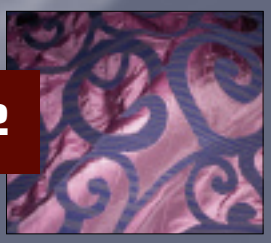
WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

WIPO MAGAZINE

GENEVA - APRIL 2008 - No.2

GREEN INNOVATION

IP AND TEXTILES
An SME on the Silk Road



WORLD INTELLECTUAL PROPERTY DAY 2008

Message from Kamil Idris, Director General, World Intellectual Property Organization (WIPO)

World Intellectual Property Day is rapidly growing in popularity. Since its launch, eight years ago, increasing numbers of governments and organizations are joining WIPO in the annual celebrations on April 26.

The man or woman in the street might wonder just what makes intellectual property worth all this effort. What, they might ask, do the workings of copyrights, patents, industrial designs or trademarks have to do with the really big issues, like how to stop global warming; or with the things that add spice to life, like watching their favorite athletes perform in this year's Olympics. The answer is that, without intellectual property rights, many new technologies developed to tackle global problems would never see the light of day and the great sporting events, which entertain and unite us, would not be broadcast into homes across the globe.

On World Intellectual Property Day we are celebrating not only the enormous power of human creativity, but also the intellectual property rights that help to fuel and channel it, making it such an important driving force for economic, cultural and social development.

The ingenuity of our species has propelled us from the invention of the first wheel, to effortless air travel and the latest generation of clean fuel technologies. It has led us from the creation of drawings on a cave wall, to the printing press, and on to the Internet, which puts the world literally at our fingertips. It has given us technical advances which allow pole-vaulters to soar ever higher, footballers to shoot ever further and millions of ordinary people to have a level of well-being which would have been unimaginable only a few generations ago. WIPO is committed to using intellectual property as a means of harnessing and spreading the power of human creativity and innovation so that the people of every country, of every community, can share in their bounty.

CONTENTS

WIPO MAGAZINE ISSUE 2008/2

Editor: Elizabeth March
Assistant Editor: Sylvie Castonguay
Graphic Designer: Sheyda Navab

Acknowledgements
From Cows to Kilowatts – Joseph Adelegan, GNEEDR
Pursuing the P2P Pirates – Victor Vazquez, WIPO
Debated Heroes from the Deep Sea – Tony Taubman, WIPO

WIPO Contributors
Teaching of IP – Larry Allman, WIPO

Cover photography
Histioteuthis by L. Madin, NOAA

IP STRATEGIES IN THE TEXTILE INDUSTRY: AN SME FACES THE CHALLENGE

The last issue of the WIPO Magazine *discussed industrial design protection in Europe's fashion and textile industry (Design Law in the European Fashion Industry). This article picks up the theme by looking at the IP strategies of a small textile company in San Leucio, Italy. Gustavo De Negri & Za.Ma faces a huge challenge from Asia's silk-producers. Their answer: innovation and quality.*

The silk fabrics of Gustavo De Negri & Za.Ma grace the homes of the rich and famous, presidential residences, royal palaces and luxury yachts. De Negri makes the fabrics which are presented by renowned interior decorators at the prestigious *Maison & Objet* fair in Paris as their own. De Negri's client list includes *Ralph Lauren Home* and CHRISTOPHER HYLAND Inc. – the largest purveyor of luxury Euro-pean textiles in the world.

Photo: WIPO/S. Castonguay

Gustavo De Negri – a proud father with the textile samples from his last collection displayed at the 2008 *Proposte* fair.

Gustavo De Negri, who founded the company in 1998, is the fifth generation of his family in the silk-making trade. *WIPO Magazine* asked Signor De Negri how his small enterprise of 42 employees is competing with inexpensive, attractive Asian fabrics that are flooding the European market.

The company's strategy is threefold: a constant self-renewal by creating new fabric designs; technical innovation in the mill's mechanical, chemical and finishing processes; and the creation of a strong collective trademark for silk fabrics from San Leucio.

Dress for the house

The previous generations of the De Negri family made silks for the ceremonial robes of popes and cardinals at the Vatican as well as for Europe's royal families. Without disrupting this service, Gustavo has extended the range – and with it the reach of his company – by branching into high end decorative fabrics for home furnishing. He offers what he calls "a tailor-made dress for the house." Every De Negri design is unique and produced in limited edition.

De Negri uses no standard weaves. Every creation results from months of research and development into the design, colors, weaving and finishing. Gustavo De Negri launches the creative process by studying both interior decoration and fashion trends. He then discusses his ideas with his two designers to choose a direction. Over the months that follow, the designers research past designs, works of art, coats of arms, etc. in order to create two or three novel designs, which De Negri tests with his client base. From their feedback, a design is selected and a prototype produced to test different qualities of fabric, color and weaving.

The company launches its new prototype designs every January at the *Proposte* trade fair in Como, Italy, where the world's interior decorators select the fabrics that they would like to make their own. De Negri then works with them to individualize the designs to their needs in time for the September *Maison & Objet* fair in Paris.

"It can take up to three years for a prototype to come to *Proposte*," Gustavo explains. "And sometimes, when it gets there, it is ahead of its time. It may take another two to three years for designers to catch on, before it becomes a must have item." But he remains firm in his belief that innovative designs are a key part of the De Negri success.

Technical innovation

The other main element is technical innovation. De Negri uses trade secrets to protect its modifica-

From Royal Colony to Quality Mark

San Leucio is a small hamlet that runs a few short streets downhill from what was once a royal hunting lodge. But what it lacks in size, it makes up in history and prestige. San Leucio has a rich heritage in the creation of exclusive tailor-made silk fabrics – a reputation for excellence that its founding families are seeking to protect by creating a collective mark for the village.

Photo: WIPO/S. Castonguay

A monument to silk in the Belvedere courtyard. Today, the Belvedere houses a silk museum. Both the Belvedere and the borough of San Leucio are on the UNESCO World Heritage list.

In 1750, King Ferdinand Bourbon selected San Leucio for an experimental model of production. He transformed his royal hunting lodge, the Belvedere, into a silk production site with industrial buildings, residences for the workers and a public school – the first in Italy – for their children. The King's project was to create a vertical system that went from the silk cocoon to the finished product – the very best Europe could offer. He sought the most advanced technologies and artisans and brought them to San Leucio: brocade makers from Lyon; loom makers from Milan, expert silk makers from Tuscany.

In 1789, a Royal edict established San Leucio as the "Silk Weavers Royal Colony" with its own code of law. Its members had a privileged status, a modern social security system and compulsory schooling from the age of six. Dowries were abolished and parents were forbidden to interfere in their children's love lives, but with one limitation: only those who could work silk could get married. Thus the art was handed down from one generation to the next.

So was born San Leucio's reputation for excellence. A standard of quality maintained after the industry was privatized and became family-owned in the 19th Century. It is for this high standard that the San Leucio silk makers are creating the *San Leucio Textile Art Innovation* collective mark.

The consortium managing the collective mark expects to begin using it in 2009. In the vertical system set-up by King Ferdinand, the tailor-made textiles of San Leucio went to end product manufacturers, not to the end user. This tradition will remain – at least for now. The San Leucio Textile Art Innovation collective mark is exclusively for the business to business silk textile sector. It will appear in the border of the meters of fabric which are made to order and sold directly to the world's top interior decorators.

tions, improvements and customization of the production chain from twisting to dying and weaving as well as finishing.

Photos.com

A four gram silkworm cocoon yields a 1,000 meter silk filament.

Each four gram silkworm cocoon produces a 1,000 meter super fine silk filament. Five to eight filaments are twisted to make a thread, which can be woven into fabric. De Negri buys cleaned and purified Chinese cocoons in Como, where some 80 percent of Europe's silk is produced. But the process from silk filament to textile in the De Negri mills is unique. Machines have been modified – some even been built from scratch – making it virtually impossible for imitators to reproduce the same process and quality product.

Gustavo De Negri works with a Milanese loom maker to improve their machines and modify them to suit his company's requirements. In a unique cross-licensing agreement the manufacturer makes the changes for free and Gustavo De Negri authorized them to

>>>

"By the time imitators come out with a copycat product, we have already moved on to something better."

incorporate the improvements in their new machines. He says it is a good deal for him, "I get machines manufactured to my specifications for free and I am first on the market with this new technique. By the time imitators come out with a copycat product, we have already moved on to something better." What he does not mention are the further modifications he makes to the loom once it enters his mill.

- to register and manage a San Leucio Textile Silk Quality collective trademark (see box).

Gustavo De Negri is one of the consortium's driving forces. He describes the trademark consortium as "a necessity" in view of the competition. He sees the trademark as a symbol of the San Leucio heritage in making rich, high quality silks. Only the four members of the consortium – whose families have been part of San Leucio's silk industry for generations – are authorized to use the trademark for tailor-made silk fabrics, produced in San Leucio for the business to business sector.

Photos: WIPO/S. Castonguay

Rich silks for home furnishing, designed by Gustavo De Negri & Za.Ma. Silk filaments twisted into thread are combed onto the loom for weaving into textile.

De Negri has also worked with local university researchers to develop new techniques for finishing fabrics. One innovation made it possible for heavy brocades to drape like a light silk. Another resulted in an embossing effect on silk – much like embossed leather. Another produced a new watermark effect. He is now working with a university on a nano-technology that he says will revolutionize the industry. As to how, we will have to wait to find out.

San Leucio collective mark

In 2006, four San Leucio silk textile makers, G. De Negri & Za.Ma, Tesseci & Cicala, Bologna & Marcaccho and A.L.O.I.S., announced the founding of a consortium to unite their strengths and consolidate their position in the textile industry in view of the threat from China's textile makers. Their goals:

- to establish an organizational structure for joint activities to promote their industry and product;
- to create synergies with universities to innovate and stay ahead of foreign competition; and

Keeping a step ahead

De Negri & Za.Ma may be a small company, but they have kept ahead by thinking big. What is on Signor De Negri's wish list for the future? He would like a more even playing field where Asian textile imports would also be under obligation to enforce the strict – and costly – European and North American regulations in the area of dyes and finishing. He would like to be able to stop his clients from turning around and getting his designs and fabrics reproduced more cheaply in Asia – the quality is not the same, and the weave and design are slightly different, but few end users notice. And finally, yes, he would like people to know that the exclusive textiles they buy from well-known fashion houses are Gustavo De Negri & Za.MA fabrics. Time to register that trademark?

FROM COWS TO KILOWATTS

A Case Study in Successful Technology Transfer

The "Cows to Kilowatts" initiative in Nigeria is a partnership project which aims to reduce the water pollution and greenhouse gas emissions from slaughterhouse waste. Building on innovative technology from Thailand, the project converts abattoir waste into household gas and organic fertilizer, providing local communities with clean, cheap fuel. This report by JULIA STEETS, who oversaw the Global Public Policy Institute's work on the Seed Initiative Research from 2004-2006, updates her earlier article published by the Climate Action Programme.[1]

In the face of the combined challenges of climate change, environmental degradation and poverty, an increasing number of companies, governments and NGOs are opting to join forces. Large scale partnerships involving global players are the most visible examples of such cooperative approaches. Yet projects initiated at the local level sometimes offer more tangible outcomes.

