



WIPO MAGAZINE

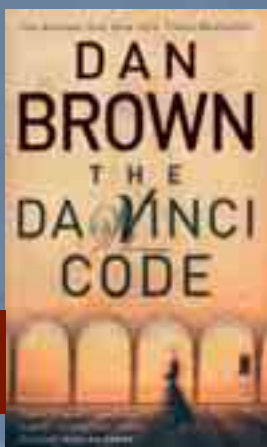
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WORLD IP DAY ROUND-UP

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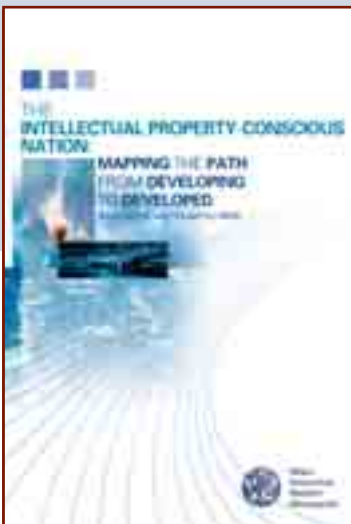


COPYRIGHT IN COURT

THE SPIRIT OF INVENTION



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About the authors

Kamil Idris, Director General of WIPO, was a professor of law and a diplomat in the Sudanese foreign service before joining the Organization. He studied law, political science and international affairs in Egypt, Sudan, the USA and Switzerland.

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The Intellectual Property-Conscious Nation: Mapping the Path from Developing to Developed

By Kamil Idris and Hisamitsu Arai

This contribution to the international debate on global development challenges, written by WIPO Director General Kamil Idris and former Commissioner of the Japanese Patent Office Hisamitsu Arai, was published by WIPO in May.

Taking as their starting point the UN Millennium Development Goals, the authors set out their vision of how the judicious use of the intellectual property (IP) system can best contribute to the achievement of those goals. Their concern is to address “one of the weakest links” in the economic development strategies of many developing countries, namely a failure to integrate policies designed to promote IP and innovation into other key development policies, such as those governing health, education, trade, environment and science and technology.

Aimed at policy-makers as well as a broad, non-expert audience, the book bases its appeal on the wealth of examples used to illustrate its message rather than on detailed economic analysis. IP success stories – and failures – drawn from developed and developing countries the world over offer the reader inspiration and instruction.

The strong personal and professional commitment of both authors to the promotion of IP does not blind them to the problems and gray areas. IP is not, they stress, a panacea. It can make a powerful contribution to meeting the world’s development needs, but the market forces driving IP-based innovation are not alone sufficient to solve such critical problems as producing drugs for neglected diseases. Nor will commercially-based licensing, unchecked, ensure that vital new technologies reach those who need them. If IP is to realize its full potential for helping meet development goals, it must, they argue, be applied within a framework of global and corporate social responsibility. They call for flexibility and common sense, and for humanitarian policies to be applied to patent management.

From start to finish, the book drives home the central message that innovation is the most important driver of economic development in the 21st century; that the creation of an innovation culture is the *sine qua non*; and that IP is the essential mechanism which rewards, protects and converts innovation into economic assets. This message is expanded and illustrated through chapters covering major development themes: food security, poverty reduction, public health, education, environment, cultural heritage. The chapters are written so as to be more or less self-standing, allowing the reader to dip in and out without losing the thread.

The authors conclude by offering a five-step action plan for government leaders seeking to speed their nations along the path from developing to developed.

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WORLD IP DAY

Intellectual property - It starts with an idea...

The extensive worldwide press coverage of this year's World Intellectual Property Day on April 26 confirmed growing recognition of this annual event in marking the importance of intellectual property (IP). Mr. Praveen Dalal, an arbitrator practicing at Delhi High Court, commented on IP Day events in **India**: "It seems the need for celebration of World IP Day is very pertinent. Public awareness is missing and I hope that celebrations like these will fill that gap." Over 70 Member States and organizations have reported back to WIPO on their World IP Day activities, demonstrating their enthusiasm to make the most of this opportunity to increase public understanding of IP around the world.

Events to mark the day varied from large scale gala evenings with live concerts and award* ceremonies, to local folkloric music and dance festivities, to exhibitions in IP offices. Some countries were celebrating the event at the national level for the first time. Others built on their technology and innovation promotion days dating back long before World IP Day.

The highest concentration of events celebrating World IP Day was reported from countries of Eastern Europe and the Former Soviet republics. **Kyrgyzstan** got off to an early start in March, making effective use of the media and the Internet to promote their very full program of seminars, workshops, exhibitions, awards and tournaments.

*A list of recipients of WIPO awards can be found on page 27.

Australia aligned their National Innovation Festival with World IP Day for a joint celebration of innovation and creativity. Selected IP ambassadors promoted the event, which featured on television shows, websites and in newspaper articles. The staff of IP Australia joined the fun with a "great debate" and quizzes.

Young people

The **Korean** Intellectual Property Office focused activities on school children, with an essay competition for young students based on the Korean comic, *Copy and paste: What's wrong?* Almost 9,000 students participated in the competition. The Urunga Entity Institute of **Kenya**, an independent public policy research project, also held an essay competition for high school students based on the IP Day theme.

In **Hong Kong**, the Intellectual Property Department joined forces with the Hong Kong Scout Association to organize the "Respect for Intellectual Property Rights Fun Fair," with scout groups participating in seminars and workshops. In **Malta** children aged eight to twelve took part in a drawing competition on the theme "Ideas shape our world." The Office of the Registrar General in **Lesotho** reported that this year's theme held "particular appeal to the youths of the country to be creative."



The Canadian Intellectual Property Office focused its activities on women in innovation and ran an IP Day blog.



Jisoo Kim, from Joongwon Middle School, won first prize in the Korean IP Day essay competition based on the comic strip *Copy and Paste: What's Wrong?*



Protecting creators' rights

Many IP offices targeted specific rights holders. The **Burkina Faso** Copyright Office invited some 180 rights holders to discuss the nature of their rights and how to exercise them. **Belize** held a seminar on trademarks and the international classifications of goods and services. Activities in **Denmark** centered on copyright, its value and economic contribution to society. The focus in **Hungary** was on creativity in the field of design; in **Barbados** on trademarks and local brands; and in **Bulgaria** on invention and utility models.

The themes of enforcement of IP, and anti-counterfeiting and piracy, were at the forefront in many countries. **China** held regular press briefings giving status reports on progress in enforcement. **Kyrgyzstan** organized a "Stop Piracy!" event, which involved the destruction of counterfeit audio-visual works. In **Samoa**, rights holders' involvement in a copyright awareness-building program explained to the public the role of creators and their need for compensation for their creative work. Presentations, discussions and campaigns in **Belgium**, the **Dominican Republic**, **Germany**, **Mexico**, **Peru**, the **United States**, **Zambia** and others highlighted the problem of piracy and respect of IP.

Costa Rica held an exhibition of works by two national artists, a writer, a cartoonist and three children, in conjunction with a national anti-piracy campaign on television and a cycle of conferences

on copyright and related rights in public schools. In **Peru** presentations were staged where people gather to enjoy creative works: cinemas, theaters and concert venues, both in the capital and provinces.

"Ideas are unique, and creative work takes tremendous time and effort. Creativity will disappear if we continue to plagiarize and 'steal' the creative works of others."

Mr. Stephen Selby, Director of Intellectual Property, Hong Kong

The reports from Member States, which are still coming in as this article goes to press, confirm that World IP Day has firmly taken root by this, its sixth year. Ambassador Joseph Ayalogu, Nigeria's Permanent Representative to the UN in Geneva, summed up as follows at a World IP Day screening of "Wetin Dey" to the United States Congress in Washington: "We are here tonight to celebrate a cultural event. But we are also recognizing the importance of an emerging facet of international law, diplomacy and political economy, which is the protection and promotion of intellectual property rights. Today, intellectual property has become a permanent fixture of international relations."



Nigerian Ambassador Joseph Ayalogu at the Washington screening of "Wetin Dey."



At Hong Kong's Fun Fair ten scout teams took part in a competition for the "Best Intellectual Property Game Booth Design."



IP Australia's poster



Winners of Indonesia's IP Quiz for high school students.

TREVOR BAYLIS,

INVENTOR

The Clockwork Radio



Courtesy Trevor Baylis

It started with an idea...

In 1993 Trevor Baylis, a British former stuntman and under-water escape artist, came up with an idea for a wind-up clockwork radio to meet the needs of isolated communities in developing countries. Today his Clockwork Radio is used in rural villages across Africa, Asia and South America, bringing communication to communities with no access to electricity or batteries.

A prolific ideas man who is strongly committed to helping promote invention, and with a talent for combining outreach with entertainment, Trevor Baylis has become something of a champion for small inventors in the United Kingdom. Following his guest appearance at the 2006 European Inventor of the Year Awards in May, he spoke to WIPO Magazine about his activities.

How did you come up with the idea for a clockwork radio?

It was pure chance. I was watching television one evening about the spread of HIV/AIDS in Africa. There were pictures of young people covered in flies and bodies being thrown in open graves. They explained that the only way to stop this disease was through radio communication and information. The problem was that most of Africa did not have electricity to run the radio and batteries were horrendously expensive for the locals.

When the program finished, I pictured myself for a minute in colonial Africa, sitting, smoking a pipe and listening to the scraping sound coming from a gramophone. I thought if that much racket can come from a simple nail on a disk, I could create something similar. Chance favors the prepared mind. I did a first experiment right after the show that took about half an hour and got a spark of life. Then I did an experiment with a tree and water, which got the radio running but only for as long as the tree was tall. Then I changed from water to soil, which was better, then a spring, with the final result being a spring to wind up the radio.

