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WIPO ASSEMBLIES 2005



THE FLYING MACHINE ONE HUNDRED YEARS ON



RESEARCH IN TUNISIA THE LANGUAGE OF LIGHT



WORLD INTELLECTUAL PROPERTY ORGANIZATION



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The WIPO Magazine is now in its 8th year. The Magazine aims to inform readers about WIPO-led activities and, more broadly, to show intellectual property, creativity and innovation at work across the world.

The Magazine caters to a diverse readership from both developed and developing countries. Readers include lawyers, government officials, members of NGOs, students, business leaders, IP-users, as well as many non-specialists.

We would like to hear from you. With subscription numbers expanding, we are seeking a more accurate picture of our readership and of what interests you most. This will help us tailor the content of the Magazine as effectively as possible.

If you would like to participate in our Reader Survey, please complete the enclosed questionnaire, or complete the Survey online at:

<https://webaccess.wipo.int/opinio/s?s=455>

We thank you for your continuing interest in the WIPO Magazine, and look forward to receiving your comments.

The Editor

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RESULTS OF THE 2005 ASSEMBLIES OF WIPO MEMBER STATES



Photo: Mercedes Martinez Dozal

"To me, perhaps the most significant achievement of this year's General Assembly has been its resolve to preserve WIPO's tradition of decision-making by consensus." –

Ambassador Enrique Manalo, Chair of the WIPO General Assembly.

Delegations from WIPO's 183 Member States met in Geneva from September 26 to October 5 to review the activities of the past year and to agree on the agenda for the coming year. The General Assembly was chaired by Ambassador Enrique Manalo, Permanent Representative of the Philippines to the United Nations and other international organizations in Geneva, who described the results as "a rich harvest."

Decisions taken by Member States during the meetings included the following.

Program and Budget: 2006-2007

Member States approved by consensus the proposed 2006-2007 program and budget presented by WIPO Director General Kamil Idris, amounting to 531 million Swiss Francs (SFr). After four consecutive biennia of budgeted deficits, the

program and budget introduced a policy based on budgetary balance, achieved without any increase in the fees levied on the services provided by WIPO. Key features include no deficit, no surplus, reserves at the level set by Member States, and efficiency gains in various areas. Mr. Idris informed delegates that, following the measures taken to redress the Organization's financial situation, the 2004-2005 biennium will close with expenditure matching income.

Member States commended the Director General and the management of WIPO for having restored the financial situation within less than a year without compromising the strategic objectives of the Organization. They welcomed the program and budget for 2006-2007 as a major shift in WIPO's budgetary policy. The budget provides for a SFr 2 million increase in resources for cooperation with developing countries, taking the budgeted amount to SFr 73.7 million.

Member States supported a proposal for WIPO to take out a bank loan to fund the construction of a revised project for a new administrative building. They also approved the establishment of a WIPO Audit Committee and a WIPO Internal Audit Charter to enhance the internal oversight function.

Protection of broadcasting organizations

The General Assembly decided that two additional meetings of the Standing Committee on Copyright and Related Rights (SCCR) would be scheduled to accelerate discussions on the second revised consolidated text (SSCR/12/2REV.2) and on the Working Paper (SSCR/12/5 Prov) regarding a proposed treaty on the protection of broadcasters. The resolution states that "these meetings shall aim to agree and finalize a Basic Proposal for a treaty on the protection of the rights of broadcasting organizations in order to enable the 2006 General Assembly to recommend the convening of a Diplomatic Conference in December 2006 or at an appropriate date in 2007." (A diplomatic conference is convened when negotiators feel that the time is ripe for the adoption of a treaty.)

"This is a very positive development. Member States have established a clear process to address this issue in readiness for a diplomatic conference," said WIPO Deputy Director General Rita Hayes.

Development agenda

Member States decided to establish a provisional committee in order to accelerate and complete discussions on proposals relating to a WIPO development agenda. This committee will build on the results of the three inter-sessional intergovernmental meetings (IIMs) which were held during the year. In the interim, and without prejudice to the provision of technical assistance, the General Assembly agreed that the Permanent Committee on Cooperation for Development relating to Intellectual Property (PCIPD), established in 1999, would cease to exist.

