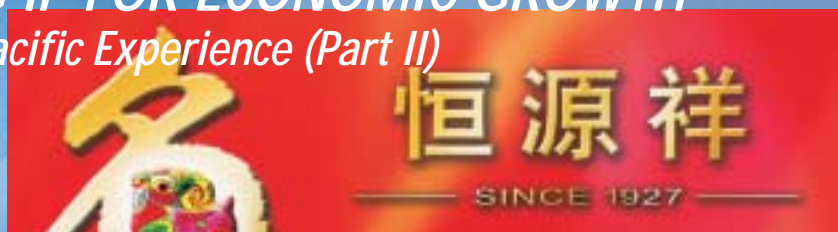


Geneva, November/December 2004

LEVERAGING IP FOR ECONOMIC GROWTH *The Asian and Pacific Experience (Part II)*



BUILDING IP INSTITUTIONS *IN LEAST DEVELOPED COUNTRIES* *(Part III)*



PUBLIC OUTREACH *Promoting Patent Awareness in Turkey*





From Artist to Audience

As part of its cooperative activities with the International Confederation of Societies of Authors and Composers (CISAC) and the International Federation of Reproduction Rights Organisations (IFRRO), WIPO recently published a booklet entitled *From Artist to Audience: How creators and consumers benefit from copyright and related rights and the system of collective management of copyright*.

The booklet explores how creative works make their way from the artists who create them to the audience that enjoys them. It explores one way, the system of copyright and related rights works, namely the collective management of rights. The booklet uses numerous examples from a broad range of creative fields to illustrate how copyright and the system of collective management help individuals make a living from their work, while building upon and strengthening cultural industries around the world.

Written by Mrs. Tarja Koskinen-Olsson in consultation with the three organizations, the booklet (publication No. 922E) is available free of charge as a PDF document at www.wipo.int/freepublications/en/ or can be ordered in hard copy at the address on the back cover of the *WIPO Magazine* or from the WIPO electronic bookshop at www.wipo.int/ebookshop.

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Geneva,
November - December
2004

RESULTS OF THE 40TH WIPO ASSEMBLIES

The Assemblies of WIPO Member States met in Geneva from September 27 to October 5 to review WIPO's activities over the past year and to agree the agenda for the next year. The WIPO General Assembly, which brings together the 181 member states of the Organization, was chaired by Ambassador Bernard Kessedjian, Permanent Representative of France to the United Nations and other international organizations in Geneva.



In his closing remarks, Ambassador Kessedjian thanked delegations for the spirit of cooperation that characterized the talks. He welcomed initiatives taken by various Member States, and referred in particular to discussions on enhancing the development dimension in WIPO's work. Ambassador Kessedjian said that the positive results that had emerged had added renewed impetus to the future work of the Organization.

The main items covered by the Assemblies included the following:

Trademark Law Treaty (TLT)

Member States agreed to convene a diplomatic conference on the revision of a key international treaty that will further simplify and streamline procedures relating to the registration of trademarks. The ***Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty***, to be held in March 2006, will update the existing treaty, bringing its procedures into line with technological advances in telecommunications. Two further sessions of the Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications plus a preparatory meeting will be held prior to the Conference to work on outstanding issues. The Diplomatic Conference will consider incorporating into the treaty provisions covering the electronic filing of trademark applications, the recording of trademark licenses, relief measures when certain time limits have been missed, and the establishment of an assembly of the contracting parties for updating administrative provisions regulated under the treaty.

Genetic Resources, Traditional Knowledge (TK) and Folklore

The General Assembly reviewed the work of the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) with the expectation of accelerated progress towards concrete out-

comes. The review was based on a progress report, commissioned by the Assembly in 2003 when it granted a fresh mandate to the IGC. The report highlighted progress on provisions for the protection of TK and expressions of folklore/traditional cultural expressions, which could form the content of an international instrument in this area. These provisions represented a step towards a shared international perspective on the objectives and the core principles of protection, with the goal of safeguarding the interests expressed by traditional and indigenous communities. Draft texts are being circulated for consideration by the IGC in November. The review also addressed activities beyond the IGC, including capacity-building initiatives and an active program of cooperation, coordination and dialogue with other UN agencies in this field, with representatives of indigenous and local communities, and with civil society.

The General Assembly also considered a key aspect of the linkage between the patent system and legal regimes governing ***access to genetic resources and benefit-sharing*** from the use of these resources. Some countries have amended patent laws to require patent applicants to provide specific information about genetic resources or TK used in a claimed invention. A number of WIPO Member States have called for changes in international standards with the same objective. This issue has been raised in several

Photos: Mercedes Martinez Dozal

WIPO forums and in other international organizations. WIPO prepared a technical study on the issue at the invitation of the Conference of Parties (COP) of the Convention on Biological Diversity (CBD).

Following on from this study, the COP earlier this year invited WIPO to address some specific aspects of the issue. The General Assembly agreed a comprehensive work program to prepare this further contribution to the work of the CBD. This will build on proposals by Member States, and will be reviewed at an intergovernmental meeting in May 2005, drawing together Member States, intergovernmental organizations (IGOs), and accredited non-governmental organizations (NGOs).

The continuing partnership and policy dialogue between the WIPO and the CBD COP is intended to promote the CBD objectives of conservation, sustainable use and equitable benefit-sharing. (In this regard, WIPO and the United Nations Environment Program (UNEP) released a jointly commissioned, in-depth study on the role of IP in benefit-sharing under the CBD at the beginning of November.)



The General Assembly gets under way

Proposal for establishing a development agenda

The WIPO General Assembly considered proposals, originally submitted by Brazil and Argentina, to enhance the development dimension in all of WIPO's work.

Following discussion which took into account developing countries' appreciation of WIPO's existing activities in the area of development, the General Assembly decided to convene inter-sessional intergovernmental meetings in order to examine the proposals by Brazil and Argentina as well as additional proposals from Member States. The meetings will be open to WIPO-accredited IGOs and NGOs. The conclusions will be presented in a report to the General Assembly in 2005.

The Assembly also decided that an international seminar should be held on IP and development, in cooperation with other multilateral organizations. The seminar will be open to all stakeholders, including civil society and academia.

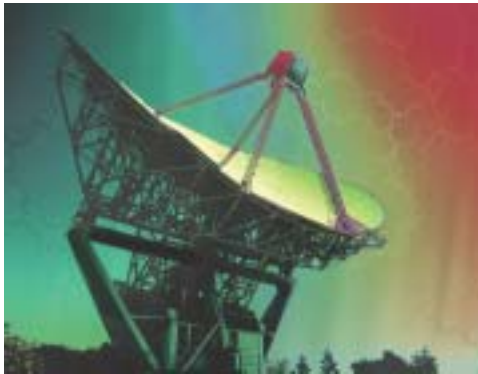
Patent Cooperation Treaty (PCT) Union

Member States of the Assembly of the PCT Union discussed a proposal to increase PCT fees. The Assembly agreed that this question should be referred as soon as possible to the WIPO Program and Budget Committee and, if necessary, to an extraordinary session of the PCT Assembly. Member States noted progress in the reform of the PCT, amended certain regulations in line with the reform process and agreed on priorities for future work. The PCT Assembly also took note of the status of the evolution of PCT information systems, particularly regarding electronic processing of international applications. Member States reviewed recent WIPO initiatives to improve the availability and usability of patent statistics. A WIPO-OECD (Organisation for Economic Co-operation and Development) Workshop on the Use of Patent Statistics was held after the Assemblies on October 11 and 12.

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Protection of the rights of broadcasting organizations

The General Assembly requested the Standing Committee on Copyright and Related Rights to accelerate its work on the protection of broadcasting organizations with a view to approving the convening of a diplomatic conference at the next session of the WIPO General Assembly in 2005. The Standing Committee was



to meet in November to continue working on the issue. A diplomatic conference is traditionally the last step in the treaty-making process.

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

Protection of audiovisual performances

Member States reviewed the status of consultations on outstanding issues relating to the protection of audiovisual performances. A number of countries pressed for an early resolution of the outstanding issues so that a new treaty could be established. Member States agreed to keep the subject under review at their annual meetings in 2005. International discussions on protecting the rights of audiovisual performers date from the early 1990s. The adoption of a new instrument would strengthen the position of performers in the audiovisual industry by providing a clearer legal basis for the international use of audiovisual works, both in traditional media and in digital networks. An international instrument would also help to safeguard the rights of performers against the unauthorized use of their performances in audiovisual media, such as television, film and video.

Draft Substantive Patent Law Treaty (SPLT)

Member States discussed a proposal by the delegations of Japan and the United States of America relating to a new work plan for the Standing Committee on the Law of Patents (SCP) regarding the draft Substantive Patent Law Treaty (SPLT). The proposal was that the SCP should give priority at this stage to four prior art-related issues and defer discussion of other issues of substantive patent

law pending resolution of this initial package. While the proposal drew support from a number of delegations, it was opposed by a number of others, in particular on the grounds that a reduced set of provisions would exclude from the discussions certain areas of interest to them. The General Assembly adopted a statement recognizing that the proposal submitted by the delegations of Japan and the United States of America had found no consensus.

Internet domain names

WIPO Member States were briefed on the status of recommendations approved by Member States in 2002 to amend the Uniform Domain Name Dispute Resolution Policy (UDRP) in order to provide protection for country names and for the names and acronyms of intergovernmental organizations. The recommendations are currently being considered by the Internet Corporation for Assigned Names and Numbers (ICANN). The WIPO Arbitration and Mediation Center is the leading provider of services for the resolution of disputes arising from the abusive registration of Internet domain names.