At the same time as I was working on the radio, I came up with a wind-up torch, a telephone charger, a solar panel... The end result was a machine that did everything and ran all day – solar powered in the daylight and wind-up at night.

What problems did you face?

There was a lot of resentment when I first came out with the idea. People said anyone could have had the idea, and that it was too easy. For four years I got no support. The *BBC World Service Radio*, then the *Tomorrow's World* team (a science-based U.K. television program), gave me my first shot. It took off after that. Then the BBC did a show with Nelson Mandela, who got involved because ultimately the radio was designed and created in South Africa and was to be made by disabled people.

The product went to market in 1993-1994. Sadly, when it took off the company fired the 400 disabled people it employed in South Africa and went to China. Thousands of the radios are made now in China and sold around the world. You can find them in small villages and at the top of scaffolding used by construction workers. It has become a universal tool – one of those things that will be there forever.

The biggest problem is that they are still expensive bits of kit and people in rural African villages cannot afford them unless they are donated. I've seen 350 people sitting around my radio in Malawi. It was rock'n roll they were listening to, but it was there.

Tell us about another of your inventions.

I made an electric shoe. That was a favorite of mine. As I walked, I could generate enough power to re-generate my mobile phone battery in a pouch by my shoe. So my phone was always powered. The trouble is that after 9/11 anyone with wiring in their shoe looks like a terrorist, so I had to give it up.

I also created some 300 products for disabled people. They were called Orange Aids.

If you had to single out an invention that you particularly admire, what would it be?

The jet engine, invented by Frank Whittle in 1930. He was ignored by everyone at the time, but with determination he formed his own company and filed patents. (He received a first patent, much delayed by the U.K. Air Ministry, in October 1932.) The Germans picked up on it and had the first jet planes in 1941. Britain could have had them much earlier, if we had listened to the 21-year-old Frank Whittle.

Are there areas today that you feel are crying out for innovative ideas?

Climate change is one of the biggest problems. We have to find a way to stop the amount of pollution. In the health area, we are a stone's throw away from finding a cure for cancer. We just need the right creative minds working on the problems. But let's also not forget the fun factor in every day living. There's always loads of room for fun inventions like the television.

What does intellectual property (IP) mean for you?

Well, nobody pays you for a good idea. IP rights are the only thing that give you value on your knowledge. Without IP, the economy would suffer. Without it, don't invent. Why bother?

What advice would you give someone who has an idea for an invention?

Don't go down to the pub and tell everybody about it! Do something about it, otherwise you will regret it for the rest of your life!

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In Africa alone HIV/AIDS has left over 14 million orphans. Radio, an essential means to educate and inform people on the virus, does not reach many rural communities because of the lack of electricity and batteries.

What do you see as the greatest difficulty faced by small inventors?

The cost! Lawyers are the biggest problem that inventors have, because they charge them so much to file a patent, to translate the application and so on. We've also got to reduce the cost of litigation.

Is there more that IP offices could do to support small inventors?

We've got to make sure that any outfit that purports to help inventors behaves under strict laws – bring a decency factor into the equation. There are so many predators out there. Anyone wanting to know about your invention must be made to sign a non-disclosure agreement. If they don't, then don't show them your product. If you are going to show your product to a large company, take a lawyer.

National governments need to stick behind inventors. If a patent is stolen in a far away country, how can a small inventor know about it? Or do anything about it? They can't afford to fight the big companies. National economies depend on innovation and inventions, so governments should be prepared to get involved and back up their inventors.





Courtesy Trevor Baylis

“Nobody pays you for a good idea. IP rights are the only thing that give you value on your knowledge.”

You are a firm believer in educating the young about invention and IP. How can governments help stimulate young people to think in terms of innovation?

The only way you are going to do that is by making sure that invention is taught as part of the national curriculum. We need to turn education on its head. Children have got to be taught to *enjoy* science. In universities, why not have a Bachelor of Invention degree, like they have Bachelor of Arts?

You’ve got to celebrate inventions. Yes, reward inventors monetarily, protect their rights, but also give them their 15 minutes in the spotlight. Make people aware of how inventions have changed lives. Do more television programs on inventors, show how they come up with their ideas. Inspire people!

I always tell young people that all you need is slightly more perception than the average wrapped loaf and you can invent something. Don’t be worried about what other people think. I tell them, I don’t mind anyone looking down on me as long as they don’t expect me to be looking up.

Standards for Invention Promotion Companies

Trevor Baylis works closely with the U.K. Patent Office to expose unethical practices in invention promotion companies. They recently had one such company shut down as a result of a live television documentary. With the support of the Patent Office and the British Standards Institution he has started a movement to establish agreed standards or principles for all organizations which purport to help inventors.

He has started his own company, *Trevor Baylis Brands*, to help inventors get their ideas to market at minimum cost. To date 1,800 inventors have signed up via the website, and the company evaluates approximately 100 new ideas per month. He wants to set up facilities, the *Baylis Breakout Rooms*, based in universities and research institutions, which would enable inventors to discuss their ideas with experts, lawyers, advisors and potential business partners, safe in the knowledge that their IP will be protected. The inventors present their ideas on camera, and everyone present must sign a confidentiality agreement. This is key as no inventor should ever disclose any information on his invention to anyone who has not first signed a confidentiality agreement. The video-taped proof of the inventor’s intellectual property can then be stored safely in a bank or post office.

For more information see www.trevorbaylisbrands.com

THE NEW SINGAPORE TREATY

What Does it Change?

On March 27, 146 WIPO Member States adopted by consensus the Singapore Treaty on the Law of Trademarks, concluding four years of work on the revision of the 1994 Trademark Law Treaty (TLT). This article explains why the revision of the TLT was necessary and describes the new features introduced by the Singapore Treaty.

The protection of trademarks is widely based on trademark registration procedures. Although unregistered marks can enjoy protection in many jurisdictions, the best protection for trademarks is obtained through their registration with a trademark registration authority, usually the trademark office of a country. Registration also serves a vital public interest, as trademark registers are public – registrations and applications are published regularly, and notice is given to third parties that certain specific signs are protected as trademarks. Trademark registers enable entrepreneurs to monitor their marks and the marks of competitors, and help them to “clear” new marks before introducing them into the marketplace.

As trademarks are territorial rights (national or regional), individual states maintain national trademark registries, or organize the administration at the regional level through a regional register. From the point of view of trademark owners, it is highly desirable that registration procedures are common to all national and regional trademark registers, as this increases the efficiency of administrative action and helps to contain transaction costs. This is the background against which the TLT in 1994 introduced harmonized and simplified trademark registration procedures applicable in all states party to that treaty.

Why revise the TLT?

The need to revise the TLT became apparent soon after its adoption. This was due largely to the “dot.com” revolution and to the introduction of e-mail and Internet-based communications. Such innovations were little known in 1994, when the fax-machine was still the most advanced means of communication between an applicant and a trademark office. Hence, the TLT contained provisions obliging contracting states to accept communications in paper form, with no possibility of electronic communication.

Other aspects requiring revision included the different types of marks covered. The TLT applies only to marks that consist of visible signs, with no provision for the registration of non-visible signs, such as sound marks. There were also procedural problems to be remedied. The TLT has a two-tiered structure, and procedural details are dealt with in the Regulations, the original idea being that those regulations could be amended by a decision of the assembly of the contracting parties. However, the TLT was adopted without providing for an assembly, thus making it impossible to change the regulations after their adoption. Nor does the TLT provide procedures for the recording of trademark licenses, or for relief measures when trademark holders miss time limits. It is essentially these areas to which the Singapore Treaty introduces changes.

Assembly of contracting parties

The new Singapore Treaty provides for the creation of an assembly of the contracting parties with powers to amend the Regulations. While this may sound bureaucratic, it is key to ensuring that the Regulations can keep pace with the sort of technological advances which will affect important administrative details, such as how a mark is represented in the application, or the nature of electronic authentication systems used in communications with an office. So the introduction of an assembly of the contracting parties to the Singapore Treaty sets up a dynamic framework for the definition of trademark office procedures, which can be adapted to respond to future developments.



Types of marks

The Singapore Treaty is applicable to all signs that can be registered as marks in a given contracting state, but without obliging contracting parties to register specific types of marks. Thus the Singapore Treaty explicitly recognizes that trademarks are no longer limited to two-dimensional labels on products. Indeed, the Regulations under the Singapore Treaty expressly mention new types of marks, such as hologram marks, motion marks, color marks, and marks consisting of non-visible signs (e.g. sound or taste marks). For the time being, the Treaty does not include standardized rules as to *how* those marks should be represented in applications or registrations. But since they are mentioned in the Regulations, the assembly of the contracting parties will be able to define relevant standards, once the treaty has entered into force and once there is agreement on the substance of such standards. Although these sorts of marks generate a great deal of interest, they are still relatively uncommon. Out of the more than 450,000 marks in the Madrid system international registry, for example, only 29 are audio marks.

Communications

Communications touch on various procedures related to the registration of trademarks. The Singapore Treaty gives offices complete freedom to determine the form of communication (i.e. paper form or electronic form) and the means of transmittal (i.e. physical means such as postal or courier services, or electronic means such as facsimile or e-mail). However, as far as the contents of the communication and the submission of supporting documents is concerned, the standard rules of the Singapore Treaty apply. In this way, the Treaty achieves harmonization of procedures while, at the same time, permitting contracting parties to work with their preferred communication technology. It is noteworthy that, at present, no trademark office in any WIPO Member State prescribes the exclusive

use of electronic communications, although a good number of offices offer e-filing, and it is only a question of time before some of those offices will give preference to e-communications. Communications between trademark agents and their clients remain unregulated as they do not fall within the purview of the Singapore Treaty.