Trademark fees lowered for LDCs

In a move to promote greater use of the international trademark registration system (Madrid system) by least developed countries (LDCs), Member States of the Madrid Union approved a proposal to reduce filing costs for applicants from LDCs. The proposed reduction would bring down the basic fee payable to WIPO for the International Registration of Marks to only 10 percent of the current fees. The amount payable to WIPO by applicants from LDCs will therefore become SFr. 65 or 90, depending on whether the reproduction of the mark is in black and white or in color. The reduced fees will take effect from January 1, 2006. At present, seven LDCs are party to the Madrid system, namely, Bhutan, Lesotho, Liberia, Mozambique, Sierra Leone, Sudan and Zambia.

Substantive Patent Law Treaty

Member States agreed on a work plan to take forward talks on the draft Substantive Patent Law Treaty (SPLT), which aims to simplify and achieve greater convergence among national and regional patent laws and practices. The decision calls for a 3-day informal open forum to be held in Geneva in the first quarter of 2006 to discuss issues that have been raised in the draft SPLT or that Member States wish to include in the draft. The forum will include contributions from speakers "reflecting a balance of geographical representation and perspectives and technical expertise." The program will be published in January 2006 following consultations to be conducted by the Chair of the WIPO General Assembly with interested Member States.

Shortly after the open forum, a three-day informal session of the Standing Committee on Patents (SCP) will be convened to agree on a work program, taking into account the discussions in the open forum. An ordinary session of the SCP will then meet to initiate this work program. The 2006 General Assembly will consider the progress made.

The General Assembly's decision resolves the previous impasse on how to advance the work of the SCP. Some Member States had favored prioritizing the harmonization of four prior-art-related issues and deferring discussion of other issues of substantive patent law pending resolution of that initial package of is-

sues. Others had been concerned that a reduced set of provisions would exclude from the discussions certain areas of interest to them, notably general exceptions, provisions on the transfer of technology, and provisions on the protection of public interest issues, such as public health, biodiversity and nutrition.

"The procedure adopted by the General Assembly will allow Member States to hold a concrete debate on many important issues with a view to clarifying and advancing the work of the SCP," said WIPO Deputy Director General Francis Gurry.



WIPO Director General Kamil Idris and Ambassador Enrique Manalo of the Philippines

Genetic Resources, Traditional Knowledge and Folklore

The General Assembly extended the mandate of the Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC) for two years and agreed that the IGC should continue its accelerated work with a focus on the international

>>>

dimension. The renewed mandate, in line with the General Assembly's 2003 directions to the IGC, excludes no outcome, including the possible development of an international instrument or instruments in this field.

The General Assembly also established a Voluntary Fund for Indigenous and Local Communities in order to facilitate the participation in the IGC's work of representatives of these communities, whose contribution is vital. The lack of a specific funding mechanism has been a key concern of representatives in past IGC sessions. Beneficiaries will be members of indigenous or local communities, or those who represent the customary holders or custodians of traditional knowledge and traditional cultural expressions. They will be selected from among the already accredited IGC observers by an Advisory Board of WIPO Member States and indigenous observers. The Voluntary Fund will fund travel and incidental expenses to enable beneficiaries to take part in the sessions of the IGC in Geneva and in related activities. WIPO will take steps to call for voluntary contributions and to put the Fund into operation as soon as possible.

Member States also agreed to transmit to the Conference of the Parties of the Convention on Biological Diversity (CBD) a WIPO study on the relationship between disclosure requirements within the IP system and genetic resources and associated traditional knowledge.

Trademark Law Treaty

Member States accepted an offer by the Government of Singapore to host the Diplomatic Conference for the Adoption of a Revised Trademark Law Treaty (TLT) in March 2006. The Conference will update the existing treaty, bringing its procedures relating to the registration of trademarks into line with technological advances in telecommunications in the past decade.



Patent Cooperation Treaty (PCT) reform

Member States of the Assembly of the PCT Union agreed to include Arabic as a language of publication of the PCT, thereby making the system more easily accessible to applicants from many developing countries.

Member States endorsed a number of proposed amendments to PCT regulations to help applicants avoid loss of rights in certain circumstances, while maintaining an appropriate balance between the interests of applicants and third parties. These amendments will take greater advantage of modern information and communications technology in the publication of PCT applications. They will also strengthen the international search with the addition of patent documents from the Republic of Korea to the PCT minimum documentation used in carrying out international searches. This reflects the increasing number of first patent filings being made with the Korean Intellectual Property Office, particularly in the fields of information technology and biotechnology, making these documents a valuable source of technical information.