Advisory Committee on Enforcement (ACE)

The General Assembly reviewed the work of the Advisory Committee on Enforcement and encouraged it to continue its work. The Committee was set up by WIPO Member States in 2002 as a forum for discussion of enforcement matters, with a mandate to provide technical assistance and coordination, and to facilitate the exchange information enforcement issues.

Admission of observers

In line with the Organization's commitment to transparency and inclusive debate, the Assemblies agreed to grant observer status to the Commonwealth Secretariat as an international IGO, and to the following NGOs: the Centre for Innovation Law and Policy, the Center for International Environmental Law, the Civil Society Coalition, the European Generic Medicines Association, the Federation of Scriptwriters in Europe, the Foundation for a Free Information Infrastructure, the Free Software Foundation Europe, the Independent Music Companies Association, and the Organization for an International Geographical Indications Network.

WIPO Member States established a set of principles covering the admission of such organizations as observers in September 2003. Organizations granted observer status are invited to attend the meetings



Photo: Christian Perle

of WIPO Assemblies and other meetings of direct interest to them. Three other national NGOs considered to be in a position to offer constructive and substantive contributions to the deliberations of the WIPO Assemblies were granted observer status in conformity with a decision by WIPO Member States in October 2002, namely the Electronic Frontier Foundation, the Japan Institute of Invention and Innovation and the Picture Archive Council of America. Currently 66 IGOs, 181 international NGOs and 13 national NGOs currently have observer status with WIPO.

Program performance report

The General Assembly approved WIPO's biennium Program Performance Report for 2002-2003. The Assembly noted the achievements detailed in the report, reached de-

spite the current financial constraints. Member States highlighted WIPO's work to promote intellectual property as a tool for social, economic and cultural development worldwide. Many Member States expressed appreciation for the technical and legal assistance provided by WIPO in support of national efforts to foster an intellectual property culture, to modernize intellectual property infrastructure, to develop human resources and to implement international treaties. They requested that WIPO continue to provide expertise to contribute to national capacity building and to the integration of developmental aspects into IP policies. The Assembly also noted the Program Implementation Overview outlining major activities during the first six months of 2004.





Creativity by Children

A Chinese Experience

Knowledge



*“Brother wears a spacesuit,
With a video camera in his hands.
Flying into space with a dancing dragon,
He celebrates the day of IP rights”
Ma Zhao Zhuang, 10 years old*



Environment



*“Under the moon there is a river,
With whirlpools in deep water.
Driving the flying fish to study,
I find a lot of subtlety”
Song Lei, 8 years old*

WIPO took great pleasure in hosting the exhibition *Creativity by Children – A Chinese Experience* from September 28 to October 8. This marked the first time that a WIPO exhibition consisted entirely of the work of children, the building blocks of the future. The exuberant display of paintings, mounted on a 60-meter scroll, provided a refreshing, child's-eye view of the importance of innovation and intellectual property.

The beginnings of this exhibition go back to the first World Intellectual Property Day, celebrated on April 26, 2001. To observe the occasion, the Heilongjiang Intellectual Property Office in the People's Republic of China organized a series of activities to demonstrate the importance of protecting intellectual property (IP) rights. Among the activities aimed at teaching children about IP was a painting competition. Children were asked to draw and paint their ideas about what IP protection might mean, and how it might be depicted. More than 1,000 entries were submitted. One hundred paintings by one hundred children were then selected and displayed as the Heilongjiang Children's Science Fiction Drawing Exhibition. The exhibition was also displayed at Harbin Children's Park (China), where some 10,000 children viewed it.



Working under the broad theme *Today Creates the Future*, the young painters addressed a number of ideas: respecting science, shaping it to the needs of the future, promoting creation and scientific innovation, and spurring human progress. Each painting was accompanied by a short poem explaining the idea that inspired it.

The one hundred paintings represent the aspirations of millions of Chinese children, expressing their thoughts about innovation and protecting the rights of creators. The children responded to the theme with evident enthusiasm, resulting in a riot of color and imagination. The paintings and poems rejoice in such themes as space exploration (“Let's Work on the Moon”), genetic research (“Gene Trees”), protecting the environment (“I Wash the Earth”) and international cooperation (“Great Unity”).





The Chinese children visit the General Assembly



Photos: Mercedes Martinez Dozal

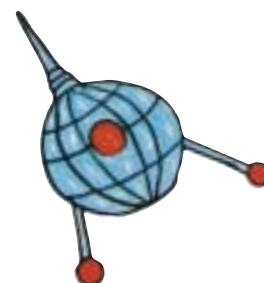


Inauguration

The exhibition was inaugurated on September 27 during the WIPO Assemblies in the presence of five of the young artists who traveled to Geneva for the event. WIPO Director General Kamil Idris noted that the children's artwork was a concrete reminder of the power of creativity in spurring awareness of the importance of intellectual property: "Respect for intellectual property and its appreciation as a valuable tool for scientific, cultural and social progress should begin at an early age," he said. "Initiatives such as the one taken by the intellectual property office of the Heilongjiang Province are highly commendable."

Ambassador Sha Zukang, China's Permanent Representative to the United Nations in Geneva and head of the Chinese delegation to the WIPO Assemblies, noted that a sound IP protection mechanism is of vital importance to the nation's creativity and development. "The nation's hope lies in the younger generation," he said. "The participation of the youngsters will help imbue a strong IPR sense in their minds, which serves as the most effective way of ensuring a sound environment for intellectual creation."

On September 28 the five Chinese child artists – Jiang Hongyao (8 years old), Li Zhenni (8 years old), Qiu Linjing (10 years old), Tu Shuo (9 years old), and Jin Dongjie (11 years old) – met with two groups of school children from the Geneva area who came to visit the exhibition and to trade painting techniques with their Chinese counterparts.



Science and technology



*"Birds are chirping in the sky,
Watermelons are ripe in the tree.
An electronic-brained robot comes,
Only to pick up the ripe ones"*

Li Yuexin, 6 years old



INTELLECTUAL PROPERTY AS A LEVER FOR ECONOMIC GROWTH

The Asian and Pacific Region Experience (Part II)

“An image... is not simply a trademark, a design, a slogan or an easily remembered picture. It is a studiously crafted personality profile of an individual, institution, corporation, product or service.”

Daniel J. Boorstin (American social historian and educator)

This is the sixth in a series of articles that looks at concrete examples of how the intellectual property (IP) system can be used as an efficient tool to extract – and enhance – economic value from creativity and innovation. The first two articles concentrated on the African region and the second two on the Latin American region; this is the second on the Asian region.

Marking their territory – branding in the Philippines

In today's competitive global marketplace, companies are placing increasing importance on strengthening and leveraging their trademarks – long-lasting and potentially very valuable intellectual assets.

The Philippine company, Jollibee Foods Corporation, has developed and managed its trademark assets with skill. Jollibee Foods began life in 1975 as a small ice-cream business with two shops. Today, it is the biggest fast-food company in the country, with more than 1,000 outlets at home and abroad, employing more than 26,000 people, and with net profits in 2003 of over 22 million (U.S.) dollars.

Mr. Tony Tan Caktiong, the Chairman, President and Chief Executive Officer of the company, stresses the importance of its trademark in Jollibee's success. The eye-catching mark – a smiling red bee – was created by him and his family. They chose a bee because of its association with hard work, and because honey represents the sweet things in life. The “jolly” prefix was intended to connote happiness and enjoyment.



Jollibee invested millions of pesos to register the “bee” trademark in the Philippines and in other key countries. Protecting its mark was a major element in strengthening the Jollibee brand. The mark itself evidently struck a chord with the public. To quote Mr. Tan Caktiong: “From a rather crude, strange-looking bee that no bank dared to touch back in 1978, Jollibee and his cheeky smile

today have become synonymous with a truly Filipino success story that is now a source of patriotic pride. It is estimated that the Jollibee brand is now worth several billion pesos.”¹

By strengthening its brand and through effective use of franchising², the company has been able to hold its own on the domestic market³ in the face of challenges by multi-national fast-food giants and has opened its own outlets abroad.

And Jollibee is not alone. Another Philippine company that has honed its brand into an efficient tool to help construct its economic future is San Miguel Corporation, a beer, beverage and food vending company. San Miguel has made no secret of its intentions regarding brand development. Its President, Faustino Galang, is quoted as stating, “We want to establish San Miguel as a ‘Megabrand’...”⁴. The company's high value brand has not only allowed it to build up a loyal customer base, but also to forge several strategic alliances with non-Philippine companies.

The company now also intends to relaunch its Magnolia ice-cream brand, one of the most recognizable and enduring brands in the Philippines. A “non-compete” clause in a contract with a multinational food giant had barred San Miguel from the ice cream business for five years. With the expiration of the clause, the company is planning to build on the

¹ See www.jollibee.com.ph/corporate/lib_ref_3.htm.

² More than half of this network is franchised.

³ It is said to hold a 65 percent share in the extremely competitive areas of fried chicken, burgers, oriental food, pizza and pasta.

⁴ See www.brandchannel.com/features_profile.asp?pr_id=93.

continuing recognition of and customer goodwill towards the Magnolia brand to set up a new ice-cream manufacturing facility to re-enter this highly lucrative sector. "The option and opportunity for San Miguel to re-enter the market is open, as in the minds of consumers, Magnolia ice-cream never left the market. People have always known Magnolia as a quality brand of ice-cream. Loyalty to the brand is strong because it is part of our heritage," the company's chairman and CEO Eduardo Cojuangco is quoted as saying.

