirements are not met from a closed list of institutional possibilities. These possibilities do not come in the form of indivisible systems, which stand or fall together. There are always alternative arrangements capable of meeting the same practical needs. It is important to maintain a healthy skepticism towards the idea that a specific type of institution – a particular mode of governance or legislation, for example – is the only type that is compatible with a well-functioning IP institution. ♦

\* United Nations Development Programme (UNDP), *Human Development Report*, 1998, 1999 and 2000, passim.



# PCT FOCUS: PATENTING TECHNOLOGIES FOR CLEANER AIR



The world market for electrical power is experiencing tremendous growth. In the United States alone, it is estimated that new plants will generate over 500 gigawatts of electricity per year by 2020 – more than double the output for 2001. The builders of these new plants, however – especially those that will generate electricity by natural gas or coal-fire – must address environmental concerns such as climate changes and global warming. These are real concerns that cannot be ignored; they raise questions as to how harmful gases resulting from fossil fuel combustion – gases such as sulfur dioxide (SO<sub>2</sub>), oxides of nitrogen (NO<sub>x</sub>), and mercury (Hg) – can be eliminated. An equally important concern for energy producers is how they can be eliminated at an affordable cost.

This article examines a success story in this area, EnviroScrub Technologies Corporation, a US company that is innovating in this field. The company's patented Pahlman Process™ scrubbing technology provides unique multi-

ple pollutant capture capabilities in a single reaction unit. Key to EnviroScrub's success has been a global marketing program that has taken advantage of the broad international patent protection provided by the Patent Cooperation Treaty (PCT) system.

## Company background and profile

EnviroScrub Technologies began operations in the air pollution control market in 2000. Its specific goal was to become a world leader in the lucrative business of removing SO<sub>x</sub>/NO<sub>x</sub>/Hg target pollutants from the combustion of common fuels and industrial emissions. EnviroScrub Technologies developed and patented various inventions, making remarkable progress in the development of clean-air technology. To this end, it acquired what is now referred to as the Pahlman Process™ technology at an early stage of its development. In addition to providing the best means to remove the air pollutants referred to above, which are in the flue gases of coal-fired power generation, the Pahlman Process™ technology is also highly effective at removing other dangerous gases and heavy metals from industrial emissions.

EnviroScrub Technologies is dynamic in developing, commercializing and licensing its dry Pahlman Process™ technology to power generating and industrial companies worldwide. It has entered into strategic partnerships with key companies in the energy industry such as Minnesota

Power, Nooter/Eriksen and Air Cure. A significant portion of EnviroScrub Technologies' financial resources are also invested into research and development with academic research affiliates of institutions such as the University of North Dakota (recognized internationally for its expertise in advanced energy systems) and the University of Minnesota-Duluth (renowned for its applied research in minerals and other natural resources).

## Area of technology covered

Pahlmanite™ sorbent is a black mineral powder developed by mining engineer John Pahlman (now deceased) and EnviroScrub Technologies' research and development team. The sorbent adsorbs all but a trace of sulfur and nitrogen oxides from combustion and industrial process gases, the toxic by-products of power plants that burn fossil fuels. Sulfur and nitrogen oxides, dubbed SO<sub>x</sub> and NO<sub>x</sub> respectively, are the chief ingredients in acid rain and smog. In addition, the process creates end products that can be used to make detergents, fertilizers and food preservatives.

The Pahlman Process™ technology can remove multiple pollutants by a single, dual or multi stage dry process, which is more efficient than any other system currently on the market. Not only does the process eliminate undesirable waste streams while producing marketable byproducts; its price tag is much lower than that of comparable technologies. EnviroScrub

Technologies reports removal of more than 99 percent of both SO<sub>x</sub> and NO<sub>x</sub> simultaneously and at costs that are significantly lower than the capital and operating costs of conventional technologies. The Pahlman Process™ technology is also reported to remove 97 percent of oxidized mercury and 99 percent of elemental mercury in the same process.

## Overall patenting strategy and the use of the PCT

EnviroScrub Technologies has a coherent and active patenting strategy. It has obtained several US patents for its Pahlman Process™ pollutant removal technology and has patents pending for production and regeneration of its proprietary sorbent compounds and for water filtration applications. The Pahlman Process™ has also been the subject of several PCT applications; the most recent (WO 2004/037369) was published in May.