Delegates reviewed other recent developments concerning PCT minimum documentation, in particular the inclusion of a wide range of traditional knowledge-related periodicals in the non-patent literature, and the status of a project aimed at developing a Search Guidance Intellectual Property Digital Library (SGIPDL) to help examiners in the choice of documentation to be considered when conducting an international search. The PCT Assembly also took note of the significant progress made in the area of PCT Automation and PCT Information Systems.

International Patent Classification

Member States took note of the status of reform of the International Patent Classification (IPC). The IPC is a hierarchical classification system covering all fields of technology designed to facilitate search and retrieval of patent information. The IPC is periodically revised to take account of technological developments and to ensure a more user-friendly patent classification and search tool for specialists and non-specialists alike. The new (eighth) edition, which enters into force on January 1, 2006, is the product of a

6-year process of reform. The updated edition in English and French was made available in August 2005 on the WIPO website at www.wipo.int/classifications/ipc.

Internet domain names

The General Assembly took note of the status of its 2002 recommendations concerning the protection in the domain name system of country names and of the names and acronyms of international intergovernmental organizations. These recommendations remain under consideration by the Internet Corporation for Assigned Names and Numbers (ICANN). A number of delegations expressed concern about the lack of progress on this matter at ICANN.

Advisory Committee on Enforcement

The General Assembly reviewed the activities of the Advisory Committee on Enforcement (ACE) and en-

couraged the Committee to continue its work. The ACE was set up in 2002 as a forum for discussion of enforcement matters with a mandate to provide technical assistance and coordination, cooperation and the exchange of information on questions of enforcement.

Protection of audiovisual performances

Member states reviewed the status of consultations on outstanding issues relating to the protection of audiovisual performances and agreed to keep the subject under review at their annual meetings in 2006.

Patent Law Treaty

Following the entry into force of the Patent Law Treaty (PLT) in April 2005, the inaugural assembly of the PLT was convened to establish its Rules of Procedure, consider the applicability of certain changes made under the PCT to the PLT and to de-

cide on future work. Eleven countries are currently party to the treaty, which streamlines procedures for obtaining and maintaining a patent.

Program Performance Report

The General Assembly approved the 2004 Program Performance Report, which provides an assessment of the progress made by WIPO during the year 2004 towards achieving the biennial objectives set out in the 2004 – 2005 Program and Budget. They took note of a second document, the Program Implementation Overview, which outlines activities during the first six months of 2005. Member States commended the achievements accomplished within the framework of rigorous budgetary containment. They highlighted progress made by WIPO in the definition of evaluation parameters (objectives, expected results, performance indicators), which translated into the improved strategic framework contained in the 2006-2007 draft program and budget document. Many delegates again expressed appreciation for the technical and legal assistance provided by WIPO in support of national efforts to integrate IP into development policies, to strengthen IP infrastructure, and to implement international treaties.

New observers

In line with the Organization's commitment to transparency and inclusive debate, the WIPO Assemblies granted observer status to Palestine, to the Hague Conference on Private International Law, to 22 international non-governmental organizations (NGOs) and to 18 national NGOs.

Organizations granted observer status are invited to attend the meetings of WIPO Assemblies and other meetings of direct interest to them. National NGOs are granted observer status in conformity with a decision by WIPO Member States in October 2002. This brings the total number of organizations with WIPO observer status to 67 inter-governmental organizations (IGOs), 202 international NGOs and 31 national NGOs.



Flair & Function

ITALIAN DESIGN EXHIBITION



Marco Zanuso believed good design should appeal to a mass market. He and Richard Sapper created a series of designs which came to be known as "techno-functionalism." Their **Grillo telephone** for SIEMENS is one of the world's first phone designs to integrate the handset and dial pad (*Compasso d'Oro Award 1967*).



Two more Richard Sapper's designs the **9090 espresso maker** above (*Compasso d'Oro Award 1979*) and the **Coban espresso machines** (*Compasso d'Oro Award 1998*) both for ALESSI.



The exhibition "Flair & Function – 50 Years of the Italian *Compasso d'Oro* Award," organized jointly by WIPO and the Italian Government, highlights the importance of design in the commercial success of a product.