Getting the best mileage on the IP highway: India

In certain cases, some of which have been well-publicized, the intellectual property system has been used to create value from products based on traditional knowledge. That value has resulted in an economic return, which could then be shared with the holders of that knowledge.

WIPO has recently published a study⁵ on aspects of such benefit-sharing. One of the examples cited in the study is the development and marketing of the herbal-based stimulant and tonic, Jeevani.

The Kani tribals of Kerala traditionally used the small, dark-colored fruit of the Aryogapacha plant (*Trichopus zeylanicus* *ssp. Travancoricus*), a herbaceous, rhizomatous plant found in the Agasthyar hills, to give them energy



Kani tribal members stand to benefit from the Kerala Kani Samudaya Trust

when trekking. Originally a nomadic people, they have become more settled over the recent past and their population of some 16,000, live in and around the tropical forests of the Agasthyamalai hills of the Western Ghats, a mountain range along south-western India. The Kani's traditional lifestyle has allowed them to acquire a unique knowledge of the use of the biological resources around them⁶.

In 1987, a team of scientists led by Dr. P. Pushpangadan, then director of the Tropical Botanical Garden & Research Institute (TBGRI) in Kerala, was trekking through the forests of the Agasthyar hills. The scientists' interest was piqued when they saw – and experienced – the effects of the Aryogapacha fruits eaten by their Kani guides to overcome fatigue. The Institute spent several years carrying out detailed pharmacological and chemical research into the plant and its properties, particularly its fruit and leaves. After seven years, it had isolated 12 active compounds and produced a scientifically verified

and standardized herbal formulation, which was named "Jeevani" – giver of life.

The Institute protected the process for extracting the relevant substances from the plant, filing two national patent applications and, in 1995, licensing that technology for seven years to the Arya Vaidya Pharmacy Ltd. (AVP), Coimbatore, Tamil Nadu, for production and marketing. Interest in the product was strong and Jeevani is said to have made up a substantial part of the Arya Vaidya Pharmacy's sales to southeast Asian and Western countries.

The Institute, under the leadership of Dr. P. Pushpangadan⁷, decided to divide the financial gain it received from the Jeevani formulation – at that time, the licensing fee (US\$50,000) and 2 percent royalties on sales – with the Kani people and a benefit-sharing agreement was drawn up. Without examining the legal and technical issues of

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⁵ WIPO-UNEP Study on the Role of Intellectual Property Rights in the Sharing of Benefits Arising from the Use of Biological Resources and Associated Traditional Knowledge: WIPO Publication No. 769(E), 2004.

⁶ The Kanis say they can live actively only on the unripe fruit of the Aroygapacha for over 15 days.

⁷ Now director of the National Botanical Research Institute, Lucknow.

benefit-sharing (which are covered in depth in the study and include many complex issues) it is interesting to look at the Jeevani example merely from its potential as a generator of benefits – monetary or non-monetary in nature.

The world market for herbal medicines is said to be worth billions of dollars. There is, therefore, potentially significant financial gain to be reaped from the commercialization of Jeevani. However, there would be no financial benefits to share without effective protection of the relevant intellectual property.

The fact that national patent applications were filed protected the technology in India, gave it value on the Indian market and allowed revenue to be generated through the licensing and royalty-sharing agreements with the AVP. However, it did not provide protection in other countries likely to be fruitful markets for the product. It should be noted that, at the time that the patent applications were filed, India was not a member of the WIPO-administered Patent Cooperation Treaty. It became a member in 1998, thereby facilitating for Indian applicants the process of targeting and filing patent applications in the Treaty's 124 Member States.

If the product – described in the Indian patent application as “a novel, safe herbal sports medicine, having anti-fatigue, anti-stress, immunoenhancing and stamina-boosting

properties” – had had patent protection in key countries with strong market demand, the value of the technology license granted by the TBGRI could have been considerably increased. This is particularly true given the success of the product outside India, and the fact that the TBGRI intended to issue a global tender for the granting of an international marketing license for Jeevani, as the seven-year contract with AVP had come to an end.

The word “Jeevani” is becoming increasingly widely recognized. The named product has been featured on the cover page of sports and fitness magazines⁸ and can be found for sale on the websites of companies based in countries other than India. Regis-



Jeevani tonic based on the Aryogapacha plant

tering it as a trademark in targeted countries, would also have enhanced the product's financial value for the TBGRI and the Kanis. Non-registration creates an IP vacuum that could be filled by any other party interested in registering it as a mark. In the present case, at least one trademark registration containing the word “Jeevani” has been registered by a body other than the TBGRI.

China: on its marks – and ready to go

Enterprises that wish to succeed against acute competition have to create brand-name products, according to China's Premier Wen Jiabao. He has said⁹ that future world competition will be for intellectual property rights, which take the form of first-class technology and products, and that prominent Chinese enterprises should be encouraged to create world top-class name brands¹⁰, which “show quality, efficiency, competitiveness and vitality”.

The Heng Yuan Xiang Group has done just that, developing in only ten years from a small wool store into an enterprise that has some 70 companies producing its wool products, more than 600 distributors, around 5,000 retailers, and an annual revenue of 3 billion yuan. This growth was generated not by huge investment in tangible assets but largely through a unique brand name strategy.¹¹

Although Heng Yuan Xiang was created in 1927 and had a “glorious past”, when the present General Manager and Chairman, Mr. Liu Ruiqi, took over in 1987, it had almost no resources, other than its famous name – and certain useful marketing and information channels. Mr. Liu moved quickly. He registered the well-known “Heng Yuan Xiang” name as a trademark and added a cartoon image of a little girl beside the three Chinese characters

⁸ “Jeevani: The Anti-Stress/Pro-Energy Botanical Complex”, Natural Bodybuilding and Fitness. New York, February, 2000; and also Amagaya, S., and Ogihara, Y. *Journal of Ethnopharmacology* 28 1990: 357.

⁹ See english.people.com.cn/200406/23/eng20040623_147335.html.

¹⁰ WIPO's Madrid system offers, a simple, affordable and efficient way of obtaining and maintaining trademark protection – through one single application – in multiple countries. (77 – including the European Community). In September this year, China was ninth on the list of top filing countries under the Madrid system and third in the list of countries designated in applications originating in other countries.

¹¹ China Trademark (September Edition, 2004) a monthly magazine issued by China Trademark Association(CTA).

of the company name. The image was not only eye-catching but also easy to identify and remember.

Mr. Liu then sought an alliance with a company that had the necessary tangible assets for production – equipment, factory and funding – but lacked the intangible assets his company could provide. This combination paved the way for the trademark-driven wool venture to go to market. Partnerships with other factories followed. Heng Yuan Xiang's added value not only saved advertising and marketing costs for the factories, uniting their products under one brand, but greatly reduced the internal operational costs, allowing more to be invested in further market development. The strategy was successful and Heng Yuan Xiang developed it rapidly. The company moved from producing 75 tons of wool in 1991 to 10,000 tons in 1997. It is now one of the largest enterprises producing and selling wool and wool products.



The company attached great importance to brand name promotion, but targeted it in a very specific way. In 1992, it designed a unique five-second commercial, paying heavily to have it played during a popular television series. The commercial did not use famous stars, but merely cardboard cutouts of the three Chinese characters in the company name plus the image of the little girl. A voice-over repeated the name of the company, once, plus the word "sheep", three times; the sequence was repeated twice in the five-seconds of the commercial. During each TV series, the commercial was repeated several times. The simple, repeated five-second sequence was not only low cost, but also effective in attracting the audience's attention. The commercial became widely known and the company became a household word for wool in China.

Mr. Liu had built on the power of the brand, cleverly using a brand name to create economic value, realizing that, while products can resemble each other, the brand name is unique.

In addition to collaborating with many textile mills – developing markets for their products by using its own image, culture and brand name

– Heng Yuan Xiang uses the franchise style to sell those products. In effect, the company licenses its intangible assets, such as IP, including trademarks, as well as its organization and administration, market base, and human resources to its franchisees. Heng Yuan Xiang is a strong example of the value that can be built up in a well-crafted and creatively used mark.

The Haier group has also built its trademark up into a powerful and valuable asset. Founded in 1984, the company has been developing steadily for 19 years and is now a large-scale international enterprise, well-known both at home and abroad. At first, Haier comprised only two factories producing refrigerators, but it now has 96 products, exported to 160 countries worldwide. It has 18 design centers, 10 industrial parks, 22 overseas factory and production bases, and some 59,000 marketing outlets. In 2003, sales revenue was 8.6 billion yuan and the Haier brand ranked number one in China in terms of value.

From the beginning, the company worked hard to promote its trademarks. The design of the first trademark incorporated the images of the Haier brothers, and extensive adver-

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In January 2004, Haier ranked 95 among the 100 best-known brands worldwide (see World Brand Laboratory).



tising made it popular through much of China, helping to drive the development of the enterprise. By the late '80s and early '90s, Haier refrigerators were already a household brand in China. However, with rapidly increasing exports, the trademark began to display some disadvantages. It was subsequently revised, first to align it with the company name then to center on the Latin – rather than Chinese – spelling of “Haier”. With an increasing number of products, the company created a trademark family – a number of trademarks having a common component – the Haier name – that identifies each mark as being a member of the family.

To help ensure its position in a global market, Haier created design, production and marketing facilities in North America. The company's products are now exported to more than 160 countries, and more than 60 percent of all its products are sold in countries in Europe and North America.