Recording of licenses

More than 100 WIPO Member States provide for the recording of trademark licenses, although without necessarily requesting it on a mandatory basis. Trademark licensing occurs frequently in the branded goods industry, and it is widely accepted that common rules in this area are desirable. The Singapore Treaty thus contains provisions relating to requests for recording licenses, and for amending or canceling recorded licenses

Procedural relief measures

The Singapore Treaty introduces mandatory relief measures for trademark office procedures with a view to alleviating procedural mistakes by trademark applicants, notably missed time limits, which, if not remedied, could be detrimental to rights in trademarks. A specific set of rules carefully balances the interests between the person who has missed the time limit and interests of the wider public in swift and transparent trademark office procedures.

A treaty fit for the future

The Treaty will enter into force once it has been ratified by ten eligible States or intergovernmental organizations. With the adoption of the Singapore Treaty, WIPO Member States have given themselves a modern and dynamic instrument for standardizing trademark office procedures to respond in an efficient manner to future challenges to the trademark system.

Three-dimensional, Color and Sound Marks

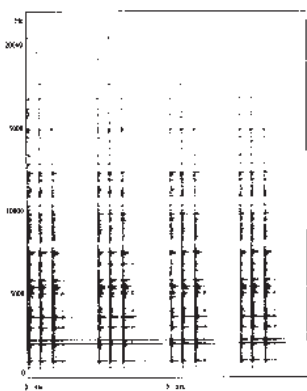
The trademarks below, from the Madrid system international registry, are examples of the sort of non-traditional marks, recognized in the Singapore Treaty. The two sound marks show different approaches to “visibly” register the trademarks as required by the TLT.



The sound mark registered as musical notes by Eismann Family GmbH & Co. KG (Madrid 753244)



The Meade Corporation describes its mark as “Blanco y azul [white and blue]. The mark consists of white eight-point star surrounding a white compass design, all on a blue three-dimensional ball surrounded by a white circle”. (Madrid 856077)



The visual representation of the strokes of a small bell, registered as a trademark by Hjem-Is Europa A/S. (Madrid 863865)



The Perrier bottle registered by Nestle Waters is a 3D and color mark. (Madrid 458476)



InBev’s description of its trademark states: “The mark consists of the 3-D form of a glass. The stem of the glass contains an engraving representing a rose and a sword.” (Madrid 766760)

Launch of Online Service for Trademark Renewals

The Madrid system launched a new service on April 3 enabling trademark owners to renew their international trademark registrations online. The “e-renewal” service is a simple, more cost-effective and efficient procedure for renewing international trademark registrations up to six months before the date on which the payment of the renewal fee is due. The new service is available from WIPO’s website at www.wipo.int/e-marks.

WIPO will continue to receive requests for renewal of international applications on paper for trademark owners that wish to continue to do so.

THE SYNERGY OF **TRADEMARKS** AND **MARKETING**

This article was written by James A. Dimitrijevs, chair of the Intellectual Property Practice Group of the McDonald Hopkins business law firm Ohio, USA, and Annette Schaffer, trademarks specialist in the Legal Department of Pfizer Inc., USA. It first appeared in the INTA Bulletin of April 15, 2006.

While trademark lawyers and marketers approach the development and use of a mark from different perspectives, it is the synergy of the relationship between the two that results in a successful marketing effort.

Different jobs, different goals

Beginning in law school, lawyers are evaluated on their ability to spot issues. To “issue spot” is to identify problems that may arise from a client’s acts or intended acts. This ability to spot issues demonstrates a lawyer’s legal acumen, showing the quality of a lawyer’s legal education and the breadth of a lawyer’s professional experiences. Clients are most pleased with lawyers who not only identify problems but also are able to provide options for overcoming or minimizing those problems.

Marketers, on the other hand, have different concerns. Marketers help consumers understand the benefits of a product. Marketers are closer to the front line of competition, charged with making good products – and even some not-so-good products – successful. David Ogilvy, a U.S. advertising executive, once said:

“It has taken more than a hundred scientists two years to find out how to make the product in question; I have been given thirty days to create its personality and plan its launching. If I do my job well I shall contribute as much as the hundred scientists to the success of the product.”

By the time the marketer is engaged, several business and technical personnel may have already decided that the product should be successful. The pressure is on the marketer to facilitate this success through his or her creativity. When the trademark lawyer’s involvement comes long after the marketer’s initial involvement, the marketer may have already evaluated and eliminated several possible marks and been subjected to criticism about the selected mark. After having defended the creation to

others, a marketer may not be willing to surrender easily to the risks or concerns the trademark lawyer communicates after conducting a search.

Where do tensions between marketers and lawyers arise?

According to Amy Cohen Heller, senior trademark counsel for JohnsonDiversey Inc., the two biggest issues between marketers and trademark lawyers are **timing** and **objectives**.

While Mark Gale, chief operating officer and creative director of Charleston/Orwig Advertising, advises marketers not to underestimate the cost and disruption that can come about when the full evaluation of a proposed mark is not done, trademark lawyers are concerned about not having enough time to conduct appropriate diligence to assess the strength and availability of a mark. Erick Estrada, senior product manager for Pfizer Inc., points out that once a product has been developed, any delay in launching the product could forfeit an opportunity and result in the loss of money to the company. Therefore, planning-ahead for the final trademark is needed to achieve a successful launch.

An in-house trademark lawyer for a major consumer products company explains that marketers want to use **descriptive marks** because they are easier to market, while trademark lawyers tend to insist on selecting unique and “**own-able**” marks. However, Sondra Schol, in-house trademark counsel for Eveready Battery Company Inc.’s Schick Shaving Division, acknowledges that in some circumstances, such as when a product has a small marketing budget or is expected to have a short life, a descriptive or laudatory mark is more beneficial than a suggestive, arbitrary or fanciful mark. That is because the descriptive or laudatory mark will more quickly convey to consumers the product’s benefits. Ms. Schol cautions her marketing contacts that one problem with selecting descriptive or laudatory marks for what are

Inviting the trademark lawyer to early brainstorming sessions with the marketing team allows the lawyer to conduct preliminary searches before the team gets too committed to a specific mark.

expected to be short-term products is that successful short-term products may become long-term products. Once a product becomes successful, others are more likely to want to compete with it or even copy it. Having committed to the use of a weak mark with such a product, the trademark owner may find that it is unable to stop competitors from using similar marks for similar products.

An in-house trademark lawyer for a major vehicle manufacturer explains that the trademark lawyer's responsibility is to identify the **long-term impact** a marketing campaign may have on the brand. However, the same lawyer acknowledges that, in an attempt to satisfy the internal expectations of short-term success for a product, a marketer may not be focused on the long-term effects on the brand. A creative marketer may want to corrupt a strong character logo mark, for example, by displaying the character in an uncharacteristic manner. While this conveys an effective short-term message to consumers, it is counter to the principle of maintaining a brand by consistent use.

Working together to manage the brand

As described by Richard Biribauer, Johnson & Johnson's chief trademark counsel, a company should manage a brand like a savings account. While the company may make occasional withdrawals from the savings account, the goal is to grow the account. A brand is replenished by use consistent with the intended brand image. When evaluating whether to use an existing brand with a new product, Mr. Biribauer suggests that the trademark lawyer and the marketer evaluate together "whether use of the brand will bring more to the project than to the brand."

Mr. Biribauer encourages trademark lawyers to understand that the client may be willing to accept some risk in exchange for greater sales. If the marketer insists on a descriptive mark as a product identifier to allow consumers to understand the product more readily, the trademark lawyer should suggest truncating the proposed mark or adding some other element to make it sufficiently distinctive. Richard Friedman, Pfizer Inc.'s senior corporate

counsel for trademarks, recommends that when a marketer accepts the risks and selects a descriptive term, the trademark lawyer should educate the marketer on how to use the term properly as a trademark (i.e., as an adjective identifying or modifying the generic term for the product). Mr. Friedman touts the development and use of the POCKETPAKS mark for "oral care strips" as one example of how the efforts of the trademark lawyers and marketers at Pfizer combined to develop an effective and protectable mark.

The senior counsel for a major media company recommends that the marketing team invite the trademark lawyer to early brainstorming sessions. This can allow the lawyer to conduct and evaluate preliminary searches before the team gets too committed to a specific mark. Mr. Biribauer agrees, and adds that "the lawyer can help to engineer the mark, trade dress and advertising at an early stage" to avoid potential concerns of an examiner or another trademark owner. In support of getting the trademark lawyer involved early, Ms. Heller asserts that the trademark lawyer, after having worked with all of the divisions within a company, can help to identify the company's overall risk tolerance and how the company is using and defining its brands. To minimize conflicting objectives, Mr. Estrada works with the trademark lawyers to identify and update standard protocols and timelines.

Despite the different perspectives of trademark lawyers and marketers, it is the combination of input that ultimately nurtures and grows the brand while products enjoy short-term success. As Mark Twain explained, "Synergy [is] the bonus that is achieved when things work together harmoniously."



Lawyers and marketers at Pfizer worked together to develop the PocketPaks mark for these breath-fresheners.

COPYRIGHT IN THE COURTS: THE DA VINCI CODE



Courtesy of U. Suthersanen

Dr. Suthersanen is a prominent expert on copyright and related rights in the U.K.

A central principle of copyright is that it protects the expression of ideas and not the ideas themselves. This was at the fore of a high profile court case in the United Kingdom in April. In question was Dan Brown's worldwide best-seller, 'The Da Vinci Code'. Media interest in the case was heightened by the imminent release of the Hollywood adaptation of the book.