The Seed Initiative (Supporting Entrepreneurs for Environment and Development) was founded by the UN Development Program (UNDP), the UN Environment Program (UNEP) and The International Union for the Conservation of Nature in order to support locally driven, entrepreneurial partnerships for sustainable development. It found that a huge variety of such local initiatives exists, often working to enhance environmental sustainability while at the same time alleviating poverty and hunger. Many of these initiatives rely on the generation or transfer of relevant knowledge and technology.

The Nigerian *Cows to Kilowatts*, initiative is an example of such a project. One of five Seed Award winners in 2005, it epitomizes how an innovative approach based on cooperative partnerships can have a real impact on the environment and on the well-being of local communities.

The problem

Slaughterhouses are a major source of water pollution and greenhouse gas emissions, especially in the developing world. Specific regulations for abattoirs often do not exist, or are poorly monitored and enforced. Untreated wastewater enters local rivers and water sources, affecting the development of aquatic life. Slaughter-house waste often carries animal diseases that can be transferred to humans, while the anaerobic degradation of wastewater generates methane and carbon dioxide – greenhouse gases which contribute to climate change.

A Nigerian engineer, Dr. Joseph Adelegan, drew attention to this issue. He studied the effects of wastewater discharged from the Bodija Market Abattoir in Ibadan, where nearly two thirds of the animals in Oyo State are slaughtered. He found high levels of organic pollution with strongly negative impacts on nearby communities. Seeking a solution, Dr. Adelegan's NGO, the Global Network for Environment and Economic Development Research (GNEEDR), joined forces with two other Nigerian organizations – the Centre for Youth, Family and the Law, and the Sustainable Ibadan Project, a UN-HABITAT initiative.

Courtesy of the Seed Initiative

A bioreactor, jointly designed by a Nigerian NGO and a Thai technology innovator, will significantly reduce greenhouse gas emissions from a slaughterhouse in Ibadan.

The solution

The first solution embraced by this group was simply to build an effluent treatment plant. Discussions with experts, however, revealed that, while treating effluents with conventional methods reduces water pollution, it also leads to increased emissions of methane and carbon dioxide. The team therefore set out to find an alternative approach which would minimize the carbon footprint of the initiative.

The solution involved capturing the gas emissions and transforming them into a useful product. They identified relevant technology that had been developed by a Thai research institution, the Center for Waste Utilization and Management at King Mongkut University of Technology, Thonburi. This was based on the use of anaerobic fixed film reactors in the treatment of agro-industrial waste and the production of biogas. By modifying this technology, slaughterhouse waste could be turned into clean household cooking gas plus organic fertilizer.

1. *www.climateaction programme.org*

>>>

This approach offered three crucial advantages. Firstly, it would minimize water pollution from slaughterhouse waste. Secondly, it would significantly reduce the greenhouse gas emissions generated by the slaughterhouse and by the treatment of its waste. Thirdly, it would create valuable biogas by-products. Through selling the biogas, the project could become not only economically self sustainable, but profitable.

Implementation I: building partnerships

The project began in 2001. As a first critical step, Dr. Adelegan had to find competent partners for GNEEDR, able to contribute expertise and resources.

Several organizations have provided key inputs to the project:

- GNEEDR represents the initiative and handles the construction of the plant.
- The Nigerian Center for Youth, Family and the Law provides legal advice and helps engage local stakeholder groups, such as the local butchers' association and the Bodija market development association.
- The Sustainable Ibadan Project was central to securing the support of the Nigerian government.
- The World Bank's Global Development Marketplace gave an important impetus to the initiative by suggesting the integration of a renewable energy component in its design.
- The Thai research institute was the technology innovator and technical adviser in the design and construction of the bioreactor.
- The Seed Initiative helped further develop the project and brokered a crucial contact with UNDP Nigeria.

Implementation II: raising finance

The capital requirements for designing and constructing the waste treatment and biogas plant, as well as for administering the project and consulting with local stakeholders, amounted to around US$500,000.

The project is designed to be commercially viable and plans to sell its household cooking gas at a quarter of current market prices, i.e. US$7.50 per 25 liters. By producing around 270 cubic meters of compressed biogas a month, the plant would generate returns on investment after two years. With an estimated lifespan of 15 years, the plant is therefore expected to create substantial economic returns.

Despite these figures, it proved difficult to obtain affordable commercial finance for a promising but untested project in Nigeria. The initiative gained international recognition through its selection as a finalist in the World Bank Global Development Marketplace and as a Seed Award winner, but still no financial support. Finally, UNDP provided the necessary start-up capital through its Energy and Environment program.

Implementation III: transferring the technology

The Biogas Technology Research Centre of Thailand's King Mongkut University of Technology Thonburi had developed an innovative technology for treating agroindustrial waste and generating biogas based on many years of research under an Asian-Australian cooperation program. Through the use of anaerobic fixed film reactors, the institute had achieved much higher treatment efficiency, handling larger quantities of waste and generating high quality biogas at a faster rate than conventional biodigester technologies. Prior to the Nigerian initiative, however, the technology had been applied successfully only to treating waste from a rice starch factory and from a fruit canning factory.

The Thai institute agreed to work with GNEEDR to adapt its anaerobic fixed film reactor technology for use with slaughterhouse waste. Successful test results showed that the adapted reactor could handle from two to ten kilograms of "chemical oxygen demand" per cubic meter (COD is used as a measure of the amount of organic pollution in wastewater), with a retention time of two to four days. It yielded between 0.4 and 0.5 cubic meters of biogas per kilogram of COD, containing 60 to 70 percent methane.

Having signed a memorandum of understanding with the University, the partnership is currently in the process of patenting the new technology for treating slaughterhouse waste.

Implementation IV: building the plant

Even once financing was secured, project implementation could not start immediately. UNDP's Programme in Energy and Environment is executed nationally, which means that funds are normally only disbursed to national governments. In the *Cows to Kilowatts* case, the Nigerian Federal Ministry of Environment agreed to receive and transfer the resources to the partnership. This, however, involved a number of bureaucratic hurdles.

With the adaptation of the relevant technology completed and the design of the biogas and waste treatment plant finalized by the Thai research institution, construction finally began in 2007. The plant is scheduled to begin operation in June 2008.

Photo: © David Steets

The compressed biogas by-product, to be supplied to local communities, will eliminate the smoke and health hazards caused by other commonly used cooking fuels in these homes.

Expected results

Once the waste treatment and biogas production plant starts operating, it is expected to generate 1,500 cubic meters of biogas per day and to capture 900 cubic meters of pure methane per day. This is equivalent to a reduction of greenhouse gas emissions from the slaughterhouse of over 22,300 tonnes of carbon dioxide per year. In addition, the sludge from the plant will be used as organic fertilizer.

The captured methane will be upgraded and compressed for use as household cooking gas to be sold locally, so generating additional employment. The gas is expected to be distributed to around 5,400 households each month at significantly lower cost than currently available sources of natural gas. A cleaner alternative to other commonly used fuels, the gas will reduce indoor air pollution and associated health hazards in the homes of these predominantly poor communities.

Through its use of innovative technology, the *Cows to Kilowatts* initiative offers a solution to waste treatment which minimizes the carbon footprint of slaughterhouse operations. It is economically self sustainable and even profitable, generating a classic win-win situation. The pilot project in Ibadan is financed with the help of international donor money. Since the plant is expected to repay its start up capital within two years, the necessary financial resources should be available for replicating the project by 2010.

Pooling Green Patents

A new technology-sharing initiative, dubbed the **Eco-Patent Commons**, was launched in January by the World Business Council for Sustainable Development (WBCSD), a Geneva-based group which includes some of the world's largest companies.

Inspired by the success of the open source software community in pooling knowledge to stimulate innovation, the scheme encourages companies to donate patents for inventions which, while not essential to their own business development, provide "environmental benefits." These are published in a searchable website, and made available for use by anyone free of charge. To join the Commons, a company needs to pledge only one patent. But the WBCSD hopes that the initiative will quickly snowball, encouraging fruitful collaboration between pledgers and potential users.

Among the first patents to be donated were a recyclable protective packaging material for electronic components from IBM, and mobile phones recycled into calculators and personal digital assistants from Nokia.

More information: *www.wbcsd.org*

GREEN BRANDING CASHING IN ON THE ECO-MARKET

As consumers rally to the climate change challenge, companies have rapidly learned that being green – and being seen to be green – makes good business sense. Certification marks figure prominently among the proliferating eco-labelling schemes, which signal a company's climate-friendly credentials. In this article for *WIPO Magazine*, journalist JO BOWMAN, who has worked extensively with the consumer research sector, takes a look at the growth business of green branding.

For anyone who thought their green obligations stopped with a bit of household recycling, the past 12 months have proved a stark awakening. Al Gore's documentary, *An Inconvenient Truth*, the international *Live Earth* concert series and intensive media coverage of the United Nations December summit in Bali have helped make climate change a universal and pressing concern.

Among mainstream consumers there's now a real sense that environmental protection is urgent. They want to live a greener life, and their spending patterns reflect their desire to see the brands they use go green as well. In the US alone, consumer spending on products and services perceived to be environmentally friendly will double to US$500 billion this year, according to the 2007 Green Brands Survey conducted by Landor Associates, Penn, Schoen & Berland Associates, and Cohn & Wolfe.

Paying more for green alternatives

Consumers not only want to buy green, they're prepared to pay more for it. Nearly 70 percent of some 2,000 people surveyed in the US, UK, Germany, the Netherlands, Australia and Japan, said they would pay a premium for green energy alternatives, such as wind and solar power. According to last year's poll by IBM Global Energy & Utilities Industry, Australians were the most willing to pay more for renewable energy, but Americans said they would pay the highest premium – 20 percent or more.

This greening of consumer consciences is not just taking place in the West. The Eye on Asia study by Grey Global Group found that 86 percent of people in the region rate protecting the environment more highly than economic development, and 75 percent say they're willing to pay extra for green products. Chris Beaumont, CEO of Grey in Japan, says the levels of concern appear higher in less affluent countries – Bangladesh, the Philippines, India and Vietnam – than in Japan and other wealthy markets.

It is not just altruism which fuels the demand. Consumers are also motivated by rising energy prices and tax policies that punish polluters. The British national budget for 2008, for instance, introduced vehicle tax breaks for new cars with the lowest carbon emissions, while almost doubling taxes on the least-efficient cars.

Consumer brands have been quick to respond to shoppers' desire to buy green. Wal-Mart announced last year that it would provide carbon ratings for all its electronics items. Procter & Gamble, the consumer goods giant behind such brands as Gillette and Olay, has committed to selling US$30 billion worth of greener products over the next five years. Rival Unilever – makers of Dove and Lipton – has pledged to reduce waste and water consumption in its supply chain. In Brazil, Unilever and Wal-Mart have built "sustainable houses" within stores, made from recycled products and showing how to make everyday living more eco-friendly.

Eco-labelling

Certification marks, labels and logos are increasingly being used by brand owners to signal their green credentials and so boost their market share. A properly controlled eco-label offers consumers a guarantee that a product or service has been independently verified to meet given environmental standards. Such schemes may be run by government agencies, consumer protection groups, industry associations or other non-governmental organizations.

In Australia, for example, the Greenhouse Friendly™ label is a registered certification mark, administered by the Government Department of Climate Change.