Inaugurated September 26 by WIPO Director General Kamil Idris and Mr. Roberto Cota, Under Secretary of State at the Italian Ministry of Productive Activities, to mark the opening of the WIPO Assemblies, the exhibition features award-winning designs from the prestigious *Compasso d'Oro* collection of the Italian Association for Industrial Design (ADI).

"Design reflects the quality of the project, technological innovation, flexibility of enterprises, availability of skills and creative knowledge," said Mr. Cota, noting the "range of knowledge which Italian design possesses, built up over time, and which constitutes economic wealth." He described innovation and protection as vital for small and medium-sized enterprises, "essential instruments for the development of the productive fabric in Italy." Italy is the fifth largest user of the Hague Agreement for the International Registration of Industrial Designs, filing eight percent of all applications.

The exhibition, which spans the period 1954 to 2004, features more than 50 objects from the *Compasso d'Oro* Award's unique Historical Collection. Set up in the early 1950s by Milanese designer Gio Ponti, the ADI *Compasso d'Oro* has become one of the most important and respected awards in the field of industrial design. Awards are granted by international juries to designs ranging from toys, sports gear, cars, furniture and electrical appliances to websites.

The exhibition, located in the WIPO headquarters building, Geneva, opened to the public on September 27 and will run to December 31, open Monday through Friday from 9am to 5pm.

"Combining people with diverse backgrounds and interests is our daily practice. Our approach fuels innovation and challenges our teams to find unexpected solutions." – Design Continuum Italia's **Scorpio 270 camping stove** for CAMPINGAZ (*Compasso d'Oro Award 2004*).



“This exhibition highlights the creativity, style and excellence of Italian design, which have brought success, respect and international recognition to the “Made in Italy” label.”–

WIPO Director General Kamil Idris.



*“If I were working at Alfa Romeo, I’d go to the bank right now and find the money to build it!” said Giorgetto Giugiaro of his **Brera car** design for ALFA ROMEO – who did just that. (Compasso d’Oro Award 2004).*



*Roberto Sambonet has 10 works in the Museum of Modern Art (MoMA) in New York. This **fish steamer** (Compasso d’Oro Award 1970) is a technological masterpiece in view of the difficulties involved in molding without reinforced edges.*



*“Design is no longer seen as a unity but as a sum of parts. We concentrate more on the elements that determine an object than on the object itself.” – Ettore Sottsass’ **Nuovo Milano cutlery service** for ALESSI (Compasso d’Oro Award 1989).*



*“Look at usual things with unusual eyes” said Vico Magistretti who designed the **Eclipse table lamp** above for ARTEMIDE (Compasso d’Oro Award 1967) and the **Maui chairs** at rights for KARTELL (Selection 1998).*



*“In reality I always wanted to be a baseball champ. At a certain point ... I had no choice but to sign up for architecture.” – Toyo Ito’s **Ripples bench** for HORM (Compasso d’Oro Award 2001).*



THE FLYING MACHINE – ONE HUNDRED YEARS ON

“Our first interest began when we were children. Father brought home to us a small toy actuated by a rubber spring, which would lift itself into the air. We built a number of copies of this toy, which flew successfully.” –

Orville Wright

Man realized his dream of flying 100 years ago. On May 22, 1906, the United States granted patent number 821,393 for a Flying Machine to Wilber and Orville Wright. It was an invention that would change the world.

Wilber and Orville Wright loved to tinker, and the race to develop the world’s first flying machine at the turn of the 19th Century must have caught their attention. They remembered how as boys they had been able to make a toy that could fly, so the brothers turned from build-

ing bicycles in their workshop to designing flying machines. In December 1903 they succeeded where others had failed; they built the first powered aircraft to maintain a **sustained, controlled** flight. The invention took them another two years – until 1905 – to perfect.

The brothers were conscious of the need to protect their invention. But once the airplanes were publicly demonstrated, the technology was relatively easy to copy – and patent infringers were numerous. The brothers found themselves in legal battles

across Europe and America. Discouraged by the legal haranguing, Orville Wright left the airplane business in 1916 a few years after the death of his brother. But he kept on tinkering. He built a small laboratory in his hometown where he worked on aeronautics, racing planes, guided missiles, toasters, automatic record changers, children’s toys – whatever took his fancy.