In consolidating its intellectual property portfolio worldwide, EnviroScrub Technologies credits WIPO's PCT system with helping it secure global protection for its technology. EnviroScrub Technologies cited two features of the PCT that were of particular significance in its choice to use the system: the quality of the search and examination reports produced under the PCT and the deferral of certain national phase fees until the 30-month and 31-month deadlines. Other benefits from the use of the PCT include its simplicity and convenience by virtue of its single procedural mecha-



The EnviroScrub Technologies Mobile Unit running at the Potlatch Paper Corporation facility.

nism for filing patent applications with effects in several countries. It also incorporates several fail-safe and user-friendly measures, which allow the user opportunities to correct mistakes.

EnviroScrub Technologies has entered the national phase under the PCT system in a number of countries, including through the European Patent Office and the Eurasian Patent Office. It was granted its first international patent (covering countries within the Eurasian region) in October 2003. This patent grants EnviroScrub Technologies protection in the Russian Federation, the world's fifth largest coal-consuming nation.

With patents granted and pending, EnviroScrub Technologies' global commercialization effort is under development. It has entered into licensing agreements with Nooter/Eriksen with respect to global marketing of the technology, which is expected to include developing countries,

especially those that are reliant on fossil fuels. Countries such as India, ranked third in coal consumption in British Petroleum's "Statistical Review of World Energy 2001", are logical markets for the Pahlman Process™ technology. EnviroScrub Technologies plans to enter the national phase in such countries as India and Nigeria (through the African Regional Industrial Property Organization (ARIPO)) with later PCT applications.

For further information on the PCT as an aid in planning corporate patenting strategies, please visit [www.wipo.int](http://www.wipo.int).

## Acknowledgements

1. **Modern Power Systems** magazine – November 2002
2. **Power Engineering** magazine – May 2002
3. **Star Tribune** (Minnesota newspaper) – April 18, 2002
4. **EnviroScrub Technologies** News online: [www.enviroscrub.com](http://www.enviroscrub.com)





# IP SEMINAR FOR SCIENCE PARKS AND BUSINESS INCUBATORS

WIPO and the International Association of Science Parks (IASP) held a three-day training program on intellectual property (IP) for managers and staff of science



parcs and business incubators, which are specifically designed to help firms in the early stages of developing their businesses. Thirty-three participants from 14 countries attended the seminar, held in Geneva from June 28 to 30, and discussed ways in which science and technology parks and business incubators could better meet the intellectual property needs of their clients and tenants.

The seminar was organized in response to a strong demand for training on IP management from managers of incubators and science parks. At the seminar, speakers provided an overview of main IP rights (IPRs) and discussed issues relating to the importance of IP for research and development (R&D)-based companies. The program included a day's training on licensing and technology transfer in order to provide participants with a better understanding of the role of IP in the licensing of technology, as well as practical advice on conducting licensing negotiations. The last day included a practical session on how to use patent databases in order to obtain technical, legal and commercial information, which is of great value to companies and researchers.

Speaking to participants, WIPO Deputy Director General Rita Hayes stressed the importance of the partnership between WIPO and IASP in raising awareness of the importance of IP for the creation and management of new business in the new knowledge-driven business climate. IASP Director General Luis Sanz highlighted the need for capacity-building within science parks and incubators on intellectual property, enabling businesses and R&D institutions to better exploit their innovative capacity.

## IP a key business development service

"In today's knowledge economy, it is important for the management of science parks and incubators to have a good understanding of intellectual property in order to provide tenants with a solid front-line support to meet their most urgent business needs," said Mr. Guriqbal Singh Jaiya, Director of the SMEs Division of WIPO. "Science parks are much more than real estate operations. They are key providers of business development services to their clients and tenants and IP is one of the most crucial areas in which technology-based businesses and R&D institutions will need professional support."

Science parks are organizations managed by specialized professionals whose main aim is to increase the wealth of park tenants by promoting the culture of innovation and business competitiveness. To meet these goals, a science park stimulates and manages the flow of knowledge and technology between universities, R&D institutions, companies and markets; it facilitates the creation and growth of innovation-based companies through incubation and spin-off processes; and provides other value-added services together with high quality space and facilities. The main goal of a business incubator is to produce successful and financially viable businesses.