To be eligible to display the mark, products and services must pass a rigorous verification and certification process. "Displaying the Greenhouse Friendly logo means your products and services stand out from the crowd and it gives you a marketing edge," says the Australian Government's sales pitch. Another Australian certification mark, the Good Environmental Choice label, is managed by a non-profit organization. A member of the Global Ecolabelling Network, it has mutual recognition arrangements with Thailand's Green Label, the Korea Eco-Label, Germany's Blue Angel mark and other national programs.

The greenwash backlash

Jacob Malthouse, a co-founder of the Vancouver-based consumer advice site *ecolabelling.org*, says eco-labels can, however, be something of a mixed blessing for consumers. "The sheer number of labels available can be enough to make your shopping trolley spin," he says. In Britain alone, there are at least four labels to tell consumers about a product's carbon footprint. To help consumers navigate through the eco-label maze, the *ecolabelling.org* website, launched this year, details more than 300 eco-labels and sets out who runs them and what they mean. A further 150 will be added soon.

The EU Ecolabel aims to stimulate both supply and demand of products with reduced environmental impact. Criteria for its use are set by the EU Ecolabelling Board.

Australia's Greenhouse Friendly™ label is a registered certification mark administered by the Government Department of Climate Change.

Chile's Sustainable Forest Management Certification system requires forests to be used in such a way that they do not compromise the needs of future generations.

The Thai Green Label Scheme was launched in 1994 by the Ministries of Environment and Industry. The symbols signifies hope and harmony with nature.

In the US, more than 2.5 billion products bearing the Energy Star logo have been sold since the program was launched back in 1992 by the US Environmental Protection Agency and the Department of Energy. "We know it has a very positive effect," says Energy Star communications director, Maria Vargas. She cites consumer research according to which 79 percent of people who had knowingly bought an Energy Star product said the label had influenced their decision to buy.

Some companies are developing their own eco-standards and product labelling. BASF is one; Philips is another, launching its Green Logo and tick symbol last year to identify products with "significantly better energy efficiency than the nearest competitor products." Shai Dewan of Philips in the Netherlands says the development of an additional eco-logo in preference to existing third-party stamps of approval stemmed from the international nature of the Philips business and the variety of products it makes. "There are several logos for various criteria, and in the three sectors we represent there's no single logo across all three that represents a green product and some logos only exist in certain countries," she says.

The potential for confusion is risky, explains Jacob Malthouse. "People see ecolabels and think 'perfect, this is green.' Then they start to hear about *greenwashing* and they question the credibility of what's being done." Greenwashing, the term used to describe companies trumping up their green credentials without any real basis, can backfire on a brand.

Getting ahead

The Carbon Neutral Company, which offers consulting services and carbon offsetting packages to businesses seeking to go carbon neutral, stresses that the business benefits of going green – and being seen to be green – come not just from satisfying consumer demand. Reducing energy consumption cuts costs, influences investors, and puts companies ahead of legislation that is likely in future to oblige companies to reduce their environmental impact.

On the shop floor, however, it's the consumer that's king. Grey's Chris Beaumont sums up: "Ask anyone whether they're concerned about the environment and it's almost an academic question. Everybody is."

PURSUING THE P2P PIRATES

Balancing Copyright and Privacy Rights

A landmark ruling by the European Court of Justice in January sparked a rash of headlines, many presenting the verdict as a victory for Internet access providers over demands by record companies to disclose the identities of copyright-infringing file sharers. In reality, the judgment – aimed at guiding national legislators in their implementation of EU law – cut several ways. The following account was written for *WIPO Magazine* by Professor RAMÓN CASAS VALLÉS, an expert in copyright law at the University of Barcelona, Spain.

Exchanging – or *sharing* – files on peer-to-peer (P2P) networks is now a widespread practice. Via increasingly decentralized technological platforms, users can take what they need from other users' computers, while making available the contents of their own shared folder. It would be a delightful model of cooperation and generosity… were it not for the detail that, as often as not, what they are sharing actually belongs to someone else.

Photos.com

How can P2P users be prevented from sharing what is not their's to share?

Except when exchanging material which is not copyright protected, or doing so with the rights owner's authorization, P2P file sharing entails copyright infringement of colossal proportions. It affects not only the right to reproduce a work, but also the right to make it available to the public. It is not covered by any limitation or exception to copyright. Nor could the reproduced files be considered private copies, since they are intended for collective consumption. The effects are suffered by small businesses as much as large ones – and simply to blame their business models seems a cynical excuse.

Who is liable?

In considering legal action, the rights owners have before them three distinct groups who might be seen as responsible.

First, those who create and distribute the file sharing programs. But, in itself, this technology is neutral, with both positive and negative applications. Anyone who simply makes and distributes P2P programs – without promoting their use for infringing acts – is not committing any infringement. (In this regard, the US Supreme Court ruling of June 27, 2005 found against *Grokster* because it explicitly encouraged copyright infringement by the users of its P2P services).

The second group consists of the various Internet service providers (ISPs) which provide access to the network. These are the major beneficiaries of the P2P phenomenon – to the extent that, in some countries, the expansion of broadband services has gone hand in hand with P2P traffic. Yet be that as it may, the fact of facilitating such services does not constitute copyright infringement.

This leaves the third group: the P2P users themselves. Here, there can be no doubt. In the absence of authorization from the rights holders, the users are undeniably breaking copyright law. But how can these users be identified in order to bring legal action against them? The short answer is through subscriber data held by their ISPs. This, then, was the starting point of the *Promusicae* vs. *Telefónica* case in Spain, which led to the landmark ruling by the European Court of Justice (ECJ) on January 29[1] this year.

Promusicae vs. Telefónica

Promusicae is a Spanish association of producers of music and audiovisual recordings. In 2005, the group applied to the Spanish courts for an order to oblige the ISP *Telefónica* to disclose the names and physical addresses of a number of its subscribers,

1. ECJ Case C-275/06

It is equally consistent with EU law for national legislators to impose an obligation on ISPs to disclose personal data in civil cases.

who were allegedly using P2P programs to distribute copyrighted music on a massive scale. The individuals could be identified through their Internet protocol number plus connection dates and times. Under Spanish law, *Telefónica*, as an access provider, is obliged to retain and make available such connection and traffic data "for use in the context of a criminal investigation or for reasons of public security and national defense." (Article 12 of the Law on information society services and electronic commerce – LSSI.)

The Madrid Court ordered *Telefónica* to hand over the information. *Telefónica*, however, objected on the grounds that *Promusicae* had brought the case in the context of commencing civil, not criminal, proceedings.

So why didn't *Promusicae* go down the criminal proceedings route? Simply because, in Spain, the infringement of copyright and related rights is only deemed a crime when carried out for a "profit motive," and, for the moment at least, the Attorney General's Office and the courts agree that this implies seeking commercial gain. Thus, using P2P file sharing networks to obtain for free something which has a price in the market place, would not imply a profit motive as such – despite the fact that it may save the user a considerable amount of money.

Conformity with EU Directives

The Spanish law underpinning *Telefónica*'s refusal derived directly from European Union (EU) law. The Spanish court therefore decided to seek a preliminary ruling from the ECJ. The court's concerns centered on whether Article 12 of the LSSI (above) was in conformity with the legal principles enshrined in certain EU laws, namely the Charter of Fundamental Rights; Directive 2000/31 on electronic commerce in the Internal Market; Directive 2001/29 on copyright and related rights in the information society; and Directive 2004/48 on the enforcement of intellectual property rights. Should, the court asked, these EU laws be interpreted to mean that member states should oblige ISPs to disclose connection and data traffic also in civil cases of copyright infringement?

The Directives cited by the Spanish court are intended to ensure the effective protection of intellectual property, but without prejudice to laws covering the protection of confidentiality and handling of personal data. For this reason, the ECJ responded, these Directives "do not require member states to lay down… an obligation to disclose personal data in civil proceedings." Neither does the Charter of Fundamental Rights, which provides for legal protection both of property and of personal data and privacy.

However, the ECJ judgment also referred to another EU law, not cited by the Spanish court: Directive 2002/58 on the protection of personal data and privacy in electronic communications. This enabled the ECJ to make clear a point that, interestingly, was omitted from much of the news coverage of this case. Namely, that it is equally entirely consistent with EU law for national legislators to decide to impose an obligation on access providers to disclose connection and traffic data in civil cases.

Striking a balance

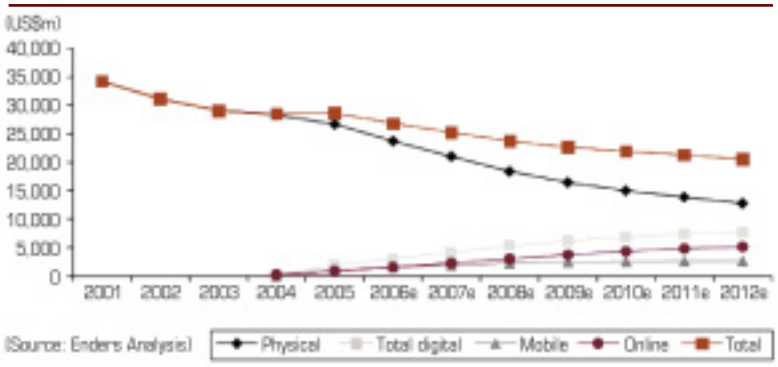
As the ancient Greeks knew well, consulting the Oracle at Delphi was never a simple matter. The question had to be worded carefully and the Oracle's response was often cryptic. The interpretations handed down by the ECJ, while less enigmatic, still sometimes need reading between the lines. The ECJ reply to the Spanish court opens with a categorical statement: in civil proceedings, the EU Directives do not require member states to oblige ISPs to disclose personal data for copyright protection. But it goes on to add a significant warning: when transposing EU Directives into national laws, member states must ensure a judicious balance between all the different fundamental rights protected by the Community legal order.

The final decision of the Spanish court is still pending. If it finds against *Promusicae*, it will then be for the legislators to consider whether the current legal provisions achieve the required balance.

THE DIGITAL MUSIC MARKET – EDUCATING USERS

The Digital Music Report 2008 compiled by IFPI, which represents the recording industry worldwide, estimates that worldwide earnings for the record industry in digital music sales topped US$2.9 billion in 2007 – a 40 percent increase over 2006. Not bad considering that the industry was non-existent in the digital market five years ago. But will the double-digit growth in digital sales counter industry losses on physical CD sales, falling since their US$45 billion peak in 1997? Not by a long shot, if the Enders Analysis forecast in its March 2007 "Recorded Music and Music Publishing" report proves correct.

Recorded music actual and forecast sales, 2000-2012 (estimate)



IFPI identifies rampant illegal downloading and peer-to-peer (P2P) file sharing as the number one reason why digital sales have not made up for the slow down in CD sales. It calls for Internet Service Providers (ISPs) to act by suspending and disconnecting the accounts of copyright infringers and by applying filtering measures, noting that tens of billions of illegal files were swapped in 2007 – a ratio of twenty unlicensed downloads to each legal one. IFPI suggests that new revenue sharing models with ISPs may provide the incentive for them to act against piracy. Legal action against ISPs may also further encourage cooperation with the music industry. (See also, In the Courts: *Pursuing the P2P Pirates* on page XX).