Commercial passenger flight

When Orville sold the business, there were only two potential markets for the airplane: military and exhibition flying, where most of the money was being made. But commercial passenger transportation, made feasible as a result of the technology developed through military use, would have a far broader impact on the general populace.

1903

1934

1964

Drawing from the patent application filed by the Wright brothers on March 23, 1903

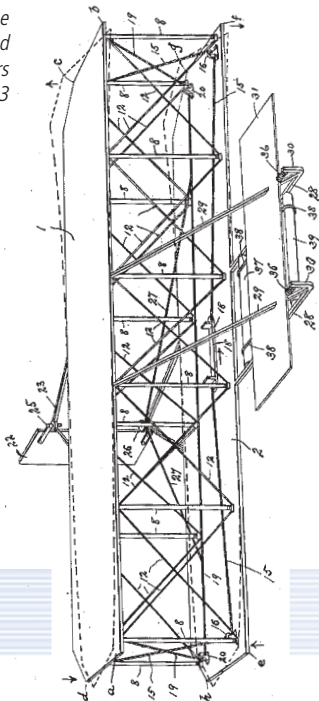


Photo: Robert Neil



The DC-3, the world’s most successful passenger airplane, still flies today.

Photo: Courtesy Pratt & Whitney



Pratt & Whitney’s JT8D and JT8D-200 series, the most popular modern commercial engines ever made. More than 14,000 have been built since 1964. Pratt & Whitney is a United Technologies Corporation, a frequent user of WIPO’s Patent Cooperation Treaty (PCT).



Commercial passenger air transportation had started in Germany on Zeppelin airships, which ran from 1910 to the start of the war in 1914, flying some 34,000 passengers and crew. It was in 1919 that passenger flights in airplanes were introduced and it was a rather daunting experience for those who could afford it. The two passengers, squeezed-in facing each other in what was a converted gunner's cockpit, could not hear themselves think over the engine noise and howling wind. Much improvement would be needed before commercial flight became an attractive alternative to ships.

In 1933 Donald Douglas introduced the 12-passenger DC-1 with heaters and soundproofing. But it was not until the 1935 test flight of the DC-3 – the most successful passenger airplane in history – that he got

it all right. The 21-passenger DC-3 incorporated just about every aviation-related engineering advance of the day, including [almost completely] enclosed engines to reduce drag, new types of wing flaps for better control, and variable-pitch propellers, whose angle could be altered in flight to improve efficiency and thrust. The DC-3 could even be configured with sleeping berths for long-distance flights. Passengers came flocking and travel changed forever.¹

Speed and power

DC-3s are still in use today, mostly transporting cargo and medical relief supplies in developing countries. But the minimum of 15 hours required for the propeller engine to fly across the Atlantic would discourage today's most fervent long-haul

Eco-friendly flight



Photo: Guilherme Maranhao

The Embraer 202 Ipanema, a crop dusting aircraft made in Brazil, is the first ethanol-fueled airplane certified by the aviation regulation industry. Ethanol is an alcohol extracted from cane sugar. It is three to four times cheaper than aviation gasoline, cleaner and more environmentally friendly, because it has no lead content. Embraer's research indicates that it increases engine power by five percent and may prolong engine life.

1969

2004



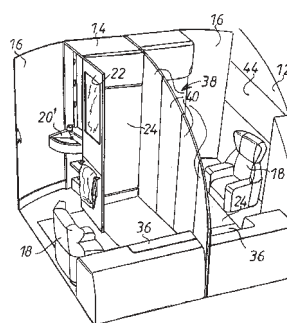
Photo: Hann Rufften

Concorde, the only supersonic passenger plane ever built, with a cruising speed of more than twice the speed of sound. It took less than 3.5 hours to fly from London to New York. A joint UK-French project, the Concorde required over a decade of on the ground research and nearly 5,000 hours of flight development.



Photo: Courtesy Airbus

PCT applications describe novel configurations of the Airbus A380, e.g. private cabin modules like mini hotel rooms, with pull-down bed, entertainment system, and wash basin (WO 2004/009442 – at right); a children's "play container" with ladder and slide (WO 2004/078301); or reclining seats arranged back-to-back in groups of four on either side of the aisles. (WO 2004/018290).



flyers. For commercial flight to become the success it is today, engineers would have to go back to their drawing boards to design a faster, more powerful flying machine.