High-technology businesses located in science parks and incubators are often established with a view to commercializing innovative technologies or delivering innovative services. Such businesses often rely on the research results developed within universities and/or research centers. The intellectual property system is a key tool to encourage the transfer of technology from universities and research institutions to the private sector for commercialization purposes.

During the seminar, WIPO and IASP agreed to continue organizing activities targeted at managers and staff of science parks and incubators in order to help them provide further IP support to their tenants. These activities would include events at the international and regional levels.

## Survey on IP Services of Technology Incubators

The WIPO Survey on Intellectual Property Services of European Technology Incubators, concluded last year, reveals that the majority of surveyed incubators – 60 percent – have staff responsible for intellectual property (IP) assistance. The survey, conducted in order to gather information on IP services provided by technology incubators to their tenants, also reveals that some 57 percent of these technology incubators consider IP ownership or a license to use the IP of others very important or quite important at the time of selecting tenants for the incubator.

These figures demonstrate that a company that has not protected its innovative technology, has not conducted a patent search to verify whether its inventions are infringing on third party rights, or has not requested a license to use a given proprietary technology may face problems in taking a new product or service to market, and is therefore less likely to be admitted into a technology incubator.

The survey further reveals that while few incubators provide financial support for the application for IP rights, 40 percent provide assistance in-kind, for example by providing services free-of-charge or at a subsidized rate. The survey also indicates that the types of IP services offered by incubators to tenant firms and the mode of provision vary significantly from one to the other. Incubators often act as a first line of support for tenants, relying on the assistance of external service providers, such as private law firms, government agencies, university technology transfer offices (TTOs) or other relevant institutions for more specialized support.

Incubators provide some IP services in-house, others through external partners and others still are considered outside the scope of services to be provided by incubators. For example, while 56 percent of incubators provide assistance for trademark applications in-house, 31 percent do so for licensing and technology transfer, relying strongly on external partners, and only 10 percent provide support for enforcing IP rights.

The WIPO Survey of European Technology Incubators can be downloaded from the SME website at [www.wipo.int/sme/en/documents/pdf/incubator\\_survey.pdf](http://www.wipo.int/sme/en/documents/pdf/incubator_survey.pdf).

# BEYOND TRADITION: NEW WAYS OF MAKING A MARK

At first glance the smell of freshly cut grass, the lilac color, Tarzan's scream, the sound of a Harley Davidson motorcycle engine, the roar of a lion, the shape of the Pfizer Viagra pill and the packaging of a chocolate candy may seem to have nothing in common. However, new marketing techniques have made it possible for businesses to create and use these unique symbols to distinguish their products from others, thus all of them could work as trademarks.

The advent of the Internet and electronic commerce has also increased the range of signs that businesses would like to use as registered trademarks. Motion and sound marks, for example, could capture the attention of Internet users much more efficiently than the traditional static marks.

The very essence of a trademark is its ability to distinguish the goods and services of one trader from those of another. Traditionally, trademarks consist of words, letters, numerals or designs. However, innovative marketing technologies and electronic commerce are precipitating an evolution in the symbolic representation of trademarks. Any new and distinctive sign that can be graphically represented can be the object of a non-conventional trademark. In recent years, many companies have followed this route to gain consumer recogni-

tion, and trust, for their goods and services. The particular shape, color, sound, and smell of a product can acquire distinctiveness and become a valuable trademark.

## Using the senses

People rely on their five senses – hearing, sight, smell, taste, and touch – to identify objects around them. They thus learn to distinguish similar products in the marketplace based on presentation of color, extravagance of packaging, or even a particular smell. Most people can recognize a favorite soft drink by the shape and color of the bottle, a favorite chocolate by its triangular shape, or associate a certain jingle with a product. In practice, packaging, color, sound, smell or even a tactile impression, when sufficiently distinctive, can perfectly characterize a product or service, identifying the company from which it comes and distinguishing that product from all others.

From the legal perspective, the situation is far more complex. The legal system in many countries does not permit the registration of a single color, sound, smell or other similar type of trademark. Enterprises wishing to protect their trademarks from confusingly similar signs on the market often rely on the residual safeguard offered by laws to protect copyright, industrial designs, and against unfair competition and passing off.