The music industry is also looking to remedy the situation by reaching out to the users. The *pro-music.org* site was launched three years ago with the endorsement of the music industry worldwide – from musicians and managers to major record labels, retailers, performers and publishers – to educate the public on the legal download of music. The site links to resources for educating parents so that they can in turn teach their children to use the Internet responsibly (see box).

This approach is in line with the findings of the Microsoft Survey of Teen Attitudes on Illegal Downloading, conducted in January. The survey showed that their parents were the first source of information for teenagers on the rules related to downloading. Moreover, the survey found that the more teenagers know about copyright, the better they understood that illegal downloading is a punishable offense. However, the older the teenagers, the less likely that knowing the rules would change their downloading habits. The findings of the survey suggest that outreach efforts which target parents and get them to teach their children how to download files legally may have better results than those which try to target teenage file swappers directly.

Adapting to new challenges

The Internet has created a new online world teeming with both opportunities and obstacles for the music industry. The IFPI Report states that "the ease of access to music has damaged its perceived financial value to consumers," creating a huge challenge for the music industry. A challenge to which the industry has been, according to its critics, slow to react. IFPI admits that the record companies are only now reinventing themselves, creating new business models to survive – and thrive – in the digital environment.

The Enders report concurs, "as we analyze core challenges, we consistently find the industry […] has often appeared caught short, and its reactions are accordingly wrong-footed." It gives as examples the industry's backing of their own online subscription services in 1999 when P2P was emerging and their subsequent refusal to license to download services until their own subscription services failed. However, Enders cites Universal's decision in 2007 to license master recordings to YouTube as evidence that the industry has started to re-orient itself.

Promoting Legal Downloading

The updated and redesigned *www.pro-music.org* site was launched in April with the strap line: "All you need to know about music online". The site is an authoritative information source that promotes positive, educational messages about music online. Its unique selling point remains its links to a comprehensive directory of legal music sites worldwide. New content includes:

- news about digital releases and initiatives;
- a list of the international top ten digitally downloaded tracks every month;
- information on how to protect your computer and disable P2P;
- a series of filmed and written interviews of people who work 'behind the scenes' to illustrate the complexity of the work behind the music and showcase the opportunities digital technology brings;
- new sections dedicated to parents and teachers, kids, businesses and university administrations; and
- a new Q&A section and information about copyright and the digital music market.

The updated "Young People, Music and the Internet" guide was launched at the same time as the new Pro-music website. Authored by Childnet (a non-profit organization that works with governments to make the Internet a safe place for children), with input from the cross-sector Pro-music alliance, the leaflet aims to help ensure young people enjoy music and stay safe, secure and legal "at home, at school and on the go." Pro-music has discerned a real demand for this simple all-you-need-to-know guide.

The leaflet, which will be linked to a more comprehensive information website run by Childnet, does the following:

- explains the different ways of getting music on the Internet and on mobile phones;
- promotes legitimate online music outlets;
- raises the issues that parents and teachers need to be aware of (copyright, legal risks, security risks);
- offers key tips on how to stay safe and legal; and
- unpicks the jargon so parents and teachers can better understand digital music.

It features a laminated pull-out card, addressed to young people, which aims to get the discussion going between the adults and the kids. A first mailing will go to over 5,000 schools and 3,000 libraries in the UK. Adapted versions are planned in France, the U.S.A., Australia, New Zealand, Taiwan, Sweden, Argentina, China and Singapore with more to follow.

But the Enders report points to a few other problems areas for the industry. First, the decline of the album. Today's music lovers are no longer willing to buy an album for the sake of one or two favorite songs. They would rather go to the Internet, download a single and pay less. Second, Enders notes that the music industry surge of the 1980s and 90s came from fans rebuilding their libraries, buying CDs to replace their vinyl record collections – a one-time occurrence that the digital revolution will not replicate. Third, growing apathy. Many fans say they are disenchanted with the low-quality product the industry is offering.

Enders' findings are reinforced by a Rolling Stone/ Associated Press poll of 1,000 adults, carried out in 2006 by market research company Ipsos. 58 percent of respondents claimed that music quality – and talent – was on the decline. Interestingly, although 71 percent of those same respondents believed 99 cents a fair price – if not an outright bargain – for a song, 75 percent also claimed that CD prices were too high.

Only time will tell how the music industry will reinvent itself, which models will work and which industry paradigms will have to be discarded. The Internet has changed our world, there will be no going back. The survivors will lick their wounds and find the way ahead.

A DAY IN THE LIFE OF AN IP BLOG-MEISTER

There are many ways to spread the word about intellectual property – books, articles, seminars, adverts, activities for young people. And then there are the weblogs, or 'blogs,' now sprouting across the Internet like cyber-mushrooms. British academic and writer Dr. JEREMY PHILLIPS is a veteran IP 'blogmeister.' A founder of the IPKat weblog (www.ipkat.com), he is an active contributor to several other blogs, including the new Afro-IP. In this article for *WIPO Magazine*, he shares some thoughts on the rise of the IP blog, and on what it takes to run one successfully.

The IPKat was named by Managing Intellectual Property Magazine in 2005 as one of the 50 most influential "people" in the IP world.

A blog is a quick, easy and generally free way of grabbing an audience. A do-it-yourself website, it enables the blogger to post news, comments, photos or video clips, and offer them to an audience as wide as the Internet itself.

There are no rules as to what a blogger can write about. Holiday fun, political diatribes and favourite recipes are just a few topics that have tempted ordinary folk to expose their opinions to the world. It is no surprise, then, that some bloggers have opted for intellectual property (IP) as their chosen topic. And since a blog is a personal account, no subject, nor any slant upon it, lies beyond the range of the IP bloggers – from those who rage against piracy free-riding on the creativity and investments of others, to those who rail against digital rights management or the pricing policies of the recording industries; from advocates of the protection of traditional knowledge, geographical indications or data, to champions of open source.

It is remarkable nonetheless – when you consider how busy most successful IP legal experts are, and just how much commentary on IP law and practice already exists – that so many specialist IP law blogs have sprung up. Early pioneers like *The Trademark Blog* in the United States have inspired private practitioners, academics and even Patent Office employees to place their reasoned understanding, their furious rants and their breaking news before an increasingly voracious readership.

While most bloggers are soloists, juggling multiple commitments, many successful blogs now are run as a team effort. Blog-posting software enables groups of individuals, sometimes writing from different time-zones, to keep up the flow with less stress. The six person team of the *Class 46* blog – which specialises in European trademark law – spans nearly 1,900 km and five jurisdictions, while the prolific eight-strong team of *Spicy IP* in India produces a veritable cascade of news and views.

But can you trust them?

Critics of blogs complain that, while law journals are refereed and books carefully checked before publication, blogs undergo no equivalent quality control process. That's true, but most blogs enable readers to post their own comments, so that a blogger's mistakes can be pointed out, his questions answered and his position on issues of the day endorsed or rejected. Most IP bloggers also cite their sources or hyperlink directly to the source of their information.

Other critics object that bloggers are too selective: they may write up the Da Vinci Code dispute if they like the outcome, but ignore the spat over plagiarism of Harry Potter if they don't. This criticism misses the point: a blog records what the blogger wants to get across. It is not an encyclopaedia – and what for example *Patent Baristas* chooses to leaves out, *Patently-O* may wish to feast on – or *vice versa*.

What does it take?

Asking what it is like being an IP blogger is a bit like asking what it's like to be a human being. That said, IP bloggers do tend to share certain characteristics, not least:

- the online equivalent of an extrovert streak,
- a passion for IP,
- an acute desire to inform and to share,
- the ability to read, think, formulate and express an opinion – all at high speed,
- patient and understanding family and colleagues.

Early IP blog pioneers have inspired private practitioners, academics and even Patent Office employees to place their reasoned understanding, their furious rants and their breaking news before an increasingly voracious readership.

And a typical day? I am committed to five IP 'team' blogs with different aims, in addition to my regular work and professional engagements. But judging from conversations with fellow IP bloggers, my experiences, though perhaps extreme, seem not untypical.

I'm up shortly after 5am to check the status of my blogs, count the previous day's hits and check for criticisms, corrections and comments that may have come in overnight. The hit figures are vital. If your readership starts to decline, it's time to ask what's wrong: your analysis, your presentation or your content? Keeping the blog fresh is also essential. I post articles that I prepared late the previous night, so that readers in and behind my time zone will have something new to read when they log on.

Bloggers have to be multi-taskers. I check my e-mails throughout the day while, for example, taking routine phone calls. Each time a new item or comment is posted on the blogs, I receive an email alerting me to the fact that there is an item to be moderated. If you don't do this, your blog becomes a magnet for spam and advertisements for generic Viagra.

I also check my e-mails for the latest tip-offs. Readers often ask how the *IPKat* – a broadly-focused multi-jurisdictional forum for IP law and practice – can post information so quickly. The answer is that sometimes the *IPKat* is sent details from practitioners, press releases, litigants, policy-makers and institutional employees before an event happens, or contemporaneously with it. This hugely enhances the freshness of the blog. No-one wants to be the thirty-seventh blogger to write how Google's application to register GMAIL as a Community trade mark was thwarted by an earlier registrant of a similar national mark.

Last thing at night, I check my blogs once more, just to make sure that any readers' comments in need of moderation don't have to wait till the next morning for me to approve them.

Avoiding infringements

IP bloggers have to be particularly careful about the use on their blogs of material protected by IP rights. After all, they can hardly claim ignorance of copyright or trademark law. Textual quotes are rarely a problem, since the Berne Convention's exceptions for reporting news and current events, and the *bona fide* reproduction of an extract of a work for criticism or review, are widely understood.

The use of a trademark-protected logo may be apt in the context of illustrating a blog article about that trademark. And it is rarely going to be the sort of use that attracts legal liability. Even so, rights owners who are constantly told by IP lawyers how important it is for them to prevent unauthorised uses of their marks, may resent being told by IP lawyer-bloggers that they are being fussy and overprotective if they complain about use of their trademark in a blog.

The *IPKat* has an automatic take-down policy for all images and will remove them as a matter of goodwill in case of any complaint, even if there is no way that it can be said to be an IP infringement. There is no point in alienating prospective friends and readers.

What's in it for the blog-meister?

So, apart from telling readers about IP while seeking to avoid liability for infringing it, what's in it for the IP bloggers?

Some of us do it out of a missionary zeal to convert readers to IP in general, or to our personal views concerning it. Others seek to build up recognition, and hence business, in their fields of expertise. Some just do it for the fun. But there's one thing you can be sure of: for as long as blogs are free, none of us does it for the money!

RECORD DEMAND FOR WIPO SERVICES IN 2007

In 2007, WIPO saw an increase in both Patent Cooperation Treaty (PCT) applications and in international trademark registrations under the Madrid system, as well as an unprecedented number of complainants filing cybersquatting cases.

PCT – 30 years and going strong

The PCT received a record 156,100 applications (provisional estimate) in 2007, an average of over 400 applications per day. The most notable growth rates came from countries in northeast Asia, which accounted for a quarter of all international applications. Applications from China grew by 38.1 percent as compared to 2006 and the Republic of Korea by 18.8 percent, making the latter the fourth top filing PCT country. However, the US, Japan and Germany preserved their spots at the top of the list.