The following account of the case was written for WIPO Magazine by Dr. Uma Suthersanen of the Intellectual Property Law & Policy department of Queen Mary, University of London. Dr. Suthersanen is Chair of the British Literary & Artistic Copyright Association (ALAI-UK), and sits on the Legal Advisory Board of Creative Commons (England & Wales).

The background

The case against the publishers of *The Da Vinci Code*¹ was brought by Michael Baigent and Richard Leigh, the authors of a non-fiction work, *The Holy Blood and The Holy Grail*, which was first published in 1982. Messrs. Baigent and Leigh claimed that *The Da Vinci Code* was an infringement of their copyright in their book.

At the center of the dispute was a 'hypothesis' presented in *The Holy Blood and The Holy Grail* concerning the early Christian legend of the holy Grail. (The theme of the quest for the lost Grail – i.e. the cup, or chalice, used by Jesus Christ at the Last Supper – was a popular theme in medieval tales of chivalry and has inspired countless writers, filmmakers and historians through the ages.) The core of the authors' hypothesis in *The Holy Blood and The Holy Grail* was that references to the Grail in early manuscripts were disguised references not to the chalice, but rather to holy blood or *Sang real*, i.e. to the bloodline of Jesus Christ, and to the belief that this bloodline – through marriage between Jesus Christ and Mary Magdalene – had continued and merged with the French Merovingian dynasty.

In their book, Michael Baigent and Richard Leigh argue that the Holy Roman Church and its successors had sought to suppress the bloodline, but that a powerful secret sect, the Priory of Sion, was formed to protect this "grail." Baigent and Leigh used six known 'indisputable' historical facts, or supposed facts, though their conclusion was the result of 'historical conjecture' based on those facts. This quasi-

historical approach was also the basis of various other published hypotheses as to the merging of Christ's bloodline with the Merovingian bloodline.

Dan Brown is a popular fiction writer, and his book, *The Da Vinci Code*, has been the number one best-selling novel in Europe and U.S. for months. *The Da Vinci Code* is a murder mystery. It opens with the death – in Paris' Louvre museum – of the Grand Master of the Priory of Sion, Jacques Sauniere. Seeking to solve his murder, the heroes of the story are led on a Grail quest, in which they must unravel a series of puzzles based on the history of the Priory of Sion and on the secret behind Christ's bloodline.

There was no doubt that Dan Brown had drawn on *The Holy Blood and The Holy Grail*. Indeed, there was a clear and explicit reference to the book in *The Da Vinci Code*, and the name of one of the characters, Sir Leigh Teabing, was based on an anagram of the names of the two authors.

Key legal issues

The court did not set out any novel legal ideas. Instead, much of the decision was based on the application of established legal principles to the facts at hand.

Baigent and Leigh claimed copyright in the literary work, and alleged that Dan Brown had copied the "Central Theme," or the way in which they had made the sequence of connections of the facts of the merging of the bloodlines. Since there was little copying of the actual text of *The Holy Blood and The Holy Grail*,

1. Michael Baigent and Richard Leigh v. The Random House Group Limited [2006] EWHC 719

“It would be quite wrong if fictional writers were to have their writings pored over in the way ‘The Da Vinci Code’ has been pored over in this case by authors of pretend historical books to make an allegation of infringement of copyright. If that was allowed to happen it would have a serious impact on writing.” **Mr. Justice Peter Smith**

the claim was that there had been **non-literal copying of a substantial part** of their literary work.

The general principle in copyright law is that copyright protects expression and not ideas. Moreover, *The Holy Blood and The Holy Grail* is an “historical” book, or at least it is comprised largely of **historical facts** which are unprotectable ideas. Baigent and Leigh based their case, therefore, on the claim that Brown had taken a substantial part of the “**manner**” in which they had expressed those ideas, as opposed to taking the ideas themselves.

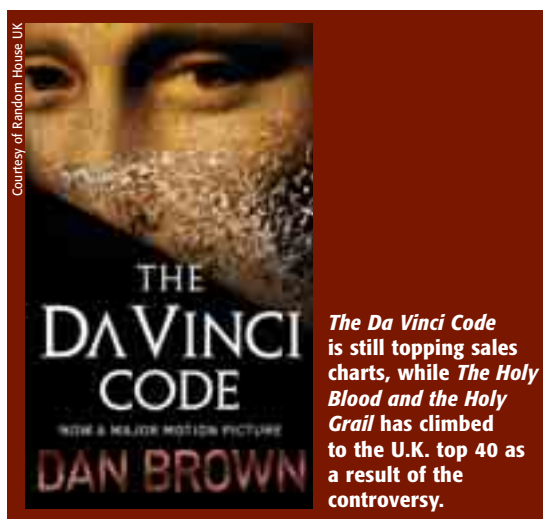
A paradox exists in relation to works based on historical facts: such a work *can* achieve copyright protection; but subsequent creators *can* draw on those facts; nevertheless, no one is allowed to appropriate the labor of the original author.

The judgement

The court held that there were no Central Themes to the book capable of protection by copyright law. While the evidence was clear that Dan Brown and his primary researcher (his wife) had drawn on *The Holy Blood and The Holy Grail* to a greater extent than Brown had acknowledged, this did not mean that they had infringed copyright in the book. Rather, they had used *The Holy Blood and The Holy Grail*, and other books, to provide general background material for the writing of *The Da Vinci Code*.

Significance

The significance of the case for copyright law relates to the fact that the lawyers acting for Baigent and Leigh attempted to make – and lost – an argument



that there can be **non-literal copying of a work of literature**. The non-literal argument has previously been successfully used, usually in the case of computer programs or recipes or knitting patterns.

And finally...

Intriguingly, the judge, Mr. Justice Peter Smith, hid a coded message of his own in the judgment. Using a simple code, including a keyword based on the Fibonacci Sequence employed in *The Da Vinci Code*, the judge’s message refers to a World War I British admiral. The judge subsequently explained that the admiral was a hero of his, and that the trial coincided with the centenary of the launch of one of the admiral’s ships. Never let it be said that English judges are staid and boring!

CAPTURING THE SPIRIT OF INVENTION

Philippe Tarbouriech, Photographer

"Do you know there are said to be five times more lawyers than engineers in the U.S.?" photographer Philippe Tarbouriech asks with a rhetorical flourish as he shows his latest photographs of inventors.

physics. But she's solved a technical problem. She's discovered that by creating a vortex in front of the bucket with her paddle she can make it move forwards instead of just spinning round."



Problem-solving as child's play

The pictures, taken during his recent travels in South East Asia, are captivating. But Philippe Tarbouriech's interest in photographing inventors and innovators is fuelled by more than purely aesthetic considerations. Fascinated by all aspects of technological innovation, and with patented inventions to his own name, he is concerned that too many people, especially young girls, simply cannot envisage themselves as inventors. "The image has got somehow warped," he explains in an interview during an exhibition of his photographs at WIPO in April. "There is a social need to show more good role models of inventors. My dream is

that kids will look at my photos of inventors and think: 'Hey, I could be like that!'"

It is not just the owners of patents or of successfully commercialized innovations who attract Philippe Tarbouriech's attention. His photographs include children and adults, Silicon Valley scientists and grass roots entrepreneurs in developing countries. What he seeks to capture on camera is the essence, the spirit that pushes a person to invent.

Many of his images portray inventiveness at its simplest expression. "What makes someone invent? It's basically about refusing to accept that something is not possible," he says. He points to a photograph of two children on the skeleton of a bicycle, wobbling down a street in their Lahu hill village in northern Thailand. "Just look at these two. Their bicycle has no chain and no tires. They've got no shoes. It shouldn't be possible to ride it. But they've found a way to do it. That's inventiveness.

"Or this," he continues, indicating the figure of a small girl from Cambodia's Tonlé Sap lake, who beams up at the camera from a basin which serves as her boat. "She knows nothing about the laws of

Communicating a passion

Whether his subjects are children at play or scientists in their laboratories, what matters to Philippe Tarbouriech is that his photographs succeed in communicating the passionate interest of individuals in what they are doing. "And that only works," he says, "because I too am genuinely interested in understanding what that person is doing and how he or she is going about it."

Here, Philippe Tarbouriech's own technical background comes into play. He originally trained as an engineer, worked for a video game production company, and founded a company to promote his own invention, *iTag*, a keyring-sized device for "bookmarking" radio broadcasts. His background, combined with what he calls his profound curiosity, means that such interest comes naturally. He recites with infectious enthusiasm the technical details underpinning the achievements of the inventors he has met, such as the WIPO award-winner in Bangkok, Professor Vira Kasantikul (WIPO Magazine issue no.1/2006), whose collection and study of immense quantities of data from motorcycle accidents helped him design an affordable helmet that increases the survival chances of accident victims.

In a similar vein, he tells the story of Thai horticulturist Oradee Sahavacharin. A former teacher at Chulalongkorn University, she was determined to provide hill-tribe farmers with an alternative cash crop to opium poppies, so set out to devise a means for the large scale production of orchids and cut flowers. Refusing to accept the limitations in tissue culture technology which prevented growing more than one orchid per plant, she developed a new cloning technique and a nutrient growth medium, which allowed more than one million plants to be grown from the tissue of a single orchid. Dr. Sahavacharin's work has helped Thailand become the world's top orchid exporter, and has realized her own dream of providing poor farming families with a way to earn a decent living.



Copyright Philippe Tabouriech

Not just a pretty flower. Oradee Sahavacharin's new tissue culture techniques for orchid production provide hill farmers with a cash crop alternative to opium poppies.