Jet engines were the answer. Developed in the mid-1940s, they revolutionized the airline industry. By the 1960s jet engines had halved the time required to cross the ocean and airplanes quickly grew in size and passenger capacity. The first jumbo jet, the Boeing 747 introduced in 1969, carried 547 passengers and crew, and brought commercial flight within the means of the average citizen. Then came deregulation. Airlines competed against each other, driving down prices.

The next generation of super jumbo jets will be even larger. In an all-economy class configuration the Airbus A380, which made its first test flights this year, will carry over 800 passengers non-stop from Paris to Sydney in 15 hours. The advanced technology used to build the plane will also result in 15-20 percent lower costs per seat-mile, while increasing its range by 10 percent above that of other large aircrafts and significantly reducing noise and pollution emission levels.

Now boarding for outer space

Where next? Flights to outer space may soon be within the grasp of civilian passengers if Burt Rutan, the aerospace designer behind the

Courtesy of Scaled Composites, LLC



White Knight launch of SpaceShipOne

Courtesy of Scaled Composites, LLC



Touchdown! SpaceShipOne returns to the runway.

Scaled Composites has U.S. patent applications pending for their Winged Spacecraft and for their Unitized Hybrid Rocket Motor.

rocket plane SpaceShipOne, has his way. Using new technologies developed by his company, Scaled Composites, he designed the craft specifically to put civilians into space without government assistance. Burt Rutan recently signed an agreement with Virgin Galactic to manufacture and market SpaceShipOne, which was voted "Coolest Invention of 2004" by Time Magazine.

"Before Wilber [Wright] went to Paris with his airplane, the Europeans thought he was lying," Burt Rutan said to Time Magazine. "Then they watched him do turns, and they watched him fly for a long time, and they watched him do multiple flights a day. I believe the significant thing is that they then all said, at the same time, 'I can do that, too, because these are just bicycle shop guys.'"

SHAKESPEARE MEETS BOLLYWOOD
IN DELHI'S IP DRAMA

"People shamelessly copy the stories of others and redo them in the most horrible manner. And then, they choose to call it inspiration." – Script-writer Farrukh Dhondy

This, we heard, was the world's first play about intellectual property – not an obvious subject for a theatrical comedy. So when the curtains rose on *Brain Child* on a Delhi stage in September, WIPO Magazine was curious to know more.

The play came about when screen-writer Farrukh Dhondy was commissioned by a prominent Indian IP attorney, Pravin Anand, to write something which could help to teach law students about IP. It was an idea long cherished by Mr. Anand, a firm believer in entertainment as a means of communication, and whose efforts to spread understanding of IP rights include not only lectures and articles but films, songs and games. His idea fell on fertile ground. Mr. Dhondy, a one-time scientist turned columnist, television commissioning editor, playwright and screen-writer (five of whose scripted films were screened at the 2005 Cannes film festival), had plenty to say on the subject.

The opening scene, set in a Mumbai police station, was directly inspired by Mr. Dhondy's personal experience while working on a recent film. "The editor ran away with the film edit in his computer because he and his girlfriend had grievances against the production company," Mr. Dhondy explained. "He was stopped at Delhi airport by the police. The cop in charge of the arrest

didn't understand – the computer belonged to the editor, so what was it that was stolen? The footage? No, the order in which the footage had now been placed. He didn't get it. This was funny and started me on my train of thought."

With irreverent wit, Mr. Dhondy satirizes a mindset in which lucrative imitation counts for more than cultural or artistic integrity; and where the theft of intellectual property – be it pirated software or the lyrics from a musical – is fine, so long as you can get away with it. Weaving legal fact with farce, Bollywood pastiche with Hollywood intrigue, *Brain Child* explores the nature of creativity and paternity; and breathes comic life into questions which usually inhabit the desks of lawyers and academics.

"The play does more than inform. It creates an emotion as well. I felt that we could do with more positive emotions in favor of IP." –

Brain Child's sponsor, Pravin Anand

The cast of familiar character types includes double-dealing brothers and their wives, who stand to inherit a fortune from the proceeds of a Bollywood film, which turns out to be based on songs stolen from *West*



Photos: Courtesy of Pravin Anand



"[The script writer] writes the recipe. I make the banquet." – Film editor Talab tries to explain the creative nature of his work to a nonplussed police officer.