## Three-dimensional trademarks and product shapes

Most countries permit the protection of product shapes as trademarks. General principles concerning trademark registration, such as the requirement of distinctiveness, are applicable to product shape or three-dimensional trademarks. A product shape cannot be registered as a trademark if it is the same as a protected copyright or industrial design owned by a third party.

Many national and regional trademark laws exclude certain categories of product shapes from protection. For example, Article 3(1)(e) of the First Council Directive of the European Communities (89/104/EEC) states:

1. The following shall not be registered or if registered shall be liable to be declared invalid:
  - (e) signs which consist exclusively of:
    - the shape which results from the nature of the goods themselves;
    - the shape of goods which is necessary to obtain a technical result; and
    - the shape which gives substantial value to the goods.

The decision on whether or not a product shape can be registered is always based on a case-by-case analysis of the particular circumstances of a proposed trademark and the product or service which it represents.

## Trade dress

Generally speaking "trade dress" refers to both the product's packaging and the product's independent appearance. The distinction between packaging and product appearance features is not always easy. For example, while a bottle is in itself a product by way of functioning as a container, it could also be construed, for trade dress purposes, as a "package" for perfume or liquor. The concept of trade dress only applies in certain jurisdictions (notably in the United States of America (U.S.)).

## Animated or moving image marks

Most consumers have seen animated or moving image trademarks, but have not identified them as such. These trademarks often appear at the beginning of films or on Internet websites. Animated or motion signs attract consumer attention more easily than the traditional two-dimensional or static trademarks, and the Internet offers the ideal medium for their use.

Businesses must pay particular attention to the description and depiction of the mark when applying for a motion trademark. The best approach would be to make a detailed written description of the overall sequence of motion, and to file drawings showing key stills from the sequence. It would also be helpful to further depict the moving image mark by making a specimen part of the application, for example by attaching a videotape or a computer disc to the application and referring to the specimen in the written description of the trademark.

The following are examples of well-known animated marks:

### Netscape Communications Corporation



US Patent and Trademark Office (USPTO) TM 2.077.148

The mark consists of an animated sequence of images depicting the silhouette of a portion of a planet with an upper case letter "N" straddling the planet and a series of meteorites passing through the scene, all encompassed within a square frame. The animated sequence is displayed during operation of the software.

### Columbia



USPTO TM 1.975.999

The mark consists of a moving image of a flash of light from which rays of light are emitted against a background of sky and clouds. The scene then pans downward to a torch being held by a female figure on a pedestal. The word "COLUMBIA" appears across the top running through the torch and then a circular rainbow appears in the sky encircling the figure.

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## 20<sup>th</sup> Century Fox Film Corporation



USPTO TM 1.928.424

The trademark is a computer-generated sequence showing the central element from several angles as though a camera is moving around the structure. The drawing represents four "stills" from the sequence.

## Bradford & Bingley plc



The Patent Office, United Kingdom, TM 2130164

The trademark consists of a representation of the two characters illustrated in the first frame of the sequence slowly raising their hats as illustrated in frames two through eight of the sequence, and then replacing them.

## Sound

As mentioned above, every sign is a communication tool, and as such, may be perceived by at least one of the five senses. Marketing experts often use the remarkably evocative capacity of sound to attract consumer attention and to distinguish their products and services. Even years later, the jingle from certain television and radio advertisements can often bring immediate recall of the related product to the consumer's mind. Sound is therefore an important element of branding and corporate identification.

There is, however, little international consensus on whether a sound can be protected as a trademark. So far, only a few countries have allowed this kind of protection. The United States of America opened the way by allowing protection of a sound trademark in 1951, the three-note chimes of the National Broadcasting Corporation (NBC). Since then, many applications have been filed, particularly in recent years because of the growing popularity of multimedia websites on the Internet. Another familiar example is the 18-note Looney Tunes Theme Song, registered by Warner Entertainment Group as a trademark for its Looney Tunes cartoons featuring Bugs Bunny, Daffy Duck and other well-known characters.