“It’s about refusing to accept that something is not possible.”

Breaking free from the black box

The advent of digital cameras, Philippe Tabouriech believes, has transformed the relationship between photographer and subject, providing a more powerful medium of communication both with – and by – the subject. “Before, there used to be this element of almost hunting involved in photography: The photographer captured images of a person and carried them off in a black box,” he explains. “Digital photography is different. It is a wonderful means of starting a conversation, of establishing a relationship. The photographer can show people themselves in a way that they have never seen before.” This, he believes, relaxes and liberates his subjects, enabling their intellect to shine through for the camera.

Explaining IP

And to what extent are the inventors whom Philippe Tabouriech meets familiar with the principles of intellectual property? Such notions, he says, are often confused. In some developing countries where patenting activity and infrastructure were minimal, he encountered a basic lack of understanding even among officials in government ministries responsible for science and technology. Assuming the mantle of an impromptu ambassador for intellectual property, he often found himself teaching those he met about

Copyright Philippe Tabouriech



The images seek to convey the passion which drives inventors and scientists such as Chantiga Choochottiros, shown here working on nano polymers for biomedical application.

how the patenting system functions. This, he recalled, sometimes meant dashing the hopes of individuals, such as an enterprising artisan in Cambodia, who had hoped to patent the furniture he had made from recycled wood.

And what thoughts would he offer for World Intellectual Property Day? “Never accept a problem as definitive. Give yourself space to have ideas. Go for it!”

BIOETHICS AND PATENT LAW

The Case of the Oncomouse

This article is the second in an occasional series which highlights issues that have arisen in some significant patent law cases concerning biotechnology and bioethics. Here we look at how several jurisdictions have dealt with the ethical implications of patenting transgenic animals.



The Oncomouse, genetically modified to develop cancer for the purposes of medical research, raised complex ethical issues for patent authorities.

Animals are called “transgenic” when DNA from other species has been artificially introduced into their genome. Transgenic animals have been developed for potentially beneficial applications, such as medical research, enhanced food production, and the production of proteins or organs. But the ge-

netic manipulation of animals, particularly mammals, also raises a host of ethical issues that can be highly controversial.

Such issues are much wider than the questions relating to patentability. And governments may of course at any stage of research and development directly outlaw any technology deemed inherently unacceptable. But some controversial new technologies only surface publicly when they reach the patent office.

So what has happened when inventors have sought to patent transgenic animals?

Harvard's *oncomouse*

Among the first transgenic animals to be produced was the *oncomouse*. Researchers at Harvard Medical School in the early 1980s produced a genetically modified mouse that was highly susceptible to cancer, by introducing an oncogene that can trigger the growth of tumors. The *oncomouse* (from the Greek word for tumor) was conceived as a valuable means of furthering cancer research. Harvard College sought patent protection in the United States and several other countries.

The case raised general ethical issues regarding transgenic technology in itself. But it also raised two key issues for the patent system:

- should patents be granted at all for animals or animal varieties, particularly for higher-order animals such as mammals, even if they do otherwise meet patentability criteria (novelty, industrial applicability/usefulness, inventive step etc.)?
- how should moral implications be addressed in relation to specific cases, e.g. the question of suffering caused to the transgenic animal?

These issues have been resolved differently by the patent authorities of different countries, as the following examples illustrate.

United States – patent granted

The United States Patent Office in 1988 granted patent no. 4,736,866 to Harvard College claiming “a transgenic non-human mammal whose germ cells and somatic cells contain a recombinant activated oncogene sequence introduced into said mammal...” The claim explicitly excluded humans, apparently reflecting moral and legal concerns about patents on human beings, and about modification of the human genome.

EPO – applying the utilitarian test

The European Patent Office (EPO) considered the *oncomouse* case at length and at several levels. It was only resolved in 2004,¹ and we touch here on only two aspects of a very complex case. The EPO applies the patent standards of the European Patent Convention, which contains two key relevant provisions: Article 53(a) excludes patents for inventions “the publication or exploitation of which would be contrary to *ordre public* or morality.” And Article 53(b) excludes patents on “animal varieties or essentially biological processes for the production of... animals.”

1. Board of Appeal of the European Patent Office, Decision of 6 July 2004, T 315/03

The EPO decided that the exclusion on patenting animal varieties did not constitute a ban on patenting animals as such. It concluded further that the *oncomouse* was **not an animal variety**, and so did not fall within that exclusion.

In order to address the *ordre public* or morality exception, the EPO developed a utilitarian balancing test. This aimed to assess the potential benefits of a claimed invention against negative aspects, in this case weighing the suffering of the *oncomice* against the expected medical benefits to humanity. Other considerations could also be taken into account in the balancing test, such as environmental risks (neutral in this case), or public unease (there was no evidence in European culture for moral disapproval of the use of mice in cancer research i.e. no moral disapproval of the proposed exploitation of the invention in this case). The EPO concluded that the usefulness of the *oncomouse* in furthering cancer research satisfied the likelihood of **substantial medical benefit**, and outweighed moral concerns about suffering caused to the animal.

In the original application, the claims referred to animals in general, but in the course of the proceedings, the patent was amended and finally maintained with claims limited to mice.

The Upjohn mouse – a different outcome

The same utilitarian approach to the morality issue was applied by the EPO in the Upjohn case in 1993, but with a different outcome. The patent in question, filed by the Upjohn pharmaceutical company, was on a transgenic mouse, into which a gene had been introduced such that the mouse would lose its hair. The objective was to test products to treat human baldness and wool production techniques. The EPO again weighed up benefits (usefulness in research to cure hair loss) and harm (suffered by the mice), but concluded that in this case the latter outweighed the former, such that the exploitation of the invention was contrary to morality and therefore not patentable.

Canada – patent rejected

In Canada, the patent examiner initially rejected claims to transgenic animals on the basis that they were not included in the definition of an invention, but allowed claims on the process for obtaining the *oncomouse*.

The Supreme Court of Canada finally ruled in 2002 that higher life forms were not patentable because they were not a “manufacture or composition of matter



A researcher studying oncogenes. DuPont owns the patented OncoMouse® technology and grants free licences to non-profit institutions for cancer research.

within the meaning of invention” of the Patent Act.² Manufacture was interpreted as a non-living mechanistic product or process. “Composition of matter” was understood as ingredients or substances that had been combined or mixed together by a person. So while microorganisms, or an oncogene-injected egg capable of maturing into an *oncomouse*, may be a mixture of ingredients and thus patentable under Canadian Law, the body of a mouse was not. Moreover, the drafters of the Patent Act (1869) had not had mammals in mind and so the Act did not address higher life forms. It was recommended that, as the patentability of such life forms was contentious, the Parliament should engage in public debate to address the complex social and moral issues and close the legislative gap.

The dissenting justices, however, questioned the justification for distinguishing between lower life forms, seen as a composition of living matter, and higher life forms, which were not deemed to be compositions of matter. They held that the scientific achievement of altering the genetic material of which an animal – which does not exist in nature in this altered form – is composed, was itself an inventive “composition of matter” within the meaning of the Patent Act.

Different approaches

Transgenic animals pose questions for bioethics in general, and specific ethical questions in the context of the patent system. The *oncomouse* case highlights how different jurisdictions have dealt with the basic question of whether a transgenic animal – provided it complies with the patentability requirements – should be considered patentable subject matter; and how they have then weighed the ethical dimension of this particular technology.

2. Harvard College v Canada (Commissioner of Patent) 2002 SCC 76

PATENT LAW HARMONIZATION: WHAT HAPPENED?

"It is not yet the time." So concluded Ron Marchant, head of the United Kingdom Patent Office, who chaired the close of the informal meeting of the Standing Committee on the Law of Patents (SCP) in Geneva on April 12. Agreeing that they could not yet agree on a work plan, Member States put on hold the discussions on a draft Substantive Patent Law Treaty (SPLT) which had started in 2001. This report recalls the background, and explains how differences in approach have made agreement on the way forward hard to find.

The SCP's work on a draft SPLT text initially focused on harmonizing certain operational concepts relating to the examination of patent applications. Over the next couple of years the proposed contents of the text were progressively broadened. In the course of that process, some provisions, regarding, for example, patentable subject matter or the exceptions to patentability, raised concerns that flexibilities in national policies, recognized under current international treaties, could be eroded. Delegations also differed over proposals to include requirements to disclose in patent applications the origin of any genetic resources and traditional knowledge on which an invention is based.

Attempts to move the discussions forward included proposals in 2004 from members of the so-called tri-lateral cooperation (Japan, the United States of America and the European Patent Office); a WIPO-led consultation meeting with delegations from 20 Member States and regional offices in Casablanca in February 2005; and proposals submitted by the "Friends of Development." But delegations were by now divided, broadly speaking, into two camps: those pressing to fast-track a limited number of technical issues; and those advocating an inclusive approach.

Limiting the scope...

Delegations in the former camp held that it was necessary to harmonize patent examination standards among WIPO Members in order to improve patent quality, simplify procedures, reduce costs for users, and reduce duplication of work by patent offices. This was in the common interest of both developed and developing countries. To this end, they

urged approval of a limited workplan for the SCP, in which the scope of the SPLT discussions would be confined to the definition of:

- prior art,
- grace period,
- novelty, and
- inventive step.

Agreement on these issues, the delegations reasoned, would promote higher patent quality, facilitate work-sharing, and reduce existing differences in national laws which currently impeded innovators, particularly individuals and small and medium sized enterprises, from benefiting from their own innovation. Delegates held that, while these four items were neither the only nor the last items that should be harmonized, continuing with discussions of the entire draft treaty documents, as well as additional issues, was not a viable manner in which to proceed.