PCT International Applications – Top 10 Countries of Origin

	2006	2007 estimate	Share of 2007 total	Growth over 2006
U.S.A.	50'941	52'280	**33.5%**	2.6%
Japan	27'033	27'731	**17.8%**	2.6%
Germany	16'732	18'134	**11.6%**	8.4%
Republic of Korea	5'944	7'061	**4.5%**	18.8%
France	6'242	6'370	**4.1%**	2.1%
United Kingdom	5'090	5'553	**3.6%**	9.1%
China	3'951	5'456	**3.5%**	38.1%
Netherlands	4'529	4'186	**2.7%**	-7.6%
Switzerland	3'577	3'674	**2.4%**	2.7%
Sweden	3'316	3'533	**2.3%**	6.5%

The largest number of applications from developing countries came from the Republic of Korea (7,061), China (5,456), India (686), South Africa (390), Brazil (384), Mexico (173), Malaysia (103), Egypt (41), Saudi Arabia (35) and Colombia (31). The PCT currently has 138 member countries, 108 of which are developing countries.

Matsushita (Japan) moved into first place on the list of top PCT users with 2,100 published applications, overtaking the Dutch multi-national Philips Electronics N.V. Siemens (Germany) retained third place, while Huawei Technologies (China) jumped nine places to become the fourth largest applicant.

The largest proportion of PCT applications published in 2007 related to inventions in the fields of telecommunications (10.5 percent), information technology (10.1 percent) and pharmaceuticals (9.3 percent). The fastest growing technology areas are nuclear engineering (24.5 percent increase) and telecommunications (15.5 percent).

As the PCT celebrates 30 years of operations in 2008, "WIPO will continue to enhance the System and its operations," says WIPO Deputy Director General Francis Gurry, "to ensure that applicants benefit from access to ever-more efficient, cost-effective quality services of the highest caliber."

The Madrid system

WIPO received a record 39,945 international trademark applications under the Madrid system in 2007, representing a 9.5 percent increase on figures for 2006. Applicants from Germany, for the 15th consecutive year, led the list of top filers, followed by users in France, the US and the European Community. China remained the most designated country in international trademark applications, reflecting increasing levels of trading activity by foreign companies in China.

A number of countries experienced significant growth in filings in 2007. The Russian Federation, for instance, enjoyed a 43 percent increase, the US 19 percent, Japan 16 percent, the UK 12 percent, and both Denmark and Sweden 20 percent. In 2007, the third full year of the EC as a member of the Madrid system, the 27 countries of the European Union together accounted for 26,026 applications. Developing countries accounted for 2,108 filings, representing 5.3 percent of total applications and a 10.5 percent growth over 2006.

By the end of 2007, there were 483,210 international trademark registrations in force in the international register. They contained some 5.4 million active designations and belonged to 159,420 different trademark holders.

The Madrid system also allows for the central administration of an international trademark portfolio, as it provides for procedures which enable trademark holders to record modifications to international registrations (for example, changes of ownership, changes in name or address of the holder or changes in the appointment of the representative of the holder) through the submission of a single request at WIPO. Modifications recorded in 2007 increased by some 20 percent over 2006.

Growing Concern over Cybersquatting

Last year, a record 2,156 complaints alleging cybersquatting – or the abusive registration of trademarks on the Internet – were filed with the WIPO Arbitration and Mediation Center, representing an 18 percent increase over 2006 and a 48 percent increase over 2005 in the number of generic and country code Top Level Domain (gTLDs and ccTLDs) disputes. In 2007 alone, named parties to WIPO cases represented over 100 countries. The US, France and the UK remained the most frequent base for complainants, while the US, the UK and China remained the most represented countries by respondents.

The introduction of a number of new gTLDs announced for late 2008 is a growing cause of concern for trademark owners, in view of the increase in cybersquatting cases and developments in the domain name registration system, such as domain name tasting, the use of privacy and proxy registration services and the evolving role of certain domain name registrars. "The potentially useful purposes of any new domains would be frustrated if these get filled predominantly with pay-per-click content," said WIPO Deputy Director General Gurry. "This is not just an issue of protecting the rights of trademark holders, but also an issue of the reliability of the addressing system of the Internet in matching interested parties with authentic subjects." Mr. Gurry said WIPO is ready to assist the Internet Corporation for Assigned Names and Numbers (ICANN) in its policy work in this regard.

Domain name tasting, the practice of registering domain names during a five-day registration fee grace period for pay-per-click revenue, frequently involves trademarks. This often automated practice of "tasting" effectively prevents rights holders from assembling reliable and timely information that would enable the filing of a Uniform Domain Name Dispute Resolution Policy (UDRP) complaint.

The Center faces an increasing number of cases where respondents are making use of privacy or proxy registration services. Recent WIPO panel decisions have pointed out that a privacy shield should not be used to protect cybersquatting practices. Panels have recognized legitimate uses of such services, but also make it clear that the shielding of information hinders the determination of the identity of the domain name registrant for cases brought under the UDRP.

Close to 1,000 companies are now accredited by ICANN to act as registrars for one or more gTLDs. This enormous increase from only a handful of registrars in the year 2000 raises heightened concerns about cases where certain registrars appear to engage in or collude with cybersquatting practices. This situation can blur the distinction between the ICANN-mandated obligations of a registrar and speculative behavior in the domain name marketplace, often at the expense of trademark holders.

DEBATED HEROES FROM THE DEEP SEA

This article is adapted from an excerpt by Kirsten E. Zewers from her paper, "Bright future for marine genetic resources, bleak future for settlement of ownership rights: reflections on the United Nations Law of the Sea consultative process on marine genetic resources, June, 2007."[1] KIRSTEN ZEWERS is a former WIPO intern, currently studying law at the University of St. Thomas in Minneapolis, Minnesota.

Many miles beneath the water's surface, a range of unique organisms have adapted to withstand the extreme pressure, temperature and toxicity of their surroundings, giving these organisms extraordinary properties unlike any terrestrial life forms. Recent technological advances have created unprecedented scope for exploration of the deep sea bed, and for research into the genetic material derived from the organisms which inhabit it. New discoveries are revealing their invaluable potential for biotechnological and pharmaceutical applications. This in turn has sparked debate about the extent of ownership rights or sovereignty over these genetic resources and the patentability of inventions derived from them. These issues were the focus of negotiations at the United Nations Informal Consultative Process on the Oceans and the Law of the Sea (UNICPOLOS) in June 2007.

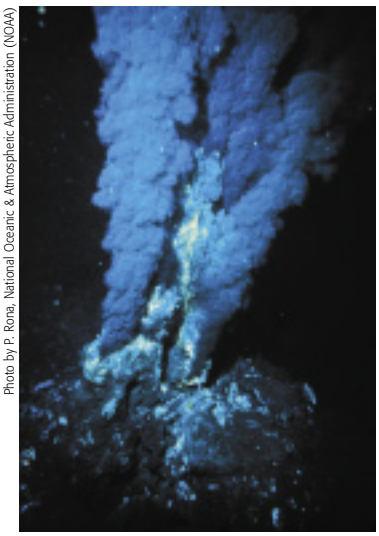


Photo by P. Rona, National Oceanic & Atmospheric Administration (NOAA)

A "black-smoker" in the Atlantic Ocean – home to an extraordinary range of biodiversity.

Unique properties

Most of the organisms from which these new marine genetic resources derive are found near hydrothermal vents – or "black smokers" – on the deep sea bed. These areas are highly volatile, associated with tectonic and volcanic activity that constantly reform the sea floor. Extreme changes in temperature (up to 400° C), pressure and hydrothermal fluid create difficult environments for sustainable life. Yet many organisms have adapted to such demands by converting hydrothermal vent fluid into useful chemical energy; a characteristic that makes marine genetic resources of particular value, especially in combating human diseases.

A number of marine genetic resources already collected, examined, and cultured, show great promise for application in pharmaceuticals, bio-remediation (e.g. the use of organic matter to clean hazardous waste spills) and cosmetics. Proteins coded by DNA and RNA derivatives extracted from marine genetic resources have, for example, been found to have therapeutic uses, including antioxidant, antiviral, anti-inflammatory, anti-fungal, antibiotic properties, as well as specific activity against HIV, some forms of cancer, tuberculosis and malaria. However, the development of new pharmaceuticals is an uncertain, lengthy and expensive process, often spanning many years and costing millions. So far, less than 1 percent of marine genetic resource derivatives have succeeded in reaching the final stage of clinical trials.[2] Yet the ratio of potentially useful natural compounds has been found to be significantly higher in marine organisms than in land organisms, and the success rate regarding the development of potential anti-cancer agents is reportedly twice as high as for any land-based samples.[3]

Patentability of genetic material

To date some 37 patents have been granted in the United States (US) for products derived from marine genetic resources. But many questions continue to surround the basic patentability of these organisms.

The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) administered by the World Trade Organization (WTO) requires patents to be available for inventions "in all fields of technology, provided that they are new, involve an inventive step and are capable of industrial application." But TRIPS does not stipulate patent protection for the mere discovery of a living organism as it exists in nature, and national laws generally distinguish between simply discovering existing organisms, on the one hand, and inventions that are either useful derivatives from

1. The full paper was published in the Spring 2008 publication of the Loyola University Chicago International Law Review.
2. Munt, Simon. (2007, 26 June). *From Marine Expeditions to New Drugs in Oncology*, quoting statistic from the US National Cancer Institute Estimates.
3. Id.

organisms, or genetically modified organisms on the other. So it is clear that marine life forms themselves cannot be patented in the form they are collected. But what about the commercially valuable genetic material derived from these organisms?

Much international debate surrounds the patentability of whole or partial strands of DNA and RNA and different countries have taken very different approaches to this matter. The US for example, has generally allowed for patentability of genetic sequences, provided a specific utility is disclosed (merely identifying the existence of a sequence is not enough, for instance). But recent US case law (e.g. the *In re Fisher* decision, which held that genetic markers, known as *expressed sequence tags*, lack substantial and specific utility unless the underlying gene function is identified) and legislative action, such as the bill presented in Congress in February 2007 to prohibit the patenting of human genetic material, suggest a trend towards more restrictive patentability standards for whole or partial strands of DNA and RNA.

In Europe, the *European Patent Convention* (EPC) excludes patents on inventions the commercial exploitation of which is contrary to *ordre public* or morality. The European Union *Directive on the Legal Protection of Biotechnologi-cal Inventions*, adopted in 1998, clarified that biological material could be considered a patentable invention provided it is isolated from its natural environment or produced by a technical process – in short, when it is the subject of inventive human intervention.

While setting a common minimum standard for patentable subject matter, TRIPS allows latitude for cultural and moral differences. Thus WTO members can exclude inventions from patentability when it is necessary to prevent commercial exploitation of the invention "to protect *ordre public* or morality, including to protect human, animal or plant life or health or to avoid serious prejudice to the environment." It also allows them to exclude from patentability plants and animals *other than* micro-organisms, and "essentially biological processes for the production of plants or animals other than non-biological and microbiological processes." Thus, under TRIPS, WTO members retain sovereignty over the question of which inventions should be considered contrary to morality.