**Nokia** (Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM) application number 1040955). Signature tune of Nokia Corporation:



An interesting aspect of sound trademarks is their graphic representation. As mentioned, in most countries, trademark protection can only be granted to signs that can be represented graphically. In certain cases the graphic representation of a sound trademark can be provided through musical notes, for example the jingle of a TV program.

In others cases, it is a bit more complicated. Imagine, for example, making a graphic representation of the yell of Tarzan, the howl of a wolf, or the noise imitating the quack of a duck. These noises, which arguably conform to the trademark requirement for distinctiveness, can be represented only through numbers, curves or spectrograms. In certain cases, the technology used to represent the trademark has been crucial to its protection. Take for example, the Tarzan yell:



**Tarzan yell** (OHIM application number 000736827):

The mark consists of the sound of the fictional character TARZAN yelling as heard in TARZAN films and TARZAN television programs and as specifically represented by the waveform pictured above, which indicates a specific duration, speed, resolution, and rate of sound waves.

## Color

Among the new signs that can function as trademarks, single colors or shades of colors have attracted the most attention. Businesses are aware that color is a powerful and effective tool for creating brand identification. For example, Formula One fans are familiar with what is known as "Ferrari red" and chocolate enthusiasts instantly recognize the Milka lilac packaging. The U.S. clothing designer Tommy Hilfiger registered the signature combination of white, red, and blue colors as a trademark, in addition to his familiar logo bearing those colors. Pepsi-Cola spent more than US\$500 million in a worldwide marketing campaign called "Project Blue" to strengthen and personalize the diffusion of the blue color as Pepsi identifier.

Moreover, the Pepsi website states: "the success of Pepsi-max and its radical design confirm that the color blue has a dramatic impact in the soft drink arena."

Although it is widely accepted that trademarks consisting of logos or emblems that use color combinations can be registered, trademark offices around the world are very reluctant to accept trademark registrations in which it is claimed that the trademark in question consists of only one color, or a color *per se*. The status of a registered mark for a color *per se* is generally only granted in exceptional cases and only to single-color trademarks which were heavily promoted, and which had been in use for many years.

## Marketing in the global marketplace

Enterprises, big and small, should be aware of and take timely steps to ensure that, while creating or finding new ways to distinguish their goods and services from those of competitors, they do not overlook the new ways in which marks are being created and used by rivals in the marketplace in the form of non-traditional marks such as those mentioned in this article. Choosing a trademark that is identical to or that significantly overlaps with key elements of that of another enterprise, whether done inadvertently or not, is likely to

create confusion in the minds of consumers and to result in conflict, attendant costs of dispute resolution, uncertainty, and delay. If the trademark is rejected for this reason, there is also the additional cost of modifying or creating a new trademark to launch or re-launch the marketing campaign for the relevant goods or services.

One of the most challenging tasks for companies in the global marketplace is the adoption of an effective branding strategy. Novel forms of distinctive signs such as color, sound, fragrance and holograms are effective tools to attract consumer attention. It is, therefore, important for businesses to incorporate those elements into their promotional material, advertising and packaging product configuration. They can ultimately serve as trademarks, and will most likely serve as the basis for the dominant marketing strategies of the future, creating new and valuable assets for companies.

For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at [http://www.wipo.int/sme/en/case\\_studies/index.htm](http://www.wipo.int/sme/en/case_studies/index.htm).

The next article in the IP and Business series will discuss intellectual property for exporters.



# EUROPEAN COMMUNITY JOINS INTERNATIONAL TRADEMARK SYSTEM

WIPO Director General Kamil Idris has welcomed the accession of the European Community (EC) to the Madrid Protocol, one of the two treaties that govern the international registration of trademarks and offer trademark owners greater flexibility in safeguarding their trademarks.

To mark the EC's accession, Dr. Idris received a European Union (EU) delegation on June 29 consisting of the Ambassador and Permanent Representative of Ireland in Geneva, Mrs. Mary Whelan, the Ambassador and Permanent Representative of the EC in Geneva, Mr. Carlo Trojan, and the Ambassador and Head of the EU Council Liaison Office in Geneva, Mr. Jacques Brodin.

"The accession of the European Community marks a milestone in the development of the international trademark system," said Dr. Idris. "This important development creates an interface between WIPO's international trademark operations and those of the European Community trade-

mark system, thus offering trademark owners greater flexibility in the process of obtaining international trademark protection." The Director General added, "The Madrid system for the international registration of trademarks offers businesses in all participating countries a simple, affordable and efficient way of obtaining and maintaining their trademarks."