...versus the broad sweep

Other delegations opposed this approach as failing to take adequate account of the concerns of all Member States, particularly those of developing countries. These concerns included the cross-cutting nature of the patent law harmonization process, its impact on public policy objectives for developing countries, and the importance of such subjects as:

- safeguarding public interest flexibility,
- transfer of technology,
- curbing anti-competitive practices, and
- disclosure of the origin of genetic resources in patent applications.

The “Friends of Development” and other like-minded delegations could not accept a fragmented approach to negotiations, as suggested in the Casablanca statement and the proposal of the Delegations of Japan and the United States of America, whereby such issues would be left aside or transferred to other fora, such as the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

bridge the differences in approach. But while many delegations indicated some flexibility, the frank discussions revealed that certain key differences could not be resolved in the near term. Member States emphasized support for the continuation of the work of the SCP, but concluded that it was premature to establish a work program, and decided to refer the matter back to the WIPO General Assembly in September 2006.

The frank discussions revealed that certain key differences could not be resolved in the near term.

They considered that negotiations needed to keep on board issues of concern to all Members as a single undertaking, so as to keep a balance between, on the one hand, demands for upward harmonization of national patent laws, and, on the other, the safeguarding of existing flexibilities and national policy space.

Three step procedure

Seeking a way through the impasse, the WIPO General Assembly in September-October 2005 adopted a three-step procedure consisting of the following: (i) A three-day informal open forum to debate all issues in the draft SPLT text, or that Member States wish to include; followed by (ii) a three-day informal session of the SCP to agree to a work program, taking into account the discussions of the open forum; leading to (iii) a formal meeting of the SCP to commence work on the agreed work program.

Many participants in the Open Forum (March 1 to 3, 2006) appreciated the constructive and wide-ranging discussions, and expressed the wish to broaden the debate on the patent system in WIPO. The Open Forum was followed as planned by the informal session of the SCP from April 10 to 12. Delegations acknowledged the importance of all the issues raised, and several contributions sought to

What now?

It is, for the moment, an open question as to whether this outcome is to be considered final or whether it is more of a stopover on a longer journey. In any event, it reflects the various interests and positions among Member States, and suggests that further reflection is needed on a number of important issues relating to the international patent system. Further consideration of such issues would have to take account of certain existing parameters, such as the fact that the international patent system is not functioning at its best, in terms either of handling increasing numbers of patent applications, nor of the quality of granted patents. In addition, policy-related issues, such as the space for flexibilities or exclusions from patentability, are complex matters, which may require some time for resolution. Moreover, patents have an inherent international dimension, while national interests are multiple and various. Consideration could also be given to the question of whether some of the issues on the table could be addressed by means of practical measures rather than through a legislative process.

Member States and stakeholders involved in the process to date have expressed the continuing hope that the key issues will be addressed in a satisfactory manner for all parties.

A STRONGER VOICE FOR INDIGENOUS AND LOCAL COMMUNITIES (IGC)

The Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC), meeting in its ninth session from April 24 to 28, put into operation a Voluntary Fund to enhance participation of indigenous and local communities in its work. Following pledges by the Swedish International Biodiversity Programme, SwedBio, and France, the Fund is expected to support directly the participation of geographically and culturally diverse groups of representatives of indigenous and local communities in the next IGC session.

The session opened with a panel of indigenous representatives from Brazil, Canada, Kenya, Panama, the Philippines, Russia, and Vanuatu, chaired by a leader of the North American Tulalip Tribes. Each explained the needs and concerns of their diverse communities to guide the IGC's work.

The IGC took up a renewed mandate, with many delegations voicing the expectation that it should move towards tangible outcomes.

The Committee considered the subject matter, focus and level of detail that such outcomes should have. It reviewed the interplay between the international dimension and national legal systems, and the relationship with other international instruments and processes.

The IGC's work on traditional knowledge and traditional cultural expressions currently centers on two complementary sets of draft provisions of the objectives and principles of protection. Based on discussions over eight past sessions, the experience of more than 70 countries, and an intersessional stakeholder complementary process, the draft provisions outline possible policy and legal space for protection against misappropriation and misuse, and help define the legal measures for this protection. Although still in draft form, they have been widely consulted upon and have already served as a benchmark for a range of international, regional and national policy processes. The ninth session fur-

ther reviewed these draft materials, debating the appropriate form, legal content, and core principles of any outcomes of the IGC's work on protection of TK and TCEs. The Committee agreed on an extended duration of its next session (December 2006), in part to ensure a full review of intersessional comments made on these materials.

The IGC continued its work on improving the recognition of TK in the patent examination process, so that patents are not unwittingly granted that illegitimately cover TK subject matter. This work included practical measures such as improved information systems, guidelines for patent offices, and proposals for patent disclosure requirements relevant to genetic resources and TK. The Committee also took stock of work on the IP aspects of access to – and benefit-sharing from – genetic resources.

AWARENESS-RAISING FOR EFFECTIVE ENFORCEMENT (ACE)

The Advisory Committee on Enforcement (ACE), meeting from May 15 to 17, focused on the role of education and awareness-raising in combating counterfeiting and piracy and in building support for global enforcement efforts. "The Advisory Committee on Enforcement has been successful in mobilizing attention about the importance of effective enforcement," said WIPO Director General Kamil Idris. "We cannot underestimate the negative impact of counterfeiting and piracy, and not just in terms of the economic losses, but also the threat posed to health and security."

Presentations from Member States and private sector representatives on experiences in the field of IP enforcement provided valuable insights into the problems and the approaches adopted in different countries. It also underscored the need for closer international cooperation in tackling enforcement challenges.

The presentations covered diverse topics, including the advisability of an officially adopted holistic approach to enforcement matters; problems related to health and safety in developing countries; the impor-

UPDATING BROADCASTING RIGHTS (SCCR)

At the 14th session of Standing Committee on Copyright and Related Rights (SCCR) from May 1 to 5, WIPO Member States agreed on a framework to enable them to take forward negotiations on a treaty to protect the rights of broadcasting organizations.

Resolving what had been a sticking point, they agreed that issues relating to webcasting and simulcasting would be dealt with separately in a parallel process, leaving the main process to concentrate on questions relating to the rights of traditional broadcasting and cablecasting organizations. Member States agreed to hold an additional session of the SCCR ahead of the annual meeting of the WIPO General Assembly to strengthen consensus on questions relating to the rights of traditional broadcasters and cablecasters, so that the General Assembly in autumn 2006 would be able to recom-

mend the convening of a diplomatic conference to conclude a treaty in 2007. The questions of webcasting and simulcasting would continue to be examined at a meeting of the SCCR after the General Assembly.

“We are very pleased that Member States have been able to agree on a framework to move forward in their work on these important questions,” said WIPO Deputy Director General Rita Hayes. “We are very encouraged by the constructive and cooperative spirit of the discussions, which show a serious willingness on the part of the Member States to find balanced solutions to these questions.”

Delegates agreed that the 15th session of the SCCR would be confined to the protection of broadcasting and cablecasting organizations in the traditional sense. Discussions would be

based on a revised draft basic proposal, prepared on the basis of existing documents and proposals and taking into account discussions of the Committee. Delegates also agreed that a revised proposal on the protection of webcasting and simulcasting would be prepared on the basis of the Basic Proposal (SCCR/14/2) and other existing proposals and taking into account the discussions at the 14th session.

Main documents of the 14th session included:

- *Draft Basic Proposal for the WIPO Treaty on the Protection of Broadcasting Organizations Including Non-Mandatory Appendix on the Protection in Relation to Webcasting* (Ref. SCCR/14/2)
- *Working Paper for the Preparation of the Basic Proposal for a Treaty on the Protection of Broadcasting Organizations* (SCCR/14/3)
- *Proposal by Colombia* (SCCR/14/4)

“We cannot underestimate the negative impact of counterfeiting and piracy.”

tance of training trainers; the expansion of efficient public outreach programs and of involving collecting societies; the elaboration of comprehensive national guidelines for the fight against piracy; the need to give foreign investors confidence in the rule of law; and the need to ensure that institutional structures are in place before assistance is given to a country.

The Committee took note of the wide-ranging activities undertaken by WIPO in the form of expert missions, seminars, workshops and training, including specialized training sessions for members of the ju-

diciary. Some delegations provided information on development cooperation activities in their countries relevant to IP rights enforcement.

Following informal consultations, the Committee agreed that the next session of the ACE should focus on an exchange of views on coordination and cooperation at the international, regional and national levels in the field of enforcement.

NEWS ROUNDUP

US\$4 Million in Prizes for Young Scientists



Hannah Louise Wolf (16), Madhavan Pulakat Gavini (16) and Meredith Ann MacGregor (17) the top prize winners, each will receive a US\$50,000 scholarship.



Engineering prize winner Apurv Mishra (17), with his "Glabenator," a device to help paralysed people to communicate.

Agilent Technologies, from May 7 to 10 in Indianapolis, USA.

The projects submitted tackled some of science's most challenging problems, among them developing effective alternative energy sources, finding treatments for autism and other learning disabilities, reducing contaminants in the water supply and reducing electronic waste.

"More than a science competition, the Intel ISEF is an investment in the next generation of scientists," said Brenda Musilli, Intel Corporation director of education.

One thousand expert judges, all with a Ph.D. or equivalent or at least six years of related professional experience, volunteered their time to judge the projects. Among the finalists, 15 percent already hold or have applied for a U.S. patent, and 47 percent are female.

This year marks the 10th anniversary of Intel's title sponsorship of the fair, which has been administered since 1950 by Science Service, a nonprofit organization whose mission is to advance the understanding and appreciation of science around the globe. (For more information and a full list of winners, see www.sciserv.org.)