Political and business leaders are increasingly aware of the power inherent in the creativity and innovation of their citizens and employees, both to generate economic growth and to enhance the identity of their company. The intellectual property system that protects assets has an important role to play in determining a company's profile internationally and its competitiveness in the global marketplace.

Haier

 The Haier logo consists of the word "Haier" in a bold, blue, sans-serif font. Below the text is a graphic element consisting of a solid pink square followed by five solid blue circles of equal size, arranged horizontally.

The examples discussed above show how companies are using trademarks in particular to make their mark in international commerce. By using the intellectual property system to protect their brands, companies ensure the continuing value of the elements that support those brands and that help to build up an image and a message that secures customer loyalty and an expanding client base. These elements, which help sustain the attractiveness and

quality of the goods and services offered, can include solid franchising networks, cost-effective management and partnerships, and unique technology.

A good brand strategy can enhance competitiveness to the extent that even a small, family-owned company can expand its business and grow into a player in the global market.



THE "OUTSOURCING OFFSHORE" CONUNDRUM: AN IP PERSPECTIVE

Outsourcing is a simple concept, based on the principles of comparative advantage and division of labor. Outsourcing *abroad* or *offshore*, however, is relatively complex, with significant political overtones linked to the issue of job losses. The interaction of different national business environments in such transnational relationships is a multi-layered process in which diverging legal, economic and social concerns arise. Outsourcing offshore has become a popular corporate strategy to increase profitability, and with it many jobs have moved from developed to developing countries.



Specialists in creating offshore outsourcing alliances stress the savings, which lead to lower costs while maintaining high quality. This is due to a combination of factors, such as high levels of education and skills appropriate to the tasks outsourced. Opponents emphasize the loss of jobs and opportunities for workers who are likely to face persistent unemployment thereafter. Newspapers and magazines in many countries increasingly feature articles highlighting the apprehension and insecurity over outsourcing offshore felt by workers in many sectors.

The issues raised are legitimate. Nonetheless, outsourcing offshore remains a valid business strategy at a time when information technology and the globalization phenomenon are bringing about a rapid integration of economies.

This article will focus on the role of knowledge sharing in offshore outsourcing relationships and the crucial link to intellectual property (IP) in enabling and facilitating it. The nature and critical importance of intellectual property differs in every sector of industry and business. Nonetheless, every type of IP asset – trade secrets, trademarks, industrial designs, patents, copyright and related rights, etc – may be involved at the different levels of outsourcing relationships. However, each type of IP asset is generally governed by its own distinct national law, which varies from one country to another, adding further complexity to managing IP assets in outsourcing relationships, especially if there are many partners in different countries. These issues will become increasingly important to enterprises as the practice of offshore outsourcing continues to grow.

Trends in outsourcing

Outsourcing is generally defined as a means of "... marrying efficiency with innovation, which requires managers to consider the following: cycle time and cost reduction, leveraging scale and scope, reduction of resources, partners as role models for change, and reduction of

"People are realizing that outsourcing is a genuine business innovation. It's a smarter way of delivering value by leveraging workforces all over the world. Today, fine, this is predominantly in India. But it could be in any part of the world."

Mr. Nandan Nilekani, CEO of Infosys, the second largest Indian information technology software outsourcing provider¹.

risk."² Outsourcing refers to an enterprise making an arm's length alliance with one or more entities or enterprises to perform carefully selected operations and day-to-day business processes that were previously done in-house.

Outsourcing arrangements in the manufacturing sector – for example in the apparel, automotive, textile and steel industries – have a long history. The practice, called *contract manufacturing or subcontracting*, was and still is used to reduce overall costs. Over the last decade, the introduction of information and communications technologies (ICTs) has considerably improved the ability to control outsourced activities or processes, whether in one or more distant locations, making outsourcing offshore a more attractive option for many other sectors. ICTs have also improved overall logistics, by allowing for reliable transport to destinations – "just in time" delivery – thus also reducing inventory costs for companies. As many enterprises using subcontractors in this way were

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¹ "An Outsourcing Provider Sets His Sights on Global Giants" by David Kirkpatrick of Fortune Magazine, www.fortune.com.

² "The Collaboration Continuum" by Prahalad, C.K. and Ramaswamy, Venkatram (November 2001).

able to improve their overall competitiveness, they moved on to outsourcing service-related functions. "*Out-servicing*" started with information technology-based tasks, and has evolved to what is known as '*business processing outsourcing*'.

Thus, the two main types of offshore outsourcing that are now on the rise can be grouped under:

- ▶ **Technology services**, which includes information technologies (applications hosting, telecommunications (voice and data), logistics, etc.); electronics (semiconductor chips; high-value microprocessors); electronic commerce, etc; and
- ▶ **Business processing outsourcing**, which deals with differentiated activities, such as finance and accounting, procurement and supply, customer contact (customer relations management), human resources, security, etc.

Many other functions, such as drug and product development in the pharmaceutical and biotechnology industries, especially clinical trials and legal services, are being outsourced offshore. For example, several law firms in the United States of America are outsourcing patent application drafting and prosecution to contractors overseas.³



Value-chain and levels in outsourcing

Outsourcing can be used at any level of the value chain. At the lowest level, labor-intensive unskilled tasks are outsourced to low-wage countries. At the next level, the production or manufacture of a component, or the whole product or service, is outsourced. At the top level, technology development is outsourced, including some or all of the associated research and development (R&D) tasks. Marketing functions may also be partly (for example, market research) or almost wholly (for example, distribution and sales), outsourced.

Protection of IP

Outsourcing requires the sharing of a wide array of proprietary knowledge. Effective management of this sharing of knowledge requires that both parties properly administer their IP while keeping their overall business objectives in view. The benefits of sharing IP assets must outweigh the multiple risks encountered in outsourcing, including the risks linked to the shared IP assets. Such risks include challenges in monitoring and/or dealing effectively with various types of breaches of contract clauses, theft or misappropriation of trade secrets, misuse or loss of other types of IP rights (resulting in partial loss of control of business), poor or inconsistent quality of goods and services (that may affect the reputation or brand image), enforcement of IP rights, parallel imports and grey-market issues.

Basic level of outsourcing relationships

Low-wage human capital: Focus is on labor-intensive tasks, which require unskilled, low-wage labor, then moves on to tasks requiring educated and skilled low-wage labor.

Second level of outsourcing relationships

Manufacture of commodity products: Focus on standardized (and often labor-intensive) production systems for standardized or mature (limited value-addition) products, often reaping economies of scale.

Third level of outsourcing relationships

Outsourcing Development of Technology: Focus on highly skilled science and engineering/technical personnel employed in state-of-the-art R&D setups in lower-wage countries.

³ "Outsourcing Reaches Corporate Counsel" by Jennifer Fried, The Recorder: (08-25-04): "The Andrew Corp., an Orland, Ill., manufacturer of telecom infrastructure equipment, has cut back on its use of American outside counsel by sending some of its patent application work to Balwin Shelston, a law firm in Wellington, New Zealand."

Therefore, an *intellectual property due diligence enquiry* should be undertaken before finalizing any outsourcing plan to safeguard an enterprise's IP, while determining which functions be kept in-house or outsourced. It will include a range of essential issues, as listed in **Box 1**.

After having identified the areas of critical importance to its business, the enterprise can begin the process of finding and selecting one or more partners. It is essential first to assess the economic and political environment of a potential partner's location (country), as well as to consider and understand the country's institutions and legal framework. However, it is important to realize that

there are no 'bullet-proof vests' for the protection of IP.

In many countries trade secrets are inadequately – or not at all – protected by a specific national law; therefore, a primary concern when outsourcing is the potential partner's ability to safeguard confidential information of commercial value against accidental, inadvertent or willful misappropriation, misuse, sabotage, loss or theft.⁵ If the partner cannot be trusted to protect trade secrets, then the risks of outsourcing offshore may outweigh its benefits. Hence, it is crucial to review *the integrated security and/or IP protection program* of the potential outsourcing partner. It is advisable

“Executives were unanimous in saying they are very, very careful about what they offshore and what they don't,” said Rick White, head of U.S. industry group TechNet. “They tend to send things overseas that don't compromise their intellectual property, for obvious business reasons. You would never offshore unless you were sure you were going to get the same kind of quality as you would get elsewhere – and even then, you wouldn't do it if you weren't sure you could protect your intellectual property.”⁴

to carry out a proper investigation to overcome or mitigate the risks of accidental or willful loss or misappropriation of trade secrets.

Box 1. IP due diligence enquiry (Non-exhaustive list)

- ▶ **Identify and document IP:** trade secrets, trademark(s), patent(s), industrial design(s), copyright and related right(s).
- ▶ Identify the **inventor, creator or author** of the IP.
- ▶ Determine **ownership rights** in the identified IP, including joint-ownership issues.
- ▶ Identify **contracts or other agreements** associated with the IP. For example technology transfer or licensing agreements; confidentiality and non-compete agreements.
- ▶ Identify **assigned or licensed** IP used by the interested enterprise(s): IP of third parties and/or by employees. Ascertain the rights granted to each party, and detect existing and potential sub-contracting issues.
- ▶ Identify existing and/or alleged breaches of contract, infringements, disclosure of confidential information and trade secrets.
- ▶ Determine **jurisdiction and enforcement:** applicable laws, enforceability; dispute resolution mechanisms (mediation, arbitration, choice of governing law, applicable jurisdiction).
- ▶ **Termination, expiration or exit clause** of arrangement: Is there an indemnity against infringement?
- ▶ Determine other IP-related responsibilities: Ongoing maintenance and upgrades to the IP; payments of transfer fees; product liability, IP insurance, etc.