Under the Madrid Protocol, certain intergovernmental organizations with a regional trademark registration office are able to accede to the treaty. This is the first time that the EC has joined a WIPO-administered treaty and is also the first accession by an intergovernmental organization, as a bloc, to a WIPO treaty. The EC is the 77<sup>th</sup> member of the Madrid system.

From October 1, 2004, the date on which EC membership to the Madrid Protocol takes effect, trademark owners from Member Countries of the Madrid Protocol will be able to designate the EC in their application for international

trademark registration. If protection is not refused by the EC's trademark office, the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM), protection of the trademark will be effective in all 25 EC member states as if it had been applied for or registered directly with OHIM. Trademark owners will also be able to use a trademark application filed or registered at OHIM as the basis for an international application under the Madrid Protocol.

The accession of the EC to the Madrid Protocol is the third major development in the international trademark system in the past year. The first was the accession of the United States of America to the Madrid Protocol in November 2003 and the second relates to the addition, in April 2004, of Spanish as the third working language of the Madrid system. "These developments promise to transform the international trademark registration system into a more inclusive and global system," said Dr. Idris.

## Measures to ensure seamless interaction

Agreement on a series of measures by WIPO Member States in September 2003 ensures that the Madrid Protocol and the EC Trademark System (CTM) interact in an efficient and seamless way. These measures, which offer trademark owners maximum flexibility, took effect in April 2004:

- Under the CTM System, trademark owners holding trademark rights that pre-date the establishment of the CTM system in one or more individual EC member states are able to incorporate these earlier trademark rights into a CTM registration. When the accession of the EC to the Madrid Protocol takes effect on October 1, such rights can also be incorporated into international registrations designating the EC.
- Within the European Community, national trademark registration systems exist in parallel with the CTM System. This means that a trademark owner may choose to register directly with the national trademark office concerned or with OHIM. With the accession of the EC to the Madrid Protocol, either route may be selected when using the Madrid system. Moreover, in the event that OHIM refuses

to grant protection to a trademark that is the subject of an international trademark application under the Madrid Protocol designating the EC, the designation in question can be converted into designations of individual EC member states that are also members of the Madrid system.

## The Madrid Agreement and Protocol

The Madrid System for the International Registration of Marks gives trademark owners the possibility of protecting a trademark in several countries by simply filing one application, in one language, with one set of fees in one currency (Swiss francs). It offers a cost-effective and efficient way for trademark holders to ensure protection for their marks in multiple countries through the filing of a single application. An international registration produces the same effects as an application for registration of the mark made in each of the countries designated by the applicant. If the trademark office of a designated country does not refuse protection, the protection of the mark is the same as if that office had registered it.

The Madrid system is governed by two treaties: the Madrid Agreement, dating from 1891 and revised several times since then, and the



WIPO Director General Kamil Idris and the Ambassador and Permanent Representative of Ireland in Geneva, Mrs. Mary Whelan, holding European Community's instrument of accession to the Madrid Protocol.

Madrid Protocol, which came into operation in 1996, introducing some new features into the system to address difficulties that had impeded adherence by certain countries. A country may adhere to either the Agreement or to the Protocol or to both. The current membership of the Madrid system (Agreement and Protocol) is 77. The membership is made up as follows: there are 66 members of the Madrid Protocol and 56 members of the Madrid Agreement. Forty-five countries have adhered to both the Agreement and the Protocol, 11 are party to the Agreement only and 20 countries plus the EC have signed up to the Madrid Protocol only.





# PROGRESS MADE ON BROADCASTER'S RIGHTS

COMMITTEE  
MEETINGS

The WIPO Standing Committee on Copyright and Related Rights (SCCR), which met in Geneva from



June 7 to 9, made significant progress towards updating international intellectual property (IP) standards for broadcasting in the information age. The SCCR recommended that the WIPO General Assembly consider convening a diplomatic conference – the final step in developing a new international treaty – to consider the protection of broadcasting organizations. Endorsement of the SCCR recommendation by the General Assembly at its September session would be a significant step forward in this process.