Source www.intel.com/pressroom

Nearly 1,500 young scientists aged 12 to 20 from 47 countries competed for US\$4 million in scholarships and awards at the Intel International Science and Engineering Fair, presented by

CIPIH Report on Public Health, Innovation and Intellectual Property Rights

The final report of the independent Commission on Intellectual Property Rights, Innovation and Public Health (CIPIH), was published on April 3. The CIPIH was set up by Member States of the World Health Organization (WHO) in 2003 to investigate how to improve access to medicines and health products for diseases that mainly affect developing countries, in the light of international and national rules on patent rights.

Among more than 50 recommendations in the CIPIH report were recommendations addressed to –

— **Governments** regarding: provisions in bilateral trade agreements which could affect access to medicines; funding for research projects run by public-private partnerships; advance purchase schemes to contribute to the development of vaccines, medicines and diagnostics; incorporation of digital libraries of traditional medical knowledge into patent office data; elimination of tariffs and taxes on healthcare products.

— **Governments of developing countries** regarding: promotion of health research in line with public health needs; use of research exemption as part of

patent law; investment in health delivery infrastructure; financing of the purchase of medicines and vaccines; use of compulsory licensing provisions to promote innovation or access to medicines.

— **WHO and international agencies** regarding: a global plan of action to secure more sustainable funding to develop new products and make them more accessible; the creation of patent pools to facilitate product development; monitoring the impact of IP rights from a public health perspective.

— **Companies** regarding: pricing policies, and the filing or enforcing of patents in low-income developing countries.

As this Magazine goes to press, the World Health Assembly from May 22 to 27 is debating the issues raised in the report to decide whether to adopt a resolution on the subject. For the text of the CIPIH report see: www.who.int/intellectualproperty.

Source: Bulletin of the World Health Organization (May 2006)

Apples and Beatles

The judgement in a long-running dispute between Apple Corps, the record label founded by the Beatles, and Apple Computer has cleared Apple Computer of trademark infringement.

Apple Corps filed the lawsuit in 2003 after Apple Computer launched the *iTunes* online music store. The Beatles' company charged that Apple Computer had violated a 1991 co-existence agreement, which barred the computer company from using the apple name and logo for products "whose principal application is music."

In a ruling at the High Court of England and Wales on May 8, Mr. Justice Anthony Mann held that Apple Computer had used the Apple logo to represent services which were "a form of electronic shop" rather than the actual music. "What [Apple Computer] does

is to take a musical recording, in the form of a digital version, and then carry out some technical processes to the file. That is not the sort of activity that a record company or record label would necessarily carry out in relation to musical content." He concluded that the use of the apple logo "does not suggest a relevant connection with the creative work," and that it was "a reasonable and fair use on and in connection with the service."

Steve Jobs, chief executive of Apple Computer, welcomed the judgement. "We are glad to put this disagreement behind us," he said in a statement to the press. "We have always loved the Beatles, and hopefully we can now work together to get them on the iTunes Music Store." (Apple Corps has always refused to license any of the Beatles' music to be sold on iTunes.)



Apple

Apple Corps



Apple Computer

Apple Corps' managing director, Neil Aspinall, said in a prepared statement that Apple Corps disagreed with the judge's conclusion. "During the course of the trial we demonstrated just how extensively Apple Computer had broken the agreement. We will accordingly be filing an appeal," he said.

European Inventors of the Year

Inventors should be "treated like pop stars," said Alain Pompidou, President of the European Patent Office (EPO), in his opening address to the European Inventors of the Year on May 3. This was the first such awards ceremony to be organized jointly by the EPO and the European Commission.

The awards gala was held as part of a two-day conference in Brussels to explore the role of patents in promoting innovation in Europe. High-level experts from Europe, the United States and Asia attended the conference to discuss the future of the European patent system and the challenges presented by China's emergence.

European Inventor awards were granted in six categories: industry; small and medium-sized enterprises; university and research institutions; new European Union member States; non-European countries; lifetime achievement. Four winners were from the life sciences and health sector, while the lifetime achievement trophy went to Federico Faggin, the inventor of the first microprocessor chip.



Federico Faggin (left), inventor of the first microprocessor chip, receives the Lifetime Achievement award.

Photo: Rupert Warren, © European Patent Office

LES BREVETS DE LA CROISSANCE

“Statistician: A man who believes figures don’t lie, but admits that under analysis some of them won’t stand up either.”

Evan Esar, American humorist



Les Brevets de la croissance ou IPness=HAPPYness, by Marc Chauchard, published (in French) by Editions Paradigme, France, 2005, ISBN 2-86878-250-7

Marc Chauchard, a counselor in industrial property in France, has written *Les Brevets de la croissance ou IPness = HAPPYness* for the “Collection Survey,” described as a vehicle for experts and practitioners connected with multifarious fields of human activity. With a group of professionals from several disciplines to assist him, he sets out to quantify the value of industrial property to an entire national economy.

Mr. Chauchard is aware of the pitfalls in tracing a quantifiable statistical connection between the number of patents affecting French domestic productivity, and the growth of French Gross Domestic Product (GDP), as well as in evaluating the general impact of innovation on French society. He rightly raises the problem of definitions – such as the different components used to calculate national productivity, and the different criteria for patentability in various countries. While offering indications regarding other developed countries, he limits the scope of his overall study to France.

It is not possible to outline Mr. Chauchard’s entire methodology here. But he explains and presents a series of detailed calculations and tables, using such data as annual numbers of patent applications (including certificates for utility models) affecting French domestic productivity, the sums spent on research and development in France with a base year of 1995, and official figures of French domestic productivity also with a base year of 1995.

The devil is not entirely in the details, as Mr. Chauchard realizes, but also in the *interpretation* of data. Giving an example, he specifically points out that a coefficient of positive co-relation of 97 percent between data on patent applications and GDP in a given period does not mean that patent applications directly contribute 97 percent to GDP

growth: his conclusion that the two phenomena that are co-related cannot be interpreted exclusively as cause and effect is reasonable.

The author is fully aware of the chicken and egg dilemma of the question, is GDP growth directly attributable to a high level of innovation, or does a healthy economy generate more R&D, leading to more innovation? In estimating the contribution of GDP to innovation, he acknowledges frankly that he uses intuition to ascribe a 33 percent contribution to each of the factors of market and competition pressures, financial resources made available to research and development by shareholders, and teams of inventors and researchers.

Mr. Chauchard’s general conclusions will be considered by the intellectual property community to be perfectly sound: innovation is a positive factor in any economy, and can be improved by better nationwide education in intellectual property at various levels, by the worldwide consideration of related ethical questions, and by greater international reciprocity in the handling of applications for industrial property titles.

The seriousness of the subject deserves better than illustrations based on a cartoon-like mascot figure, but the important graphics, such as the explanatory tables, graphs and calculations are clearly and thoughtfully presented. This publication will be of interest to both specialists and students of intellectual property and its statistics. Students will find meticulous explanations of the nature of a patent and of the procedures involved in processing a patent application, which will assist them in following the whole work’s reasoning, while the specialists and statisticians will find food for thought in the complexities of quantifying the value of industrial property. Mr. Chauchard has tackled an ambitious task with enthusiasm, while respecting the hypothetical nature of statistics.

WIPO AWARDS: APRIL 2006

WIPO congratulates the following creators and inventors, who were presented with awards during March/April, including on the occasion of World Intellectual Property Day.

WIPO Creativity Award

COLOMBIA

■ Fernando Zapata Lopez – For his valuable leadership and contribution to the development of the copyright culture of Colombia

KYRGYZSTAN

■ Tologon Kasymbekov – writer
■ Murat Begaliev – composer

LITHUANIA

■ Jrga Ivanauskaitė – For outstanding achievement as an author
■ Veronika Povilionienė – For her outstanding achievements as a performer of traditional folk music

SUDAN

■ Br' Aim – Ana El Sudan Group – For their contribution to musical performance and dancing
■ Br' Aim – White Nile Province Group – For their contribution to musical performance and dancing

WIPO Gold Medal for Invention

China WIPO-SIPO Gold Medals Awards for Outstanding Inventors of 2006

■ Hongqiang Kong – For Ruixiang A series computer products
■ Yu Li and Qingguo Xiao – For an ink cartridge
■ Yanhai Guo and Xiaojun Yan – For an assembled biochip
■ Shimin Zou – For a data communication channel and order wire channel protection equipment
■ Yuefang Jiang, Jindi Zhao, Baocai Jiang, Yaokang Le, Cailai Yuan and Xingli Tang – For a pulsed high-power Xenon flash lamp and process for manufacture
■ Fen-Er Chen – For synthesis of (3aS, 6aR)-1,3-Dibenzyl-tetrahydro-furan (3,4-d) – imidazole-2,4 (1H) – dione

■ Keqin Zhang – For a type of microorganism and a method of producing biologic nematicide using this microorganism

■ Zhihai Hu, Yiqin Zhu, Yahua Shi, Hong Nie, Jianwen Shi, Zhenlin Xiong, Yulin Shi and Yanping Zhang – For a process for hydrocracking heavy distillate oil under middle pressure

■ Chengyi He, Shuaixian Zhou, Gang Chen, Zewen Zheng, Kongxian Ding, Qicai Zhou and Li Yi – For internal-connecting amorphous silicon solar cells and fabricated method

■ Xiaomei Niu, Baiping Yang, Shujuan Wei, Manli Jiang, Jinming Zhu and Yaoxing Guo – For a kind of complex metal oxidation catalyst and the method of preparation

■ Zongrui Chi, Sheng Xu, Zezhen Hua, Peishi Lv and Zhichun Zhang – For a counter-rotation wash method and washing machine

■ Xumao Ye, Ning Zhang, Bianling Zhang, Houjian Tang and Manxia Tie – For a method of the secure access of mobile device and the confidential data communication in wireless local area network

■ Zhixing Yang, Lin Yang – For a ground digital multimedia TV broadcasting system

■ Linzhen Zhao and Hongtzhuan Zheng – For a rolling mill with roll deflection bi-dimensional control

■ Gang Cheng – For a fluorescence quantitative polymerase chain reaction method and its kits

IRAN



28 year old Iranian Ali Reza Rastegar Abbas Ali Zadeh, whose invention to reduce dust and sparks in the removal of old paint or other contaminants by jet-blasting won him a gold medal at the Geneva International Invention Fair.