IP concerns in negotiating offshore outsourcing arrangements

A firm should only start practical business negotiations if it is comfortable with potential partner's reputation, human, financial and technical resources, and compatibility of corporate culture. Negotiations should focus on the steps needed for both parties to safeguard and ensure proper use, sharing, licensing, development and improvement of the IP of both parties. It should also include discussion of any relevant IP assets of third parties.

Offshore outsourcing contractual arrangements can take several forms. However, most agreements will include the terms upon which both parties agree to commit their tangible and intangible assets for a mutually beneficial outcome. The contractor (the customer) and sub-

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⁴ “Companies determined to retain ‘secret sauce’” by Mike Ricciuti and Mike Yamamoto, *news.com.com*.

⁵ For more information see “Trade Secrets: Policy Framework and Best Practices” and “Trade Secrets are Gold Nuggets: Protect Them” on the SMEs website at www.wipo.int/sme.

contracting enterprises (the vendor/service provider) may have similar financial expectations, but their IP and willingness to share parts of it may vary considerably. For example, a customer with high bargaining power may only outsource secondary IP and retain primary IP, whereas the vendor, in order to perform the requested service might have to share its primary IP.

Both parties are taking risks; so each must determine which IP assets should be kept out of the agreement, and which shared before, during and after the termination of the agreement. Vendors, no matter the country of origin, have legitimate expectations to move up the value-added chain by the transfer of technology. Hence, like the customer, they must also make every effort to assess the IP implications of outsourcing agreements. **Boxes 2 and 3** contain checklists that summarize IP issues of prime importance.

When things go wrong: Challenges in enforcing IP rights

A realistic assessment of the challenges of enforcing IP rights is necessary before entering an offshore outsourcing relationship. The effectiveness of – and time and resources needed for – using the legal and administrative mechanisms for dispute resolution and enforcement of IP rights – for example, to deal with piracy and counterfeiting – vary a lot depending on the country and type of IP asset.

Box 2. IP essentials for the contractor (customer)

- ▶ Account for all IP and associated know-how (whether registered or not, pending registration, or new (in-development) and fix the limits within which these IP assets are to be made available to the vendor.
- ▶ Ensure that the contract expressly deals with ownership issues relating to jointly created IP or over IP assets created by the vendor during the outsourcing relationship: Who will have ownership rights of newly-created information based on customer's IP data?
- ▶ Be aware of any limits on use of licensed third party IP: Can it be sublicensed to a vendor?
- ▶ Require vendor to take all reasonable measures to protect all IP assets, and especially any confidential information, trade secrets, know-how, etc. disclosed during the relationship.
- ▶ In ascertaining vendor's legal responsibilities in relation to outsourced function, make sure that their existing agreements, for example distribution, supply, marketing and research collaborations, do not compromise the IP assets to be shared with them: What would happen if the vendor were to sub-contract part of the outsourced function to independent contractors, consultants, etc.?
- ▶ Identify the vendor's other customers: Are they potential competitors? If so, what additional safeguards may be needed to safeguard the IP assets to be shared with the vendor?

Box 3. IP essentials for the vendor

- ▶ Account for all IP and associated know-how (whether registered or not, pending registration, or new (in-development) and fix the limits within which these IP assets are to be made available to the relationship. Ensure that the outsourcing agreement includes provisions to protect owned (vendor's) IP and associated know-how.
- ▶ Ensure clarity of ownership or joint-ownership of IP assets created or improved during the course of the outsourcing relationship, whether based on customer's IP data or not; seek the maximum leeway to use any such jointly-owned IP assets for other or different outsourced functions with other customers.
- ▶ Set-up an integrated, well-functioning IP and security program to safeguard your own and the customer's confidential information, trade secrets and know-how. Enter confidentiality and non-compete agreements where and when appropriate.
- ▶ Put in place mechanisms to prevent inadvertent 'mixing' of proprietary trade secrets with those of the customer.
- ▶ Be aware of any limits on use of licensed third party IP: whether it can be used for the purposes of the current relationship.

ESTABLISHING IP INSTITUTIONS IN THE LDCs

Part III

A business strategy that employs outsourcing, if well-implemented by following a comprehensive and **integrated IP policy**, will mitigate IP-related risks and improve the competitiveness of the product or services offered by the enterprise. In the final analysis, success in the marketplace and profits will flow in a sustainable manner only if the ability of both customer and vendor to create and co-create value is protected and leveraged by using the tools of the IP system. This will also help to bolster the gains from cost savings, on-time delivery and quality of the product or service offered, which remain the pillars of any successful business enterprise. These arrangements require **thorough initial and periodic IP due diligence inquiries and IP audits**, given the significant nuances involved in such business relationships.



For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at www.wipo.int/sme/en/case_studies/index.htm. The next article in the IP and Business series will discuss patent information.

This is the third article in a series outlining the steps and institutional structures needed to build and modernize intellectual property (IP) systems in the least developed countries (LDCs). This article expands on the requirements for IP institutions as knowledge-based organizations, with particular reference to information systems, and discusses areas such as customer services and financing.

All economies are knowledge-based. But growing economies today depend more than ever on the creation, acquisition, distribution and use of knowledge. This is becoming the most important factor in international competitiveness, in creating wealth and aiding social development.

Well-functioning IP institutions can help an LDC to develop a knowledge-based economy by facilitating access to information and by providing incentives for the creation and application of knowledge. The institutions can best achieve this when built upon the five pillars of a knowledge-based organization, namely:

- ▶ an institutional regime that rewards the efficient use of existing knowledge;
 - ▶ an entrepreneurial spirit;
 - ▶ an educated and skilled workforce;
 - ▶ a dynamic information infrastructure to facilitate communication and processing of information; and
 - ▶ an effective innovation system, comprising a network of enterprises, research centers, universities and other organizations, that can tap into the stock of global knowledge, adapt it to local needs and use it to develop new knowledge or technologies.
- Previous articles in the series looked at some of these pillars. This article will consider the importance of the information infrastructure.

Information systems

A full service **Intranet** is a prerequisite for providing an efficient information network inside a newly-established or reorganized IP institution. The Intranet links people and information in a way that makes people more productive, information more accessible and navigation through the resources of the institution's computing environment virtually seamless. A full-service Intranet takes advantage of the wide variety of open standards and protocols that have emerged from the Internet. It enables the IP institution to, for example:

- ▶ establish a database on IP, which employees and other users can access from their desktop;
- ▶ create a single "virtual library", linking research activities and innovation services in different institutions throughout the country;
- ▶ create newsgroups, so that teams can discuss projects and collaborate via the Web;
- ▶ publish multimedia material on the Intranet, thereby saving thousands of dollars (in scarce foreign exchange) in printing, production and distribution costs of writ-



ten publications, CD-Roms and videocassettes;

- ▶ provide employees with easy access to information, both about the institution and their immediate working environment (including the staff directory), as well as about external developments, such as research and seminars.

Sophisticated information and communication technology involves a level of investment and financial outlay that only those IP offices with reserve funds or profits can afford. However, LDCs can take advantage of the **WIPO IP Offices Automation Program**. The aim of the Automation Program is to create basic, efficient software, which can be used by as many IP offices as possible, with variations to allow adjustment to local needs and peculiarities. Pilot projects run by WIPO with two regional offices in Africa (OAPI and ARIPO) have proved very successful.

The WIPONET project can also make a major contribution to the modernization of IP institutions in LDCs. The project offers the following services to all IP offices in WIPO member States:

- ▶ **WIPONET e-mail service** provides users (i.e., registered staff of the IP offices) with an Internet e-mail address and mailbox. This is accessible via a web browser, such as Internet Explorer, or through a mail client, such as Outlook Express, on the user's workstation.
- ▶ **WIPONET web hosting service** provides the infrastructure for IP

offices to publish their own web sites. Each office is responsible for the content, preparation and maintenance of its site.

- ▶ **File Transfer (FTP)** is the service through which the offices publish, maintain and manage their WIPONET-hosted web pages and content. WIPONET FTP is also available to IP offices, which require a file and document transfer facility for their IP applications and information sharing needs.
- ▶ **Discussion groups** offer an online forum for discussions among WIPONET registered users on topics of IP-related interest.
- ▶ **User directory service** provides information concerning WIPONET users.

Customer services

In order to foster the creativity required for a knowledge-based economy, IP institutions have to establish a framework of transparent, stable rules governing IP rights. Moreover, they must ensure that these rules are enforced fairly, with no exceptions or special privileges. To administer these IP protection systems, IP institutions are required to provide a wide range of services and information to customers in industry, universities, research centers and the business community. The table on page 19 summarizes the different types of IP, in relation to which the institution must provide services. It also lists the international agreements, which govern protection of the different forms of IP.



For reasons of geography (size or remoteness of certain provinces) or language (multilingual population), some LDCs may have to set up subsidiary branches of their IP offices. The subsidiary branches facilitate the provision of information and advice to customers across the country. They do not usually grant titles of protection, such as patents or trademark registration, which remains the preserve of the central IP office.

Other services provided by the national IP institution may include training events, such as workshops and seminars. They may organize examinations and oversight for patent attorneys. They may also establish "liaison" bureaus to enable university researchers to search CD-ROM, Internet and commercial online databases, thus facilitating the role of universities in technology transfer.