WIPO Deputy Director General Mrs. Rita Hayes, who oversees WIPO's work in the area of copyright, welcomed the adoption by the SCCR of the resolution asking the WIPO General Assembly to consider convening a diplomatic conference. "This was possible because most Member States are confident that differences on this important issue can be narrowed in a reasonable time frame," she said, "thus paving the way for the adoption of a new treaty that would update the rights of broadcasting organizations."

The updating of the IP rights of broadcasters, currently provided by the 1961 Rome Convention on the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, began in earnest in 1997. A growing signal piracy problem in many parts of the world, including piracy of digitized pre-broadcast signals, has made the need for updating IP standards in this area more acute.

Noting the cultural importance of the broadcasting sector in all countries, SCCR Chair Mr. Jukka Liedes of Finland stated that the SCCR session had "created a roadmap towards a new international instrument, the goal of which was to balance the real needs of broadcasters with those of other rights holders and society at large." ◆

The next meeting of the Committee will take place from November 17 to 19 and will discuss a revised text containing brackets around proposals that have obtained limited support, such as protection of web-casters. Based on its review of the new text, the November Committee meeting could recommend dates for a diplomatic conference.

### Further work for the SCCR

The SCCR also considered the issue of protection of non-original databases. Collections of data, such as telephone directories, which are not sufficiently original to qualify for copyright, may still deserve protection for the significant investment in their creation and maintenance, and to avoid unauthorized copying and dissemination, for example, over the Internet. The Committee decided to revisit the matter in the second half of 2005.

The SCCR was attended by delegates from 90 Member States, and 8 intergovernmental and 55 non-governmental organizations, including policy-makers, representatives of broadcasting organizations and the content industries (such as film and music), users and consumer organizations. ◆

# ENFORCEMENT ADVISORY BODY ADDRESSES KEY QUESTIONS

The key role of the judiciary in the effective enforcement of intellectual property rights (IPRs) was the focus of discussions of the WIPO Advisory Committee on Enforcement (ACE) meeting in Geneva from June 28 to 30. A series of presentations by top judges and senior government officials from around the world were delivered during the three-day meeting, which examined the role of the judiciary, quasi-judicial authorities, and the prosecution in enforcement activities; parallels between civil and common law legal systems; administrative procedures in the enforcement of IPRs; criminal procedures and sanctions; and various national experiences in the enforcement of IPRs.

WIPO Director General Kamil Idris welcomed discussions by Member States to strengthen the role of the judiciary in enforcement. "The importance of enforcement of intellectual property rights and the role of the judiciary cannot be understated," Dr. Idris said. He added, "For true economic, social and cultural development to occur, intellectual property must play a crucial role; for IPRs to play that role they must be enforced throughout society."

Given the pivotal role of the judiciary in the enforcement of IPRs, the Committee agreed on the global importance of continued

judicial training and specialization in the field of intellectual property and on the need to raise awareness of IP enforcement issues at all levels of the judiciary.

A range of key questions relating to IPR enforcement were discussed by the Committee, including civil and criminal actions and remedies, the determination of damages in different legal systems, and ways to reduce IP litigation costs – a fundamental concern for an effective IP enforcement system. On the question of reducing litigation costs, the Committee discussed the importance of effective case management by the judiciary, the integration of mediation procedures within judicial structures, the streamlining of procedures in IP litigation and the role of quasi-judicial administrative procedures. The Committee also emphasized the important role played by rights holders in obtaining evidence and identifying infringing goods.

The ACE was established by WIPO Member States in 2002 as a forum for discussion of enforcement matters with a mandate to provide technical assistance and coordination, cooperation and the exchange of information on questions of enforcement. Member States agreed on the importance of enforcement and stressed the value of the

Committee as a forum for discussion and exchange of national experiences to promote better



Member State representatives in the Advisory Committee on Enforcement (ACE) meeting.

understanding of enforcement issues. Some 143 representatives from 62 Member States, three inter-governmental organizations, and 13 non-governmental organizations attended the meeting, which was chaired by Mr. Henry Olsson, Special Government Advisor, Ministry of Justice of Sweden.