Another challenge to the patentability of marine genetic resources lies in basic taxonomy. To meet patentability requirements, the inventor must disclose the invention fully, so that others reading the patent document will have enough information to reproduce the invention. This may entail, for instance, giving the full botanical name of plants used in the claimed invention, or references to deposits

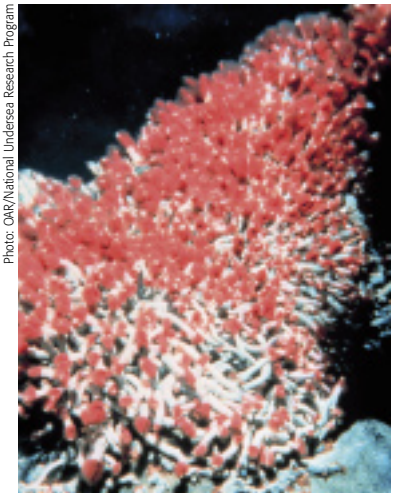


Photo: OAR/National Undersea Research Program

Photo: C. Van Dover, OAR/NURP

Valuable genetic resources. Tube worms living in deep sea hydrothermal vents have adapted to survive in conditions of extreme pressure, heat and toxicity.

of microorganisms in recognized international collections. However, because some recently discovered marine genetic resources have unique properties and their taxonomy has not been settled, establishing a sufficiently precise reference in a patent document can be problematic.

Novelty, inventive step, capable of industrial application

Under TRIPS, and in line with already accepted international practice, an invention must be new or **novel** and be non-obvious or include an **inventive step** to be patentable. There is a general debate internationally about whether inventions that are derived from naturally occurring genetic material should be considered new and inventive. For instance, as we have seen, the EU Biotech Directive clarified that in Europe biological material can be considered patentable even if it is identical to material found in nature, provided there is sufficient human input to develop an invention that serves a useful purpose. Debate continues over what degree of 'isolation' and technical transformation of genetic material is enough to make it truly new and inventive for patent purposes.

Another TRIPS requirement for patent protection is that the invention is useful or **capable of industrial application**. Despite jurisdictional differences, many countries require inventors to state a specific use; hypothetical uses often do not meet patent requirements. However, as marine genetic resources have vast and several unknown possibilities, specific use requirements may limit the capacity of applicants to obtain patents on broad-brush claims over newly isolated marine genetic materials.

The final requirement for patent protection under the TRIPS agreement is that the invention be **dis-**

>>>

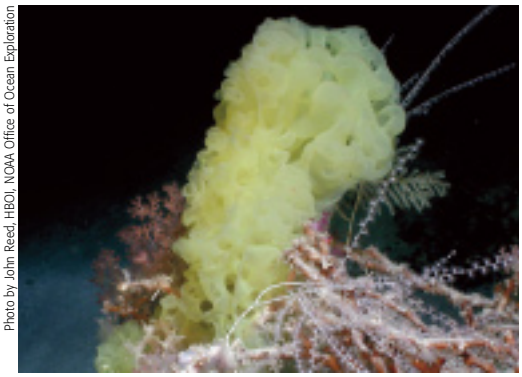


Photo by John Reed, HBOI, NOAA Office of Ocean Exploration

Derivatives from marine sponges are well known as a source of pharmaceutical products, e.g. in the treatment of leukemia.

closed in a publication so as to enable a person skilled in the relevant art to reproduce the invention. However, it is questionable exactly how much background disclosure is required. In addition, a number of countries have introduced specific disclosure requirements relating to inventions based on or derived from genetic resources and traditional knowledge – with a view to tracking compliance with prior informed consent and equitable benefit sharing obligations. There are on-going debates within WIPO's Intergovernmental Committee on Genetic Resources, Traditional Knowledge and Folklore (IGC) and in WIPO's Standing Committee on Patents, as well as in the WTO (where an amendment to TRIPS has been tabled), as to whether there should be an international requirement for inventors to disclose the original source or origin of traditional knowledge or genetic resources used in an invention, as well as demonstration of compliance with prior informed consent and equitable benefit sharing arrangements. This debate also addresses issues of equitable remuneration, transfer of technology, and benefit sharing. At this point, discussions have not yielded any resolution at the international level. But the inclusion of such requirements already in national laws, may already impact the process of patenting inventions based on marine genetic resources, even in the absence of any international standard.

Who owns marine genetic resources?

Due to the massive potential of marine genetic resources, significant debate surrounds ownership rights and entitlements to benefit from these organisms when they are located in areas beyond national jurisdiction. At the June 2007 meeting, UNICPOLOS delegates sought to negotiate ownership rights of marine genetic resources found in international waters beyond areas of national jurisdictions. The 1982 *United Nations Convention on the Law of the Sea* does not specifically address or regulate this issue.

The Convention does, however, address various acts beyond areas of national jurisdictions, such as commercial fishing and marine scientific research. For example, the Convention says that all states' nationals have a right to fish for profit on the high seas, allowing commercial fishing on a "first come, first served" basis (subject to cooperation with the conservation and management of living resources within the high seas). The Convention has also, over time, established guidelines regarding marine scientific research. Although this term is not specifically enumerated in the Convention, marine scientific research is understood to encompass the study of the marine environment and its resources for peaceful purposes, and to be carried out for the benefit of the common heritage of mankind, including equitable benefit sharing.

In trying to develop a draft document to be submitted to the UN General Assembly for adoption, the UNICPOLOS debate broadly diverged between developing and developed countries. By analogy with the regulation of marine scientific research within the Convention, developing countries proposed that the Convention should regulate bio-prospecting of marine genetic resources through equitable benefit sharing regimes for the common heritage of mankind.

Developed countries, however, argue that because marine genetic resources are not specifically defined in the Convention, they fall outside the scope of the Convention's regulation. Developed countries draw an analogy with the rights of commercial fishermen in international waters beyond national jurisdictions, proposing that only the bio-prospectors who take the initiative to collect these organisms should own them.

Ultimately delegates were unable to agree whether or not the 1982 Convention on the Law of the Sea set out the legal framework within which all activities in the ocean and seas must be carried out. On midnight of June 29, 2007, the negotiations remained at a stalemate. Since then, delegations have been holding informal consultations, the outcome of which is unpredictable.

While marine genetic resource discovery is expanding, little progress has been made regarding their ownership rights in areas beyond national jurisdiction. However, given the pressing need for new pharmaceuticals derived from marine genetic material, despite issues over patentability and ownership, their tremendous economic potential will ensure that marine genetic resources remain a hot topic in the international community for years to come.

INVENTION AWARDS

Saudi Arabia, Switzerland and Thailand were just three countries to host major invention exhibitions in recent weeks. At all three, WIPO presented awards for notable inventions selected by independent juries.

Inventive women in Saudi

Women inventors were prominent at the Ibtikar Fair in March, billed as the first Saudi Innovation Exhibition, which drew some 35,000 visitors. The WIPO Award for the best invention by a woman – a category introduced to the WIPO Awards program some years back to help address a lingering perception that inventing was a man's game – was won by the dynamic young Reem Ibraheem Khojah. Based on her experience as a laboratory technician, she devised a fully automated process for microscope analysis of liquid samples. It took her just two months to build the prototype for her "automated cylindrical slide microscope," which, she says, will save time, save resources and reduce health hazards for laboratory workers associated with the disposal of biological material.

The top prize at the Ibtikar Fair, awarded by co-organizers Aramco and the Mawhiba foundation, also went to a woman. Faten Abdul Rahman Khorshid had combined her medical training with traditional knowledge to develop an anti-cancer agent from an unlikely source – camel's urine. The active ingredient has proved successful in eradicating leukemia cells in mice and lung cancer cells in humans.

The WIPO best invention award at the same event was won by Mr. Ahmed Basfar for halogen-free flame retardant compounds for wires and cables.

Striking deals in Switzerland

In April, the 36th International Exhibition of Inventions, New Techniques and Products in Geneva, brought together 720 inventors from 45 countries, all hoping to attract the eye of an investor. According to the organizers, licenses totaling more than US$40 million were negotiated at last year's Exhibition. "Companies are now looking for ideas outside their own R&D department," explains the fair's founder, Jean-Luc Vincent. Added to which, he believes, as the attractions of the stock market wane, more investors are backing inventions which they assess could be commercially successful.

Courtesy of M. Eslami

Maryam Eslami. Mending bones.

A jury of international experts selected the award winners, including the two WIPO laureates. A young Iranian researcher, Ms. Maryam Eslami, won the WIPO Award for the best invention by a woman for an apparatus used in bone related ailments. Mr. Wan Tarmeze, of the Forest Research Institute Malaysia, won the WIPO Award for the best invention by a developing country national. His engineered wood, POPS™ Lumber, uses waste biomass from oil palm plantations, so relieving the burden on forests as a source of timber. His was among many notable innovations inspired by climate change challenges at this year's Exhibition.

Fire-fighting in Thailand

"Without inventors, no invention; without innovation, no development." This was the slogan of the First International Inventors Day Convention, held in Bangkok in February by the National Research Council of Thailand and the International Federation of Inventors Association.

Photo: WIPO/R. Paguio

Woradech Kaimart. Fire-extinguishing ball.

WIPO presented an Outstanding Inventor medal to Mr. Woradech Kaimart. He had set about inventing an easy-to-use fire extinguishing device after he witnessed a tragic fire at a hotel eleven years ago, resulting in the deaths of 91 people. His chemical-filled Elide Fire Extinguishing Ball, patented and now on the market, can put out a fire with a radius of about 1.3 meters when simply thrown at the blaze. It can also self-activate.

The WIPO Award for the best invention by a woman went to Princess Maha Chakri Sirindhorn for a technique using digital high resolution imagery to aid map accuracy in the study of land use. The Thai royal family is known for its encouragement of inventors. Thai National Inventors Day was established on February 2 to mark the date on which King Bhumibol Adulyadej received a patent on his low speed surface aerator for agricultural use.

COMMITTEE MEETINGS

Traditional Knowledge, Genetic Resources and Folklore: IGC to Intensify Work

The Intergovernmental Committee on Intellectual Property Traditional Knowledge, Genetic Resources and Folklore (IGC) met from February 25 to 29. Following the election of a new chairperson, Mr. Jaya Ratnam, who is also Singapore's Deputy Permanent Representative to the UN in Geneva, the IGC considered a variety of working formats, including inter-sessional meetings and expert group work as practical steps in advancing its work towards a concrete outcome. The IGC agreed to review formal proposals for enhanced and accelerated working procedures at its next session in autumn 2008.

With regard to traditional cultural expressions, or folklore, (TCEs), the Committee undertook a detailed debate, paying close attention to the interplay between the existing international legal framework and calls for extended or enhanced protection of TCEs. The debate on the protection of traditional knowledge (TK) demonstrated increasing convergence on the role and context of such protection, although some participants pointed to the need for greater clarity of focus. Indigenous participants highlighted the specific character of indigenous knowledge systems. Work on genetic resources issues was informed by complementary developments in other forums, including the World Trade Organization (WTO), the Convention on Biological Diversity (CBD) and the United National Food and Agriculture Organization (FAO). The IGC will review concrete proposals for its work in this area at its next session.