Examination services: form versus substance

When setting up or modernizing IP institutions, an LDC may have to consider the mandate of the national IP office in relation to the examination of patent applications. The question is whether this should be limited to examination as to form, or should also include examination as to substance.



Instruments and Agreements for Protecting Rights¹

Type of IP	Instruments of protection	Protected subject matter	Examples of fields of application	International agreements
Industrial property	Patents and utility models	New, non-obvious inventions with industrial utility	Manufacturing, agriculture	Paris Convention (1883) Patent Cooperation Treaty (1970) Budapest Treaty (1977) Strasbourg Agreement (1971) [Agreement on] Trade-Related Aspects of Intellectual Property Rights (TRIPS) (1994)
	Industrial designs	Ornamental designs of products	Automobiles, apparel, construction tiles, others	Hague Agreement (1979) Locarno Agreement (1968) TRIPS (1994)
	Trademarks	Identifying signs and symbols	All industries	Madrid Agreement (1891) Nice Agreement (1957) Vienna Agreement (1973)
	Geographical indications	Identifying place names	Wines, spirits, food stuffs	Lisbon Agreement (1958) TRIPS (1994)
Artistic and literary property	Copyright and neighboring rights	Original expressions of authorship	Publishing, electronic entertainment, software, broadcasting	Berne Convention (1886) Rome Convention (1961) Geneva Convention (1971) Brussels Convention (1974) WIPO Copyright Treaty (1996) WIPO Performances and Phonograms Treaty (1996) Universal Copyright Convention TRIPS (1994)
<i>Sui generis</i> protection	Integrated circuits	Original designs	Computer chip industry	Washington Treaty (1994) TRIPS (1994)
	Database protection	Databases	Information processing	European Community (EC) Directive 96/9/EC
	Plant breeders' rights	New, stable, distinct varieties	Agriculture, food	International Union for the Protection of New Varieties of Plants (UPOV) (1991) TRIPS (1994)
Trade secrets	Laws against unfair competition	Business information held in secret	All industries	TRIPS (1994)

The latter requires skilled professionals, engineers or scientists, with specialist knowledge of each technical branch. The examiners must compare the invention with the state-of-the-art in order to determine whether it is sufficiently novel to be patentable. They require access to extensive collections of patent documents, scientific books and periodicals. This all demands considerable investment of time, human resources and funding.

Even though much has been done to improve access to patent documentation, examination as to substance remains a difficult task. It is not surprising that IP organizations in many developed countries still face backlogs. Some have opted not to carry out examinations as to substance. Instead the examiners' role may be limited, for example, to determining whether the invention is contrary to public order or morality; or whether it is capable of in-

dustrial application. LDCs which are members of the WIPO-administered Patent Cooperation Treaty (PCT), however, can cut costs by allowing PCT applications to be accompanied by the international preliminary reports prepared by one of the world's leading industrial property offices.

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¹ Source: Keith E. Maskus, *Intellectual Property Rights in the Global Economy*, Institute for International Economics, Washington, D. C., August 2000, pp. 37-38, with some additions.

Sources of financing

In addition to government funding and revenue from fees, a national IP institution can boost its income by charging for patent documents and searches. Other activities, such as providing training and seminars for practitioners and businesses, may also generate revenue.

The patent department should ideally be a significant source of funding for the institution. The fees charged by the IP office for patent applications and search reports should cover its running costs, including staff salaries. The trademark and industrial design departments should also be self-financing from registration fees and reports. If, as happens in France and Sweden, the IP office also handles the registration of corporations, then this will provide an additional source of revenue.

Establishing a National IP office – Ethiopia's experience

The role played by an IP system in promoting the transfer of knowledge, foreign direct investment and local innovation went unrecognized in Ethiopia until recently. Concerted effort to develop a legal and institutional framework for the protection of IP only began in 1995. Today, Ethiopia has in place relatively comprehensive laws covering the main fields of intellectual property law, and has established IP institutions capable of making a real contribution to social and economic development.

The Ethiopian Intellectual Property Office (EIPO) was established in April 2003. Previously, the government had dealt with IP in a fragmented manner, with patents handled by the Science and Technology Commission, trademarks by the Ministry of Trade and Industry, and copyright by the Ministry of Culture. EIPO brought everything together under one roof, thus facilitating knowledge-sharing and streamlining administrative procedures. The government granted EIPO the necessary powers to direct and implement the country's IP policy. EIPO was able to map out a three-year strategic plan with clear goals, ranging from financial self-sufficiency to establishing a copyright collective management society in Ethiopia.

The Office has open lines of communication, which make full use of WIPONET, Intranet and e-mail services. The WIPO IT Automation section also helped EIPO to computerize and expand their patent and trademark customer services.



Having set-up networks with other government ministries, EIPO has been able to take administrative and legal measures to fight counterfeiting and other IP rights infringement, which had been threatening the country's emerging copyright industry. When EIPO was established, piracy was rampant in Ethiopia. Pirates smuggled duplication equipment into the country unchecked, and used it to copy movie videos and music cassettes by the thousands. EIPO tackled the problem head on, working closely with the Ministries of Culture, Justice, Trade and Industry, and Inland Revenue, as well as with rights holders. Joint EIPO action with customs officers and the police resulted in confiscation of counterfeit goods and duplication equipment, and fines for the culprits.

In May this year Ethiopia established a National Intellectual Property Council. The Council will further facilitate coordination of IP policy and enforcement, and will work on the integration of IP into national development planning. Much remains to be done, but Ethiopia has put in place many of the blocks required to build effective IP institutions, as described in this series of articles. The EIPO's efforts are already delivering success in terms of improved IP protection and increased patent activity. The Ethiopian experience provides a positive example of an LDC, which has set and attained the goal of building an effective IP institution.



REPUBLIC OF KOREA CREATES FUNDS-IN-TRUST TO ENHANCE COOPERATION

WIPO Director General Kamil Idris met the Commissioner of the Korean Intellectual Property Office (KIPO), Mr. Jong-Kap Kim, on October 1 to finalize a cooperation agreement for strengthening intellectual property (IP) systems in developing and least developed countries. Under the agreement, KIPO committed an amount of one billion Korean Won (over one million Swiss Francs) for these activities in the 2004-2005 biennium. This will take the form of a funds-in-trust (FIT) with WIPO.



Photo: Mercedes Martinez Dozal

The Director General meets with the KIPO delegation

As part of the arrangement KIPO, in collaboration with WIPO, will make specialized software available to national IP offices in developing countries, which receive international patent applications under the Patent Cooperation Treaty (PCT). The software will facilitate the handling of these applications in both electronic and paper form. The deployment of the system, known as PCT-Receiving Office Administration (PCT-ROAD), is expected in the first half of 2005.

"We welcome the Republic of Korea's offer to make available, free-of-charge, this software which will make the system more accessible to applicants from developing countries," said Dr. Idris. Commissioner Kim said that PCT-ROAD had resulted in significant efficiency gains for KIPO. "We look forward to sharing this product with our counterparts in other countries to support them in the delivery of their services," he added.

Assisting developing countries with e-filing

In February 2004, PCT-SAFE client software, available free-of-charge from WIPO, made PCT e-filing accessible to users worldwide. PCT applicants who use the software also benefit from a reduction in e-filing fees of up to 300 Swiss francs (CHF). Nevertheless, many PCT contracting states from developing countries have been unable to take advantage of electronic filing due to limitations in their resources and information technology infrastructure. As a result, applicants using the PCT receiving offices in these countries have not been able to enjoy the benefits of electronic filing.

In a move to ensure timely delivery of its service, KIPO has developed its own receiving system for e-filing and its own business processing system. Both have been available to Korean applicants since January. KIPO, in cooperation with WIPO, is now adapting its system to make it available to all PCT receiving offices, thereby making PCT e-filing accessible to all IP offices. Once PCT-ROAD is fully operational, all IP offices will be able to download the free software from the websites of WIPO and KIPO.

PCT-ROAD is a stand-alone system designed to handle electronic international applications filed on physical media, such as CD-R or floppy diskette, while also preserving the option of filing on paper or using PCT-EASY. Once PCT-ROAD is installed in patent offices, PCT applicants will be able to benefit from the CHF 300 e-filing fee reductions when filing with their own receiving office.

Major features of the system include its ability to:

- ▶ process PCT electronic filings received on physical media or other means;
- ▶ check that the international application conforms to the legal and technical requirements under the PCT;
- ▶ assign a receipt number and issue confirmation of receipt of an international application;
- ▶ upload filings from physical media such as a CD-R to a database on a PC workstation, so that the Home Copy and Record Copy requirements can be met; and
- ▶ process international applications (Home Copy).



TURKISH PATENT INSTITUTE: PROMOTING PARTNERSHIPS

PUBLIC
OUTREACH

On October 1 Turkey deposited instruments at WIPO for ratification of both the Geneva Act of the Hague Agreement Concerning the International Deposit of Industrial Designs and the Trademark Law Treaty. The two treaties will enter into force in Turkey on January 1, 2005. Over the last ten years, Turkey has completely overhauled its intellectual property (IP) system. With new industrial property legislation in place the Turkish Patent Institute (TPI) is now focusing its efforts on increasing public awareness of IP and disseminating more information on the IP system. TPI's *Patent Information and Awareness Project*, launched at the beginning of the year, aims to reach out to creators, inventors and industry with information on how to use the industrial property system to generate economic value from the results of their work. TPI explained to the WIPO Magazine how they went about it.