The Committee agreed to cover, in its next session in 2005, the issue of education, awareness-building, and training, in all areas of enforcement, with a particular focus on areas of common concern as reflected in requests for assistance by Member States. ◆

## WIPO and UNU Sign Cooperation Agreement

WIPO Director General Kamil Idris and the Rector of the United Nations University (UNU) Hans J. A. van Ginkel signed a memorandum of understanding in Geneva on July 9. The agreement outlines broad areas in which the two Organization can work together to boost awareness of intellectual property (IP) and to clarify the link between IP and areas such as economic development, international trade and the environment. Dr. Idris and Professor Ginkel agreed that their respective organizations would cooperate in furthering research, teaching and training in the field of IP. As a first

step, WIPO and UNU will exchange expertise in activities of mutual interest, for instance through participation in specialized meetings and events.

Professor Ginkel expressed hope that this collaboration would eventually evolve into more in-depth research into the relationship between IP and trade, sustainable development and the environment. Dr. Idris underlined his vision of IP as a power tool for economic, social, and cultural development. He said research on the relevance and role of IP with regard to development merits more in-depth stud-

ies by scholars in the area of trade, development and environment.

Dr. Idris also discussed the possibility of extending WIPO's distance learning program to academics at UNU. In 2003 alone, this innovative online IP teaching technique, which is in its sixth year, enabled some 10,000 students from some 179 countries to learn about copyright and related rights, patents, trademarks, geographical indications, industrial designs, WIPO-administered international registration systems, unfair competition and the protection of plant varieties.

## Turkish Patent Institute Celebrates its 10<sup>th</sup> Anniversary

In the last decade Turkey has moved from a protected, state-directed economic system to a free market system. This transformation brought across-the-board reforms, which included a revamping of the intellectual property system. In 1994, Decree Law 544 established the Turkish Patent Institute (TPI) as an administrative and financially autonomous body. The office had a significant task ahead of it as modernization resulted in numerous new laws, decrees, and regulations on intellectual property entering into force between 1994 and 2004.

In the past ten years, TPI has been in continuous evolution, developing its infrastructure and training staff to face the challenges of a dynamic free market. The stable, reliable intellectual property system

now in place is a support for competitive business development in industry and trade. As a result, Turkey has experienced an increase in the registration of industrial property titles: from 1994 to 2003 trademark registrations rose from 14,223 to 38,219, industrial design applications from 1,533 to 4,284, and utility model applications from 181 to 1,212. From 1994 to 2001, patent applications rose from 1,392 to 3,288.

TPI's efforts have resulted in a strong modern intellectual property legal structure with good implementation systems. On July 2-3, TPI celebrated the tenth anniversary of its foundation, and to mark the event opened a new campus building to provide intellectual property training in Ankara.

## CALENDAR of meetings

### SEPTEMBER 27 TO OCTOBER 5

#### GENEVA

#### Assemblies of the Member States of WIPO (Fortieth series of meetings)

Some of the assemblies will meet in extraordinary session, other bodies in ordinary session.

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

### OCTOBER 25 TO 29

#### GENEVA

#### Committee of Experts of the IPC Union (Thirty-fifth session)

The Committee of Experts will consider amendments to the IPC, as proposed by the IPC Revision Working Group, and will discuss implementation of the IPC reform.

**Invitations:** As members, the States members of the IPC Union; as observers, States members of the Paris Union, who are not members of the IPC Union, and certain organizations.

### OCTOBER 25 TO 29

#### GENEVA

#### Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) (Thirteenth session)

The Committee will continue to work on the revision of the Trademark Law Treaty (TLT) and on issues agreed at the twelfth session.

**Invitations:** As members, the States members of WIPO and/or the Paris Union; as observers, other States and certain organizations.

### NOVEMBER 8 TO 12

#### GENEVA

#### Standing Committee on Information Technologies (SCIT) – Standards and Documentations Working Group (SDWG) (Fifth session)

The Working Group will continue its work in the revision of WIPO standards and will receive reports from the different SDWG task forces that have been established for that purpose.

**Invitations:** As members, the States members of WIPO and/or the Paris Union; as observers, certain organizations.



The WIPO Magazine is published monthly by the Communications and Public Outreach Division, World Intellectual Property Organization (WIPO). It is not an official record and the views expressed in individual articles are not necessarily those of WIPO.

The *WIPO Magazine* is distributed free of charge.

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