KYRGYZSTAN

■ Vladimir Engelsht (Institute of Physics, Tynystanov State University) – Outstanding inventor

LITHUANIA

■ Bronislovas Spruogis – For outstanding achievements as an inventor and scientist and for his contribution to the development of a technological culture and the IP system

MOLDOVA

■ Victor Ghicavii (Professor, State Medical and Pharmaceutical University) – Outstanding inventor – Obtained 41 patents in Moldova, many of which are being produced and commercialized

MONGOLIA

■ Badarch Byambaa – For his academic and innovative work in the area of veterinary science

ROMANIA

■ Alexandra et ale Ene – Geneva Invention Fair: Bio-implant for gastroenterology procedures

WIPO Trophy (innovative enterprise)

LITHUANIA

UAB SVYTURYS-UTENOS ALUS – For the active use of trademarks and registered industrial designs in the production and commercialization of their products (beer and other refreshments)

LETTERS AND COMMENT

WIPO Magazine welcomes letters commenting on issues raised in Magazine articles, or on other developments in the field of intellectual property.

Letters should be marked "for publication in the WIPO Magazine" and addressed to The Editor at WipoMagazine@wipo.int or to the postal/fax address on the back cover of the Magazine. Please also include your postal address. The editor reserves the right to edit, shorten, or publish extracts from letters. The author will be consulted if substantial editing is required. We regret that it is not possible to publish all the letters we receive.

Copyright for small creators – *The Lion* spreads the word



Courtesy of Spoor and Fisher

Thank you for authorizing the Intellectual Property Office of Papua New Guinea to distribute free copies of the article, *The Return of the Lion* (April 2006), as part of our public awareness campaign to illustrate the importance of copyright protection.

The current awareness program relates to regulating and assisting in the establishment of collective management organizations. Such organizations are a necessary component of the industry and may provide technical assistance to the small creator in Papua New Guinea. A point which the article subtly promotes is that the small creator cannot stand against the entertainment giants without technical assistance.

Your readers in the field of copyright, especially from developing countries, may be interested to know that the IP Office of Papua New Guinea intends to introduce a monitoring system, whereby users of copyright works may lose their respective business operating licenses as a penalty for non-payment of creators' royalties.

From Jonathan Amnol, Legal Officer, Intellectual Property Office, Investment Promotion Authority, Papua New Guinea

Consolidating the digital music revolution

Your news report on the boom in online and mobile music sales (*MIDEM – Music Industry Cheered by Digital Sales, Jan/Feb 2006*) reflects the growing variety and diversity of new media outlets.

As online and mobile music become part of the fabric of our everyday lives, the pressure is fairly and squarely on content and copyright owners to consolidate negotiations and licensing on a country-wide or, even better, regional or global basis. This will simplify the licensing process and reduce the barriers to entry for multimedia companies, without whom the industry will suffocate and die.

We look forward to WIPO's playing an active role, in conjunction with the international recording industry association IFPI, and local associations, publishers and regulators, in managing the transition from a pure-play physical retail world, to a more centralized environment where the market determines price, where consumers own what they buy and can enjoy and personalize their entertainment in whatever format, and at whatever time, they desire.

So what are the ingredients for this free-flowing, dynamic and *laissez-faire* environment?

- technology infrastructure which is inexpensive, uncapped and readily available to consumers;
- flexible pricing for content;
- a universe of interoperable music devices with high storage capacities and high fidelity; and
- a regulatory environment which is consistent and universal.

And how close are we? As Dusty Springfield aptly put it: Little by little, bit by bit...

From Sudhanshu Sarronwala, CEO, Soundbuzz, Singapore (www.soundbuzz.com)

Combating counterfeit – time for more creative thinking?

I write in response to your article on counterfeiting and piracy (*Recent Challenges for Enforcement of Intellectual Property Rights*, April 2006). Nobody would dispute that counterfeiting and piracy are serious problems for the rightful owners of IP. They cannot be allowed to run unchecked, and there will always be a need for enforcement. But perhaps the time has come to be more creative in searching for alternative approaches.

Among counterfeiting and piracy operations there is a vast pool of technical and entrepreneurial tal-

ent. Successful counterfeiters demonstrate ingenuity, manufacturing skills, marketing and distribution capabilities. They invest in machinery and equipment and employ a large number of people. But they operate on the wrong side of the law. My question is whether there might not be scope for efforts aimed at attracting skilled pirates and counterfeiters out of the black economy and into legal operation? As well as offering amnesties or other incentives to counterfeiters, such efforts might include incentives to encourage IP owners to find creative, low-cost licensing solutions,



Photo: Unilever

which would allow the (former) counterfeiters to put their business on a legitimate footing.

After all, Unilever makes many brands of laundry detergent other than OMO, and lets these brands “compete” in the market. Why not add AMO to the collection?

*From Richard Lennane,
Geneva, Switzerland*

Avian flu and patents – more like this



Copyright: Roche

Kudos to the WIPO Magazine with a New Look. The contents are interesting and enjoyable to read. The format is rich and pleasing.

As a patents manager in the pharmaceutical sector, I found the information on avian flu drugs and the patent situation (*Avian Flu Drugs: Patent Questions*, April 2006) really useful. Particularly the details regarding the Oseltamivir patent, its licensing situation and details of licence holders, flexibilities within international IP Laws, and details regarding countries which do not have patent for Oseltamivir. I am looking forward to having more such good articles.

*From M.A.Ganapathy, IPR Patents Manager,
Natco Pharma Limited, Hyderabad, India*

Who invented the airplane?



Santos Dumont and a drawing of his flight on *Oiseau de Proie*.

Your article about the creation of the airplane (*The Flying Machine – One Hundred Years On*, November/December 2005) talks about the Wright Brothers but overlooks the Brazilian inventor Alberto Santos Dumont. His aircraft, *Oiseau de proie* (bird of prey) is considered to be the first to take off, fly, and land without the use of catapults, high winds, launch rails, or other external assistance. So we consider Santos Dumont to be the Father of Aviation and the true inventor of the airplane.

*From Marcelo Tredinnick, Patent Division,
National Institute for Industrial Property (INPI), Brazil*

Calendar of Meetings

JUNE 6 ■ GENEVA

■ *Second Round of Informal Consultations on A Mechanism to Further Involve Member States in the Preparation and Follow-up of the Program and Budget of the Organization*

As decided by the Program and Budget Committee at its ninth session, held from January 11 to 13, 2006, a second round of informal consultations on a mechanism to further involve Member States in the preparation and follow up of the Program and Budget of the Organization will take place at WIPO Headquarters on Tuesday, June 6, 2006.

Invitations: All States members of WIPO are invited to attend.

JUNE 12 TO 16 ■ GENEVA

■ *Ad Hoc Working Group on the Legal Development of the Madrid System for the International Registration of Marks (Second Session)*

The Working Group will continue its work with a view to making recommendations to the Madrid Union Assembly concerning the reviews of the refusal procedure and the safeguard clause as envisaged in the Madrid Protocol, and possible amendments to the Common Regulations under the Madrid Agreement and Protocol.

Invitations: As members, the States members of the Madrid Union and the European Community; as observers, other States and certain organizations.

JUNE 19 AND 20 ■ GENEVA

■ *Extraordinary Session of the WIPO Coordination Committee*

The WIPO Coordination Committee will meet, in extraordinary session, to consider the appointment of senior officials.

Invitations: As members, the States members of the WIPO Coordination Committee; as observers, other States members of WIPO.

JUNE 26 TO 30 ■ GENEVA

■ *Provisional Committee on Proposals Related to a WIPO Development Agenda (PCDA) (Second session)*

This session will continue discussions and consideration of the proposals submitted by Member States.

Invitations: As members, the States members of WIPO; as observers, other States and certain organizations.

SEPTEMBER 25 TO OCTOBER 3 ■ GENEVA

■ *Assemblies of the Member States of WIPO (Forty-second 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 and the European Community; as observers, other States and certain organizations.

NOVEMBER 6 TO 10 ■ GENEVA

■ *Committee of Experts Under the Vienna Agreement Concerning the International Classification of the Figurative Elements of Marks (Fifth session)*

The Committee of Experts will decide on the adoption of proposals for amendments and additions to the current (fifth) edition of the Vienna Classification for incorporation in the new (sixth) edition, which should enter into force on January 1, 2008, and be published in the two authentic versions (English and French).

Invitations: As members, the States members of the Vienna Union; as observers, all States members of the Paris Union which are not members of the Committee, and certain organizations.

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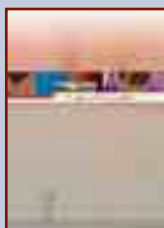
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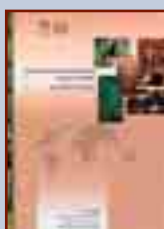
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