Preparing the ground: productive partnerships

TPI was quick to appreciate the value of forging close links with potential partners from the private and public sector. At an early stage in the development of their awareness project, TPI created a sense of shared ownership by bringing in representatives from industry, business and scientific research institutes. This is very much the IP partnership model advocated by WIPO. Together the partners defined what kind of information was needed to help Turkish

innovators and scientists exploit the patent system more effectively; and how this information should be delivered. The partners contributed their own skills and expertise to the work done by TPI and, through their contacts, helped TPI to reach a broader audience.

TPI established mutually beneficial partnerships with a range of institutions. For example, researchers and managers at the *Scientific Technical Research Council of Turkey* (TUBITAK) help TPI refine the services it offers to researchers; while its members benefit from TPI's training on conducting patent database searches and on developing patent strategies. The *Small and Medium Industry Development Organization* (KOSGEB) has many agents in industrial centers who value TPI's training in patent-related issues and who, in exchange, provide TPI with more in-depth knowledge of the needs of specific sectors of industry. A similarly productive exchange of information and experience exists between TPI and experts at the *Union of Chambers and Commodity Exchanges of Turkey* (TOBB), whose members represent both industry and trade.

Gearing up: restructuring and training

To prepare for the launch of their new public awareness campaign, TPI put in place a new *Promotional Team* within their central Information Department. The team is comprised of experts from across the Institute, specializing in the different areas of industrial property – patents, trademarks, and industrial design.

Outside consultancy services were brought in to equip the team with the communication skills they would need to run an effective campaign, including media handling, events management and public presentation techniques.

Meanwhile, TPI turned their attention to their six *Information Centers*, already established in five cities across Turkey. Network connections will link the centers to the TPI main office, giving direct access to wider information resources and to industrial property professionals. TPI anticipated that a successful public awareness campaign would lead to increased demand for the patent information and searching services provided by the Information Centers. In order to enable staff at the Information Centers to respond more effectively to the needs of their diverse clients – inventors, researchers, businessmen, lawyers – TPI devised an enhanced staff training program.

Training and education are central to TPI's IP information strategy. To this end, the Institute is investing extensively in a new, industrial property *training center* in Ankara, designed to cater not only for its own staff, but also for the wider audience. The center will provide:

- ▶ basic, intermediate and in-depth technical training for TPI staff members at all levels of the organization; including twice yearly refresher days to update staff on the latest developments in the patent arena;



Character *Sinai Hakki Bey* - Mr IP - used in TPI's first promotional campaign



Participating in fairs such as CeBIT Bilisim EURASIA, the 73rd Izmir International Fair, the MUSIAD Fair and the ADesign Fair provides TPI with ideal opportunities to reach its target groups and promote its services.

- ▶ professional training for newcomers to the IP profession;
- ▶ continuing legal education for IP professionals; and
- ▶ education on industrial property issues for individuals from universities, research institutions, corporations, chambers of commerce and other groups.

Staff development at the center has already started with a one-week course covering the use of patent databases and procedures in the national patent system, the European Patent Convention (EPC), and the Patent Cooperation Treaty (PCT).

On the higher education front, TPI has been in discussion with universities and with the Turkish Council of Higher Education (YOK) with a view to initiating a **university Masters degree** program in IP. TPI will also publish an **academic journal** on industrial property matters.

Launching the campaign: communication in action

In February 2004 TPI's Promotional Team launched the awareness campaign aimed at helping the general public and potential user groups gain an understanding and acceptance of the industrial property system, and at assisting them in its efficient use. The campaign uses a range of media and methods to get the message across to different audiences. These include:

- ▶ press conferences and briefings on IP success stories;
- ▶ radio jingles and television spots;
- ▶ magazine and newspaper advertisements;
- ▶ participation in exhibitions and trade fairs;
- ▶ information brochures and posters;
- ▶ promotional give-aways, such as calendars, key rings, meeting bags and mousepads;

- ▶ video presentations, featuring the animated character **Sinai Hakki Bey** – Mr. IP;
- ▶ mailings.

TPI has also used its links with universities, chambers of commerce and public bodies to organize seminars throughout the country, thus boosting their one-to-one connection with the end-users of the industrial property system. Local enterprises are invited to discuss face-to-face with TPI experts their questions and the problems they experience when using the industrial property system. During the first five months of the campaign, some 5,000 participants attended TPI seminars.

The campaign has just begun, but will continue to evolve. Drawing on feedback from customer surveys, the Institute will continue to increase its services and to hone its promotional activities. Based on the evidence so far, these activities will result in a greater understanding of intellectual property throughout Turkey, as well as a more informed – and efficient – use of the IP system.



CONFERENCE ON ACCESSION OF EUROPEAN COMMUNITY TO MADRID SYSTEM



WIPO hosted an international conference on October 7 to explore the benefits offered by the link between the Madrid Protocol for the International Registration of Trademarks and the Community Trademark System (CTM). This link, which became operational on October 1 when the European Community (EC) accession to the Madrid Protocol took effect, offers trademark owners maximum flexibility in the process of obtaining international trademark protection.

In his opening remarks to the conference, which was jointly organized by WIPO, the Office for Harmonization in the Internal Market (OHIM) and the European Commission, WIPO Director General Kamil Idris noted that with 77 contracting parties, the evolution and development of the Madrid system is continuing on track. "The Madrid system offers businesses and market sector interests a simple, affordable and efficient way of obtaining and retaining the registration of their trademarks," he said.

Ambassador Carlo Trojan, Permanent Representative of the European Commission Delegation in Geneva, spoke about the link between the two systems and noted that "this will be a useful instrument for users, offering companies around the world a new alternative to protect trademarks in Europe and in other countries like China, Japan or the USA." He applauded the success of the Madrid Protocol and welcomed the WIPO

General Assembly's endorsement of a decision to convene a Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT).

Mr. Wubbo de Boer, OHIM's President, told participants that the accession of the EC to the Madrid Protocol had far-reaching ramifications, and that thanks to intense cooperation between WIPO and OHIM, it had been possible to implement the new arrangement smoothly. He said the recent positive developments within the Madrid Protocol and its widening membership were good news for trademark owners interested in Europe.

The Conference considered the practicalities of the new enhanced arrangements resulting from the accession of the EC to the Madrid Protocol, and outlined the implications for trademark owners and their trademark strategies. A roundtable discussion explored implications of the EC's accession from a business perspective.

Madrid developments

The accession of the European Community to the Madrid Protocol took effect on October 1. It is the first time that the EC has signed up to a WIPO-administered treaty, and indeed is the first accession by an intergovernmental organization, as a bloc, to a WIPO treaty. The consequent link between the international system and the CTM means that trademark owners from member countries of the Madrid Protocol are able to designate the EC in their application for international trademark registration. If protection is not refused by OHIM, protection of the trademark will be effective in all 25

EC member states as if it had been applied for or registered directly with OHIM. Trademark owners will also be able to use a trademark application filed or registered at OHIM as the basis for an international application under the Madrid Protocol.

The accession of the EC to the Madrid Protocol is the third major development in the international trademark system in the past year. The first was the accession of the United States of America to the Madrid Protocol in November 2003 (see *WIPO Welcomes Accession by U.S. to Madrid System*, WIPO Magazine Sept.-Oct. 2003), and the second relates to the addition, in April 2004, of Spanish as the third working language of the Madrid system (see *A New Working Language for Trademark Registration*, WIPO Magazine March-April 2004).



AFRICAN TECHNOLOGY AND INTELLECTUAL PROPERTY DAY

African Technology and Intellectual Property Day marked its fifth year on September 13. The event was celebrated for the first time in 2000, a year after the Organization for African Unity – today's African Union – passed a resolution declaring September 13 African Technology and Intellectual Property Day. September 13 was selected as it marks the day that the *Organisation africaine de la propriété intellectuelle* (OAPI) was created in 1961.

The celebration aims to

- ▶ encourage African creators and innovators to take advantage of IP rights to protect the fruits of their work;
- ▶ raise awareness among African researchers of the value of their work; and of the importance of finding ways to capitalize on traditional African knowledge, as well as to integrate foreign technical developments into their work;
- ▶ build greater awareness in the African economic sector of the potential of IP to contribute to the cultural and economic development of the continent; and
- ▶ stimulate foreign direct investment in African industry and culture.

OAPI sets the example for the national IP offices by organizing media campaigns and a host of activities to mark the event. The Organization displays banners around the city of Yaoundé (Cameroon), the location of its headquarters, organizes workshops, and holds "open door"



Algeria's President Abdelaziz Bouteflika with INAPI's Director General Amor Bouhnik and the Director General Hakim Touassar, Office national du droit d'auteur et des droits voisins

days. It distributes information about intellectual property in layman's language to visitors, and gives interviews to journalists. OAPI also contributes funds to enable national IP offices to organize events to mark the day.

The activities organized by the national offices focus on promoting the importance of IP in encouraging economic growth and on the fight against counterfeiting. The activities include media campaigns, debates, cultural events, public destruction of counterfeit goods, and exhibitions of the works of local inventors and innovators. Awards are given to the best inventors at these expositions, who are usually invited to represent their country at the *Salon Africain de l'invention et de l'innovation technologique* held by OAPI every two years.