Side Story. William Shakespeare returns from his grave to complain that *West Side Story* was a rip-off of his *Romeo and Juliet*; only to be given short shrift by a table-thumping lawyer, who points out that every one of Shakespeare's plays was based on someone else's story.

So what messages should *Brain Child's* audiences take away with them? we asked Mr. Dhondy. "That the thieving has to stop, that intellectual property is a tricky subject." And, he adds with a smile, "that I am an amusing playwright who can make even dry subjects entertaining."

PANAMA: Empowering Indigenous Women Through a Better Protection and Marketing of Handicrafts

"I cannot recall the last time that people sang and danced in the middle of a WIPO seminar," remarked an observer. But then, this was no gray-suited gathering.

Traditional Knowledge, Genetic Resources, Folklore and Gender was the subject that attracted some 100 participants, mainly women from local indigenous and rural communities, to a two-day seminar held in October in Río Hato, Panama. They came to analyze their problems and successes as producers of traditional handicrafts; to learn which intellectual property (IP) tools could help them protect and market their products; and to benefit from the experiences of other indigenous communities in exploiting IP. With cheap imitations undermining sales of traditional handicrafts, the seminar, organized by WIPO in cooperation with the Industrial Property Registry of Panama and with financing from the Inter-American Development Bank, proved to be a timely event.

Experts highlighted a variety of IP tools, among them collective and certification marks and geographical indications. These seem particu-

larly well adapted to the protection and marketing of handicrafts and, at the same time, to the concepts of the collectivity and collective rights that are at the heart of many indigenous societies. Speakers noted that certification marks are being used, with varying degrees of success, to market indigenous art in countries such as Australia, Canada and New Zealand.

Other subjects covered included the application of copyright and design protection to traditional cultural expressions; patents; and international developments, such as discussions taking place in the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC).

Panama's *sui generis* law

Panama is one of a few countries in the world to have enacted a *sui generis* law to protect traditional cultural expressions and related knowledge¹. Indeed, the IGC text on traditional cultural expressions drew upon Panama's Law. Introduced in June 2000, Law 20 is designed to



Chacara woven fiber bags. The labels, marked "Ngobe-Bugle original art," identify the craftswoman and her community.

protect traditional dress (see box on *molas*), music, dance, and major indigenous handicrafts such as *tagua* nut carvings, hand-beaded *chaquira* necklaces and *chacara* woven bags. The seminar provided an opportunity to improve understanding of this law within the communities concerned.

New authenticity labels

Panamanian government representatives used the occasion to formally present to representatives of the Kuna peoples rolls of authenticity labels, the first of their kind to be issued under Law 20. The labels are intended to be attached to *molas* – the distinctive textile panels produced by Kuna craftswomen – so as to guarantee their authenticity.

The widespread sale of cheap *mola* imitations is adversely affecting the market price and quality reputation of the genuine product. Authentic handmade *molas*, using traditional techniques and patterns, can take two to four weeks to complete. Copies, cheap in terms of both quality

Canastas



These baskets, traditionally made of *chunga* palm fibers and hand woven so tightly that they can hold water, are produced by women of the Embera and Waounan people. Highly labor intensive, a large item may take six months to create and can fetch up to US\$ 1,000 from a collector. Most women depend on selling small inexpensive pieces to tourists.

Source: www.nativeplanet.org

¹ Law No. 20 (June 26, 2000) "on a special intellectual property regime for the collective rights of indigenous communities, for the protection of their cultural identities and traditional knowledge."

and price, are sewn by non-indigenous women or mass-produced, in Panama and elsewhere. The consequences for the community are serious, as the creation and sale of *molas* constitute the only source of income for many Kuna women and their families. Ultimately, it is the very cultural heritage of the Kuna people which is threatened. Women from the Ngobe-Bugle and Embera communities described similar problems resulting from the misappropriation of their traditional cultural expressions.

It was noted that, although authenticity labeling cannot in itself prevent the sale of imitations, it can help to differentiate the genuine traditional handicraft and so enable discerning buyers to pay a fair price for a quality product.

Placing women at the center

Indigenous women often face double discrimination, based on gender and ethnicity, and find themselves at the bottom of the socioeconomic ladder, marginalized from policy and decision-making processes and from training programs. Yet in many communities, women are the principal – or sole – producers of traditional crafts as well as custodians of cultural heritage.