In order to focus and intensify work on the protection of TCEs and TK, the IGC drew up proposals to analyze gaps in the protection available under the current international legal framework. These "gap analyses" will be developed through an open commentary process leading up to the next IGC session. This exercise will build on the solid foundation already established by the Committee in developing two new reports on the positions of its members regarding the key issues arising from calls for enhanced protection of TK and TCEs. ■

WIPO Development Agenda – First Meeting of the CDIP

The Committee on Development and Intellectual Property (CDIP) met for the first time from March 3 to 7. The CDIP held detailed discussions on developing a work program for implementation of the WIPO Development Agenda recommendations approved by the General Assembly.

The **45 recommendations**[1] adopted by the General Assembly in 2007 are divided into six clusters:

- A: Technical Assistance and Capacity Building;
- B: Norm-setting, Flexibilities, Public Policy and Public Domain;
- C: Technology Transfer, Information and Communication Technology (ICT) and Access to Knowledge;
- D: Assessments, Evaluation and Impact Studies;
- E: Institutional Matters including Mandate and Governance; and
- F: Others.

These include 19 recommendations for immediate implementation by WIPO and 26 for which the CDIP is required to develop a work program.

At its first session, the CDIP discussed recommendations 2, 5, 8, 9 and 10 in the list of 26 and agreed that the proposed activities, as suitably modified following discussions, would be sent to the WIPO Secretariat to assess the human and financial resource requirements before the next session. In addition, the CDIP reviewed and commented on activities being implemented under adopted recommendation 1 in the list of 19, suggested changes and considered new activities. It was agreed that the WIPO Secretariat would make the necessary modification and furnish a progress report on the adopted recommendations in the list of 19 for the next session of the Committee. ■

1. The 45 recommendations are detailed at *www.wipo.int/ip-development/en/agenda/cdip_recommendations.html*.

Copyright: Future Work of the SCCR

The Standing Committee on Copyright and Related Rights (SCCR) took place from March 10 to 12. The members decided that the Committee would continue to address issues such as the protection of broadcasting organizations – with a view to concluding an international instrument – and the protection of audiovisual performances, as well as copyright exceptions and limitations.

The Committee was briefed on regional and national activities that were being undertaken by WIPO in order to build understanding of issues relating to the protection of audiovisual performances. WIPO will continue to organize national and regional activities on this issue, and will hold an information meeting on this question in conjunction with the next meeting of the SCCR.

The SCCR also considered a proposal from Brazil, Chile, Nicaragua and Uruguay on limitations and exceptions to copyright and related rights. This was an elaborated version of a proposal originally submitted to the SCCR by Chile in 2005, which called for an analysis of limitations and exceptions as they relate to education, libraries and access to protected works by the visually-impaired. The SCCR called for an information meeting about existing and forthcoming studies on exceptions and limitations at its next session, with a view to preparing a comprehensive work plan on the issue.

To further enhance understanding of the issue, the SCCR requested that WIPO conduct a study on exceptions and limitations in relation to educational activities and distance education, including transborder aspects. The need for prompt action to improve access to protected works by visually impaired people was emphasized by several delegations. A fourth WIPO study, on exceptions and limitations for libraries, will also be published shortly.

In the framework of a specific discussion on the future work of the Committee, several delegations submitted a proposal to include additional agenda items, namely artists' resale rights, collective management, orphan works and applicable law. Many delegations called on the SCCR to tackle and accelerate work on unfinished business. Others called for the SCCR to focus on exceptions and limitations as a priority. The Chairman of the SCCR, Mr. Jukka Liedes of Finland, said that consideration of the work plan would continue during the next session of the SCCR. ■

WIPO Assemblies – 2008/09 Program and Budget Adopted

The extraordinary session of the WIPO Assemblies, held on March 31, ended with agreement to adopt WIPO's program and budget for 2008/09, as well as a 5 percent decrease in fees paid for international patent applications.

The proposed level of expenditure for the 2008/09 biennium is 626.3 million Swiss Francs (SFr). The full proposed program and budget for the 2008/09 biennium is available at *www.wipo.int/edocs/mdocs/govbody/en/a_44/a_44_2.pdf*. The program and budget 2008/09 was adopted with no prejudice to any adjustments that may be required during the biennium.

The agreement to reduce the international filing fee under the PCT by 5 percent – the fee will fall from SFr 1,400 to SFr 1,330 – and to increase the reduction from 75 percent to 90 percent for countries whose per capita national income is below US$3,000, as well as to Antigua and Barbuda, Bahrain, Barbados, Libyan Arab Jamahiriya, Oman, Seychelles, Singapore, Trinidad and Tobago and the United Arab Emirates, will be effective from July 1, 2008.

IN THE NEWS

Indian Film Industry Losing Billions to Piracy


Photo: istock.com

A study conducted by Ernst & Young India for the US-India Business Council (USIBC) estimates the loss in revenue for the Indian film industry due to piracy at US$4 billion (Rs16,000 crore) per year and 820,000 jobs. And some say the estimate is conservative.

The Federation of Indian Chambers of Commerce and Industry (FICCI) reports that India's entertainment industry currently earns US$11 billion annually and is growing at a rate of 18 percent a year. It is expected to be earning US$28.5 billion by 2012. "If we can stop piracy, these industries will grow even faster and employ more Indian workers," said FICCI secretary General Dr. Amit Mitra.

Study results were released by USIBC President Rom Sommers at the FICCI-Frames 2008 Business of Entertainment Conference. The way forward, he stated was "to build public awareness on the need to fight counterfeiting and piracy, advocate against piracy by supporting the passage of the optical disk legislation and fighting the scourge of cross-border piracy."

Although the popularly named Bollywood produces more films than Hollywood, it earning amount to two percent of that of the American entertainment industry. ■

Copyright – Superman's New Power?

He's faster than a speeding bullet and has x-ray vision, but his super powers are not under contention. Rather, it is ownership of Superman's very lucrative copyright.

Superman's creators Jerry Siegel and Joe Shuster sold the rights to the comic in 1938 to Detective Comics, Inc. (which later became DC Comics) for US$130 – US$10 per page for a 13 page comic – under the US *work for hire* copyright doctrine. DC made a fortune on the investment – the Man of Steel appeared in newspaper strips, radio series, on television, in movies, on merchandizing, etc.

In 1976, an amendment to the US Copyright Act made it possible, under strict conditions, for the creators of works made for hire to reclaim their rights when the copyright was due for renewal. A court decision at the time sided with Warner (DC's parent company) against Siegel; nonetheless Warner decided to award both creators US$35,000 a year each for the rest of their lives and guaranteed they would acknowledge the pair with the words Superman "created by Jerry Siegel and Joe Shuster."

A further amendment to the Copyright Act in 1997 opened the possibility for the heirs and estates of the original creators to recapture copyright. So when Superman's copyright came up for renewal in 1999, Siegel's heirs filed their claim. Almost ten years later, in March 2008, US District Judge Stephen G. Larson ruled in favor of the Siegel family; Time Warner must share copyright in the US from 1999 onward, but retains all rights abroad. A calculation will be made of earning so that revenue can be shared. Time Warner is expected to appeal.

Judge Larson's landmark decision opens the way for many creators and their heirs to file similar cases when their copyright comes up for renewal. The estate of Joe Shuster has now filed a similar case. ■

Paris Convention Celebrates 125th Anniversary

On March 20, the Paris Convention for the Protection of Industrial Property, one of WIPO's two founding conventions, celebrated its 125th year. The Convention was signed in Paris in 1883 by 11 states and had 14 member states when it entered into force a year later. Today, the Paris Convention counts 172 member states. It is widely considered the cornerstone of the international industrial property system.

The main motivation in concluding the Paris Convention was for countries to offer their own citizens the possibility of accessing intellectual property protection systems in foreign states – 125 years later, this philosophy endures. "The principles enshrined in this landmark treaty are as valid today as they were a century and a quarter ago," said WIPO Director General Kamil Idris. ■

Climate Change Focus of European Patent Forum 2008


Photos.com

"Inventing a cleaner future: Climate change and opportunities for IP" is the theme of this year's European Patent Office (EPO) Forum to be held on May 6 and 7. The Forum will be dedicated to finding answers to the question: How can the fields of patenting and intellectual property support innovation that benefit the environment and counteract climate change? It will be the first international conference to focus on climate technology and patenting strategies. International experts will make a realistic assessment of the current environmental situation and future trends; panels will discuss pressing questions, and their will be focused seminars outlining the details of patenting procedure that are relevant to climate technologies.

Slovenia, which currently holds the European Union Council Presidency, will host the event in Ljubljana. The EPO will also award the European Inventor of the year at the event. ■

For more information: *www.epo.org/about-us/events/epf2008.html*

IP Auction: Sold!
US$6 Million to the Bidder on the Phone

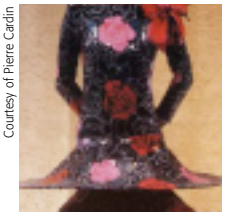

Photos.com

A portfolio of 82 patents sold at the Ocean Tomo Spring 2008 IP Auction in San Francisco in early April for US$6 million. The bid came from an anonymous phone bidder. It is the highest price paid at an IP rights auction. The patents in the portfolio relate to the processing of digital data bitstreams.

Two other lots at the auction hit the US$1 million mark, but most bids do not attract such high prices. Some sold for as little as US$10,000. Ocean Tomo held a conference on leveraging IP for investors and corporate IP strategies as part of the two-day event. ■ Source: Managing IP

LETTERS AND COMMENT

Fashion shows win French copyright protection...


Courtesy of Pierre Cardin

Your article *Design law in the European fashion sector* (Issue 2008/1) touches on some of the difficulties for IP protection in the fashion industry. Your readers may be interested, therefore, in a French High Court ruling on February 5, 2008, that French Copyright protection applies to a fashion show. The protection granted by the High Court is not limited to the clothing, headgear and other creations displayed on the podium. It also covers the overall creation of the show, including the combination of music, lights, colors, choreography, etc.

The case related to the broadcast on a website (without authorization of the fashion houses) of photographs taken during several fashion shows. The Court of Appeal ruled that this broadcast fell within the scope of copyright infringement. The sued parties argued in vain before the High Court that the broadcast had been made for information purpose only.

From Franck Soutoul and Jean-Philippe Bresson
European Trademark Attorneys
INLEX IP Expertise (*www.inlex.com*)
reporters for the IP Talk legal newsletter (*www.ip-talk.eu*)
France

...But *paparazzi* photos are excluded

In contrast, another interesting recent ruling went the other way, this one concerning the application of copyright to photographs taken by *paparazzi*.

A publishing company had brought an infringement case against some magazines which had reproduced photographs for which the plaintiff had earlier acquired copyright ownership from *paparazzi* photographers. On December 5, 2007, the Paris Court of Appeal denied the claim and ruled that copyright protection does not apply to *paparazzi* pictures.

Article L. 112-2 of the French Intellectual Property Code includes photographs amongst artistic works liable to enjoy copyright protection as long as they are original. The judge looked at whether the pictures in this case should be considered original artistic works. He found the work of the *paparazzi* to be passive and focused only on material aspects. The lack of any artistry in the composition of the photograph, the angle of the camera or the choice of the moment was also brought to bear in the consideration of originality. Some economic considerations also weighed in the balance.