The Algerian National Institute of Industrial Property (INAPI) takes full advantage of such events to inform and remind inventors and the general public of the importance of the IP system. In the weeks leading up to September 13, INAPI places simple, direct articles in local papers explaining the various forms of

IP and its protection, discussing the fight against counterfeiting and highlighting why the IP system must be respected for the protection of consumers and inventors alike. This year Algeria's President, Mr. Abdelaziz Bouteflika, visited the invention exhibition held on September 13. In his public address on the technological gap that exists between countries, he singled out the lack of incentives and of resources for research and development as major factors contributing to the gap. He declared that Africa could no longer afford to ignore the importance of IP, which has been key to the development of so many countries.

IP offices in African countries are increasingly taking advantage of World Intellectual Property Day (April 26), African Technology and Intellectual Property Day and their own, national IP day to promote and disseminate the benefits of IP to a wide audience. Every year, a growing number of countries are reporting on their activities to mark these events as the celebrations are integrated into local culture.



NEWS ROUNDUP

WIPO Welcomes Spain's Support for Development Projects

WIPO Director General Kamil Idris held talks on September 29 with Ms. Teresa Mogín Barquín, the recently appointed Director General of the Spanish Patent and Trademark Office (SPTO), to discuss implementation of the memorandum of understanding (MoU) between WIPO and SPTO, which was signed in July. The MoU establishes a funds-in-trust (FIT) valued at Euros 245,000 to finance joint cooperation projects in the Ibero-American region. It includes a joint WIPO, SPTO, and European Patent Office (EPO) initiative, known as LATIPAT, to enable the electronic publication of data on patent applications from Latin American countries. LATIPAT's aim is to enhance the global dissemination of patent information in the Spanish language.

Activities to be implemented using the FIT include an initiative in cooperation with WIPO, SPTO, EPO and countries from the Central American Isthmus (Costa Rica, El Salvador, Guatemala, Nicaragua, Panama and the Dominican Republic) to harmonize and streamline patent procedures in that region. It also includes a training program for judges in the region; promotion of the use of the Patent Cooperation Treaty (PCT), particularly within existing country members (Brazil, Colombia, Costa Rica, Cuba, Ecuador, Nicaragua and Mexico); and plans to finance the translation into Spanish of the advanced level of the International Patent Classification (IPC), which is currently published in English and French only.

IENA 2004, Germany

Young German inventors from the Maristengymnasium Fuerstenzell school show their mobile phone charger powered by bicycle dynamo at the Nuremberg "Ideas-Inventions-Innovation" fair (October 28 to 31). The annual fair attracted 650 inventions from 29 countries. The Grand Prize IENA 2004 was won by Wilfried Brings for a bone cement injection system with tin connector. A WIPO award for the best youth invention went to Julia Oberland, Nadja Berger and Stefan Heise for a waste-water treatment fungus. Innovation is thriving in Germany: the German Patent Office estimates that 48,500 German patent applications were filed in 2004, plus a further 9,500 foreign applications.



Pedal power

The Director General Receives Order of Oman

The Order of Oman was conferred upon WIPO Director General Kamil Idris by His Majesty Sultan Qaboos bin Said and presented to the Director General at a ceremony in Oman on September 25 by His Highness Sayyid Fahd bin Mahmoud Al Said, Deputy Prime Minister for the Council of Ministers. Dr. Idris received the distinctions in recognition of his efforts to promote the protection of intellectual property and his support to the development of Oman in this area.

His Highness Sayyid Fahd noted the important role played by WIPO in ensuring protection for cultural heritage and traditional knowledge. Dr. Idris said Oman had played a key role in promoting regional and international awareness of the importance of intellectual property, in particular its relationship to traditional knowledge and folklore.



ARPAD BOGSCH (1919-2004)

In Arpad Bogtsch, who passed away on September 19, 2004, the world of intellectual property has lost the founding father of modern intellectual property, the man who was largely responsible for making an esoteric legal field, once reserved for specialists, into a recognized instrument at the service of economic development, the encouragement of innovation and creativity, and the fight against counterfeiting and piracy.

Arpad Bogtsch was born in Hungary in 1919 and became a citizen of the United States of America in 1959; he studied law, and was awarded two doctorates, one in Hungary and one in Paris, and a master's degree in the United States. After having practiced at the bar in Hungary, he held the posts of legal officer at UNESCO in Paris and thereafter of legal counsellor at the US Copyright Office in Washington. In 1963 he arrived in Geneva, where he became Deputy Director of the United International Bureaux for the Protection of Intellectual Property (BIRPI), the predecessor of the World Intellectual Property Organization (WIPO), and then Deputy Director General of the latter Organization when it came into being in 1970. After that, for the 25 years from 1973 to 1997, he was Director General of WIPO and also Secretary General of the International Union for the Protection of New Varieties of Plants (UPOV), WIPO's sister organization.

It was under his influence that BIRPI, which was a legacy of the nineteenth century, transformed into WIPO, an organization for the second half of the twentieth; that WIPO joined the United Nations family in 1974, thereby taking on the universal dimension that it had previously lacked; and that it grew considerably thereafter.

Arpad Bogtsch launched a multitude of ground-breaking initiatives, notably by advocating the conclusion and revision of numerous international treaties, by launching an ambitious program of assistance to developing countries, by modernizing the system for the international registration of marks, by creating the WIPO Arbitration and Mediation Center and by presiding over the baptism of ATRIP, a world association of intellectual property teachers and researchers. But above all he was the inventor of the Patent Cooperation Treaty or PCT, the remarkable success of which made WIPO into an international organization unique in the United Nations system in that it is, to a very predominant extent, financed by the fees that the private sector pays for the use of the PCT.

In addition he contributed extensively to providing China with a modern intellectual property system and bringing that vast country into the international intellectual property community. Similarly, when the Soviet Union broke up, he actively assisted the countries that emerged from it to create their own national systems and, as far as most of them are concerned, to build up a common patent regime through the Eurasian Patent Convention.

Arpad Bogtsch was an exceptional leader, albeit a demanding one, indeed a very demanding one, but truly exceptional. The example that he set, impossible though it might have been to follow, was a formidable stimulus for us all. Not only was our top man able, through patient and often hard-hitting diplomacy, to persuade the delegates of Member States and organizations of the rightness of his proposals, but he was also awe-inspiring for his thorough knowledge of the subjects on which he led discussions.

Internally too, his profound knowledge of issues very often had the effect, as a former staff member recently reminded me, of his knowing more on the subject on which a colleague was making a proposal to him than the colleague did himself. Indeed what he did was spot immediately, to our great discomfiture, the slightest defect in the dossiers that we submitted to him.

Arpad Bogtsch's professional and human qualities earned him appreciation, admiration and respect throughout the world. Evidence of this is the score of decorations and more than a dozen honorary doctorates awarded him in the course of his career, as well as the honorary memberships bestowed on him by the International Association for the Protection of Intellectual Property (AIPPI), the International Literary and Artistic Association (ALAI) and the International Federation of Industrial Property Attorneys (FICPI). All those who have had the opportunity to come into contact with him have been left with the memory of an extraordinary personality.

The heartfelt sympathies of the entire international intellectual property community go to his widow Adèle, herself a former WIPO colleague, to his children Sylvia and Henry, to his grandchildren and to his whole family.

François Curchod
former Deputy Director General of WIPO
Translation by Patrick Andrews

CALENDAR of meetings

NOVEMBER 8 TO 11

GENEVA

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

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

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

NOVEMBER 17 TO 19

GENEVA

Standing Committee on Copyright and Related Rights (Twelfth session)

The Committee will continue its discussions on the protection of broadcasting organizations and on the possible convening of a diplomatic conference.

Invitations: As members, the States members of WIPO and/or the Berne Union, and the European Community; as observers, certain intergovernmental and non-governmental organizations.

NOVEMBER 29 TO DECEMBER 10

GENEVA

IPC Revision Working Group (Twelfth session)

The Working Group will continue consideration of IPC revision proposals and will discuss various projects aimed at the implementation of IPC reform results.

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

2005

JANUARY 31 TO FEBRUARY 4

GENEVA

Preparatory Working Group of the Committee of Experts of the Nice Union for the International Classification of Goods and Services for the Purposes of the Registration of Marks (Twenty-fifth session)

In the framework of the revision period, the Preparatory Working Group will consider and make recommendations on proposals for changes to the eighth edition of the Nice Classification, which will subsequently be submitted to the twentieth session of the Committee of Experts of the Nice Union for adoption.

Invitations: As members, the States members of the Preparatory Working Group of the Committee of Experts of the Nice Union; as observers, the States members of the Paris Union, which are not members of the Preparatory Working Group, and certain organizations.

FEBRUARY 14 TO 18

GENEVA

Committee of Experts of the IPC Union (Thirty-sixth session)

The Committee of Experts will complete consideration of amendments to the Seventh edition of the IPC and will finalize other preparations for the publication of the reformed IPC.

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

APRIL 18 TO 22

GENEVA

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

The Committee will work on finalizing the basic proposal to be presented to the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT), to be held in Geneva from March 13 to 31, 2006.

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

APRIL 25 AND 26

GENEVA

Conference on Dispute Resolution in International Science and Technology Collaboration

An event in which speakers from key institutions involved in science and technology collaboration will discuss their experience in structuring collaboration, areas of potential disputes and their approach to dispute resolution.

Invitations: Open to interested parties against payment of a fee, and as members, the States members of WIPO.

APRIL 25 AND 26

GENEVA

Preparatory Meeting for the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT)

The Preparatory Meeting will discuss and adopt the draft Agenda for the Diplomatic Conference, as well as the draft rules of procedure and the draft letters of invitation to the Diplomatic Conference. **Invitations:** As members, the States members of WIPO; as observers, other States and certain intergovernmental organizations.

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