

Rethinking the role of intellectual property in innovation

A conversation with
Dr Francis Gurry,
Director General of the
World Intellectual Property
Organization (WIPO)

IP laws and systems harness the benefits of innovation and creativity but rapid technological advances mean keeping pace with them is more difficult than ever. Dr Gurry discusses the implications of innovation on IP.

Q: What are your views on the opportunities and challenges to the existing patent regime from new technological innovations?

A: Technological innovations in recent decades, ranging from bioscience to computers to communications and more, demonstrate that intellectual property protection must keep pace with the innovations themselves. This evolution in IP rights is evidenced by normative and policy developments both on the national and international levels, including advancements in national frameworks and strengthened protection in many countries for biotechnical and pharmaceutical inventions, computer databases, integrated circuit layout and semiconductor products. The opportunities presented by 3D printing technology are promising and are already being seized. For example, such technology is already used extensively in the medical field, to manufacture replacement hips or prostheses. It also has the potential to transform R&D, manufacturing, and retailing – especially where there is demand for individual customisation.

The most immediate implication for the intellectual property system is the ease with which individuals may be able to replicate objects – not unlike what the arrival of digital technology meant for the copying of creative works. Above all, this could complicate the enforcement of IP rights – not only patents, but also industrial designs, trademarks and copyright. The breadth and pace of innovations worldwide present both a challenge and an opportunity for countries to work together to ensure that technological advances continue to be protected for the benefit of both society and economic growth.

Q: What are the lessons to be learnt from “patent wars” and what can be done differently?

A: It is important to put the so-called “patent wars” into a broader perspective. Patent filings have risen to historically unprecedented levels over the past decades. To a good extent, this reflects expanded technological opportunity, especially in the area of information and communication technologies – a benign force. In addition, companies have recognised the strategic importance of protecting their technological assets with patents. The intensity of patent disputes in these areas mirrors the intensity of business competition in the same areas, and in fact reflects the high degree of innovation in those very technologies, protected by patents. The scope for conflict has therefore widened, especially in industries – such as smartphones – where competition is intense and patent landscapes are complex.

What lessons do the “patent wars” hold? Clearly, patent offices have a big responsibility to ensure the granting of quality patents that offer certainty in the marketplace. High quality requires thorough prior art searching and examination, which is facilitated by providing IP offices and searching authorities with the tools and databases they need to ensure comprehensive searches. To this end, WIPO has created a free search system called PATENTSCOPE, which includes over 37 million searchable patent documents from 30 nations, as well as other technology databases and tools. Such systems ensure that patents are issued in light of the best prior art searches available, providing certainty and reliability to companies in protecting their developments.

At the same time, industry needs to think about new ways to manage technological complexity and avoid conflict – and such thinking is taking place.

Q: In recent years the developing markets, particularly China, have seen a significant growth in patent submissions. What are the opportunities and challenges presented by this shift?

A: The rapid growth in patenting is a reflection of a broader development: the rise of China as an innovator. This development holds immense opportunity, for China as well as for the rest of the world. China is transiting towards a new development model, whereby firms do not compete on the basis of low wages but on the basis of new products and technologies. This transition is fundamental to the Chinese economy maintaining fast growth and addressing the environmental and social challenges its society is facing. Since the benefits of innovation transcend national borders, the rest of the world stands to gain. However, China's rise as an innovator requires adjustment – some companies and workers will benefit whereas others will come under increased competitive pressure. Managing this adjustment clearly is a challenge.

Q: How is the IP system evolving to incorporate greater social inclusion and public welfare?

A: The Marrakesh Treaty to Facilitate Access to Printed Works for Persons Who Are Blind, Visually Impaired or Otherwise Print Disabled, is notable for being not only a treaty on copyright limitations and exceptions, but also a human rights treaty. The Convention on the Rights of Persons with Disabilities is acknowledged explicitly in the Preamble of the Treaty. The Secretariat of WIPO is working with many interested Member States to bring the Treaty into force as quickly as possible. WIPO has also launched a complementary project, the Accessible Books Consortium, to seek practical ways to foster the goals of the treaty through projects such as building capacity to create accessible format books in developing countries.

In general, WIPO is dedicated to working towards a balanced intellectual property system that fosters creativity and innovation and brings the practical benefits of the system to individuals and national economies, including those in the developing world. We work actively with national governments to foster inclusive innovative and creative industries. Discussions on limitations and exceptions to exclusive rights and flexibilities within the IP system are ongoing in many WIPO committees, including those focused on copyright, patents, and development and intellectual property.

WIPO also has several ongoing projects to address global challenges of particular concern to developing countries, including global health, climate change, and food security. These projects seek practical ways to use innovation to address these challenges, for instance by providing access to intellectual property for pharmaceutical compounds, technologies, know-how, and data available for research and development for neglected tropical diseases, tuberculosis, and malaria.



Biography

Francis Gurry is an Australian lawyer who has served as Director General of the World Intellectual Property Organization (WIPO) since October 1, 2008.

He holds law degrees from the University of Melbourne, a Ph.D from the University of Cambridge and is an honorary professor of, and holds honorary doctorates from, universities in a wide range of countries. Mr. Gurry is currently chair of the UN High-Level Committee on Management, which reports to the UN Chief Executives Board (CEB) and is responsible for ensuring coordination in administrative and management areas across the UN System. He is the author of a number of publications, one of which has become a standard legal text in the UK and is published by Oxford University Press as *Gurry on Breach of Confidence*.

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Designed and produced by The Creative Studio at Deloitte, London. 39108A