To consider *Paparazzi* photographers as technical persons rather than artistic creators from a copyright perspective makes good sense. This decision does not however definitively exclude *paparazzi* pictures from copyright protection in France. The reasoning of the Court leaves the door open for French copyright protection to be given to photographs which demonstrate an artistic effect.

Note: For a detailed analysis of the ruling on fashion shows, see, for example, the Journal of Intellectual Property Law & Practice 2008 3(5) at *http://jiplp.oxfordjournals.org/cgi/content/full/3/5/286*

The need to balance moral rights and public utility


Photo: Josean Prado (2006)

The case of the bridge over the river Nervión (*Bridging Moral Rights and Public Utility*, Issue no. 1/2008) deals with the relationship between the moral rights of the intellectual property holder, the Spanish architect, Santiago Calatrava, and the public utility.

The object of protection of intellectual property rights is to protect the work of an author as he has applied his intellect, time and money in its conception/creation. The basic idea is to promote development through creation of intellectual property so that people have some incentive to work their intellect for the benefit of mankind. The moral right is not absolute. Intellectual property rights have to take account of the public interest. In this case, the public interests of the citizens were appropriately taken care of by the judge. The moral rights of Mr. Calatrava are protected but only to the extent, they do not collide with public interest.

From Paramjeet Singh Berwal,
Law Student,
University Institute of Legal Studies,
Chandigarh, India

Improving IP infrastructure in developing countries


Photo: IP Philippines

The article *No Shortcuts – Raising Awareness of IP in the Philippines* (Issue no. 5/2007) was interesting and informative regarding the innovative processes or activities that developing countries need to embark on to put life into their IP system and reap the benefits thereof. I am from Nigeria, and pray that the IP system here may get such an awakening.

Among the instructive steps enumerated in the article, the need for auditing is very clear, as is the need for an understanding of the critical functions of the IP office in raising awareness of the importance of IP and of how the system works. If the IP office is dependent on government funding, with no mandate for results-oriented performance, then it remains a place for sharing the 'national cake' instead of a place to promote development. Mandating IP offices in developing nations to be self-sustaining (to a degree) might be an answer.

The IP infrastructure in Nigeria still has some way to go, despite the project collaborations with WIPO. Strategic actions can be adopted to improve the situation. But training personnel to drive the system will be a central challenge. The importance of a quality educational system to drive the system cannot be overstated.

From
Philip C. Ngemegwai
President/CEO/Chief Intellectual Property Officer
Infinite Dimensions
Lagos, Nigeria

WIPO Magazine welcomes comments on issues raised in our articles or on other developments in intellectual property. Letters should be sent to The Editor at *WipoMagazine@wipo.int* or to the postal/fax address on the back cover of the Magazine. Please include your postal address. We regret that it is not possible to publish all the letters we receive. The editor reserves the right to edit or shorten letters. (The author will be consulted if substantial editing is required.)

Calendar of Meetings

MAY 13 AND 14 ■ GENEVA

■ ***Coordination Committee of WIPO (Fifty-eighth session)***

The Committee will meet in extraordinary session in order to nominate a candidate for appointment to the post of Director General of WIPO.

Invitations: States members of the WIPO Coordination Committee and, as observers, States members of WIPO not members of that Committee.

MAY 22 AND 23 ■ GENEVA

■ ***Conference on Client Privilege in Intellectual Property Professional Advice***

The Conference will address issues relating to the protection against disclosure of information exchanged between clients and IP attorneys, including exploring the situation under different legal systems and discussing prospects for future improvements.

Invitations: The States members of WIPO and/or of the Paris Union, certain international intergovernmental organizations and international non-governmental organizations.

MAY 26 AND 27 ■ GENEVA

■ ***WIPO Workshop for Mediators in Intellectual Property Disputes***

An annual event for all parties interested in WIPO mediation procedures.

Invitations: Open to interested parties, against payment of a fee.

MAY 29 AND 30 ■ GENEVA

■ ***WIPO Advanced Workshop for Mediators in Intellectual Property Disputes***

An annual event for all parties who wish to further develop their mediation skills taught by the instructors of the annual WIPO Workshop for Mediators in Intellectual Property Disputes.

Invitations: Open to interested parties, against payment of a fee.

BOOK REVIEW

TEACHING OF INTELLECTUAL PROPERTY

Principles and Methods

ISBN: 978-0-521-71646-8
Price SFr. 80.00
Available from WIPO's e-bookshop

As use of the intellectual property (IP) system continues to accelerate worldwide, so the demand keeps growing for more and better IP education. In this new handbook, co-published by WIPO and Cambridge University Press, internationally renowned IP professors and practitioners share their teaching techniques and offer advice on what to include in coursework.

Intellectual property (IP) has become an increasingly critical tool for governments, industry and the private sector, and for various segments of the public. IP education needs are currently greater than ever, and are expanding daily in view of the pace of technological, social and commercial developments.

More IP professionals must be educated and trained. It is equally clear that their expertise in IP must be both broad, and at the same time, more specifically attuned to the practical, day to day realities, challenges and opportunities faced by businesses. In many countries, however, IP education is hindered not only by the insufficient number of trained teachers, but also by lack of guidance as to how best to teach IP.

To meet these challenges, WIPO approached a number of world renowned IP professors, and asked them to set out in concise chapters what is contained in the courses they teach, how they teach those courses, and what tips and insights they could share. The knowledge and expertise they offered is compiled in one moderately priced volume, designed for anyone wishing to enhance their IP teaching skills. The book combines theoretical applications with pragmatic expertise, and moves into new ground by taking a multi-disciplinary approach to IP education. As such, the value of this book is not limited to teachers, or future teachers, of IP, but is equally relevant to teachers and students of economics, business, science and technology.

The stand-alone chapters were written by the following experts:

- Teaching patents, by **Joseph Straus**, former director of the Max Planck Institute for Intellectual Property, Competition and Tax Law, and chair of the managing board of the Munich Intellectual Property Center.
- Teaching copyright and related rights, by **Mihály Ficsor**, a former Assistant Director General of WIPO who assisted in the conclusion of WIPO Internet Treaties.
- Teaching trademark law, by **Jeremy Phillips**, research director of the UK Intellectual Property Institute and visiting professor at University College London. (See also "A Day in the Life of a Blogmeister," on page 14).
- Teaching industrial design law, by **William T. Fryer III**, professor at the University of Baltimore School of Law, who participated in the negotiation of the Geneva Act of the Hague Agreement.
- Teaching IP, unfair competition and anti-trust law, by **Thomas Cottier** and **Christophe Germann**. Thomas Cottier is managing director of the World Trade Institute, professor of economics and law at the University of Berne, and was Switzerland's chief negotiator for the TRIPS Agreement. Dr. Germann is an attorney and lecturer on IP at the University of Berne.
- Teaching the economics of IP rights in the global economy, by **Keith E. Maskus**, professor at the University of Colorado, Boulder, who served as a lead economist at the World Bank.
- Teaching IP in a business school, by **Susanna H.S. Leong**, professor at the National University of Singapore.
- Teaching IP practical skills for practitioners and attorneys, by **Heinz Goddar**, patent attorney, associate judge and a former president of the Licensing Executives Society International.
- Teaching IP to non-law students, by **Ruth Soetendorp**, professor at Bournemouth University, who has worked as a consultant for the UK Intellectual Property Office, the European Patent Office and WIPO on IP education in the non-law curriculum.
- Teaching IP through distance learning, by **Philip Griffith**, professor at the University of Technology, Sydney, and a pioneer in delivering effective teaching through Internet distance learning.
- Teaching current trends and future developments in IP, by **Charles R. McManis**, professor at Washington University in St. Louis, Missouri.

NEW **PRODUCTS**

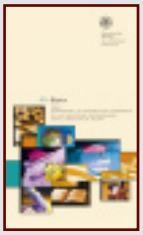
Madrid Agreement Concerning the International Registration of Marks, Protocol, Regulations and Administrative Instructions (as in force on January 1, 2008)
English No. 204E, French No. 204F, Spanish No. 204S
20 Swiss francs (plus shipping and handling)

Hague Agreement Concerning the International Registration of Industrial Designs – Common Regulations and Administrative Instructions (as in force on January 1, 2008)
English No. 269E, French No. 269F
15 Swiss francs (plus shipping and handling)

Guide to the International Registration of Marks under the Madrid Agreement and the Madrid Protocol (updated January 2008)
English No. 455E, French No. 455F, Spanish No. 455S
60 Swiss francs (plus shipping and handling)

Guide to the International Registration of Industrial Designs under the Hague Agreement
English No. 857E, French No. 857F
35 Swiss francs (plus shipping and handling)

Managing IP in the Book Publishing Industry
Creative Industries Booklet No. 1
English No. 868E
50 Swiss francs (plus shipping and handling)



Guía para determinar la contribución económica de las industrias relacionadas con el derecho de autor
Spanish No. 893S
50 Swiss francs (plus shipping and handling)

Purchase publications online: **www.wipo.int/ebookshop**
Download free information products: **www.wipo.int/publications/**

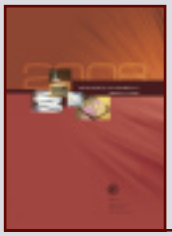
The above publications may also be obtained from WIPO's Design, Marketing, and Distribution Section:
34, chemin des Colombettes, P.O. Box 18, CH-1211 Geneva 20, Switzerland. Fax: +41 22 740 18 12
e-mail: publications.mail@wipo.int

Orders should indicate:
(a) the number or letter code of the publication desired, the language, the number of copies
(b) the full address for mailing
(c) the mail mode (surface or air).

NEW **PRODUCTS**

The WIPO Voluntary Fund: a stronger voice for indigenous and local communities in WIPO's work on traditional knowledge, traditional cultural expressions and genetic resources – Booklet No. 3
English No. 936E
Free of charge

Patentscope – Access to the World of Technology
English L434/1E
Free of Charge



Catalogue of Products – March 2008
English
Free of charge

For more information contact **WIPO** at:
Address:
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland
Telephone:
+41 22 338 91 11
Fax:
+41 22 733 54 28
e-mail:
wipo.mail@wipo.int

or its New York Coordination Office at:
Address:
2, United Nations Plaza
Suite 2525
New York, N.Y. 10017
United States of America
Telephone:
+1 212 963 6813
Fax:
+1 212 963 4801
e-mail:
wipo@un.org

Visit the WIPO website at:
www.wipo.int
and order from the WIPO Electronic Bookshop at
www.wipo.int/ebookshop

The *WIPO Magazine* is published bimonthly by the World Intellectual Property Organization (WIPO), Geneva, Switzerland. It is intended to help broaden public understanding of intellectual property and of WIPO's work, and is not an official document of WIPO. Views expressed in articles and letters by external contributors do not necessarily reflect those of WIPO.

The *WIPO Magazine* is distributed free of charge.

If you are interested in receiving copies, contact:

Design, Marketing, and Distribution Section
WIPO
34, chemin des Colombettes
P.O. Box 18
CH-1211 Geneva 20
Switzerland
Fax: +41 22 740 18 12
e-mail: publications.mail@wipo.int

For comments or questions, contact:
The Editor, *WIPO Magazine*
WipoMagazine@wipo.int

WIPO Publication No. 121(E)

ISSN 1020-7074 (print)

ISSN 1564-7854 (online)