For this reason, awareness raising and capacity building programs aimed at preserving, protecting and managing traditional knowledge and arts are likely to fail if they do not

The Mola



Kuna participants at the seminar.

Kuna craftswomen use a reverse *appliqué* technique to create *molas*, traditionally sewn onto their blouses, but often now sold as individual decorative panels. Multiple layers of colored cloth are stitched together, and designs are created by cutting through to expose underlying layers. The Panama government has been working with the Kuna communities since the 1990s to find ways to protect the *molas* from unauthorized copying.

place indigenous women at the center, both as actors and as a target group. As one participant at the seminar put it: "I may not be a lawyer or a biologist, but as a woman I know what I'm talking about from my own experience." Teaching indigenous women to use IP tools to protect and increase the income-generating potential of their products also makes sense if IP is to contribute to wider UN efforts to combat what has been termed the feminization of poverty. Studies show this to be particularly acute in rural and indigenous communities, and to constitute a major obstacle to achieving sustainable development.²

WIPO would like to see the Rio Hato seminar serve as a springboard for future activities, in cooperation with national governments and other

partners: activities that address the everyday challenges which confront indigenous communities and, in particular, indigenous women. Such activities can also inform and complement the work of the IGC. The principal aim, however, remains to identify practical, grass roots solutions for harnessing the opportunities offered by the IP system in order to ensure more effective recognition, protection and management of cultural assets.



² See e.g. *Progress of the World's Women 2005*, United Nations Development Fund for Women; and *Engendering Development*, World Bank and the Oxford University Press (2001).

PCT PORTRAITS

Meet the Innovators

Since the Patent Cooperation Treaty (PCT) began operating in 1978, more than one million international patent applications have been filed, covering inventions and new technology of every description. This is the second in a series of articles in which WIPO Magazine picks out a few innovations from among the profusion of applications, and looks at the people behind the patents.

Nobel Prize for a dance which creates new molecules

To describe Yves Chauvin as a modest man would seem an understatement. After hearing that he was to share the 2005 Nobel Prize for chemistry with U.S. scientists Robert Grubbs and Richard Schrock, the 74 year old Frenchman declared himself "embarrassed" by his sudden fame, adding, "I don't have anything much to tell." Former colleagues at the French Institute for Petroleum (IFP) recount how, indifferent to status, he would turn down more senior posts in order to pursue his research, remaining in the same office for more than 40 years.

Diagram courtesy of The Royal Swedish Academy of Sciences.



Yves Chauvin's mechanism is likened to dancing couples, in which the "catalyst pair" and the "alkene pair" of atoms change partners and so create new molecules.

As Yves Chauvin recalls, it was on a rainy Sunday afternoon back in 1971 that he thought: "Ah yes, it's obvious!" and so made his quiet breakthrough in an area of organic chemical synthesis known as *metathesis*. These chemical reactions are now widely used in industry in the production of pharmaceuticals, polymers and advanced plastics, for example, and are the only means of producing certain useful substances. But some 20 years were to pass before Robert Grubbs and Richard Schrock made it possible to walk through the door that Yves Chauvin's new "mechanism" had opened and unleash the potential.

Metathesis means 'exchange places.' It refers to a process in which the bonds between different pairs of carbon atoms are broken and new bonds formed, so creating new substances. (It can be thought of as a dance, during which the couples change partners and dance off as new couples). The critical advances made by the Nobel Prize laureates enabled the development of efficient catalysts to trigger these reactions. The new catalysts marked a great step forward for "green" chemistry. They enable industry to conduct reactions at lower temperatures, produce less hazardous waste and save energy.

Researchers are now using *metathesis* in the quest for new pharmaceuticals to fight diseases including cancer, HIV/AIDS, Alzheimer's disease and Down's syndrome. In the words of the Nobel Prize citation: "Imagination will soon be the only limit to what molecules can be built."

Yves Chauvet, Robert Grubbs and Richard Schrock have all used the PCT system to disclose and protect their scientific advances. (For more see: <http://nobelprize.org>)

A plant programmed to find landmines

Everyone knows about sniffer dogs. But sniffer cress?

In 2002 Carsten Meier, a young Danish plant biologist, filed a PCT application for a "reporter system" in plants. Based on extensive research at the Institute of Molecular Biology and Physiology in the University of Copenhagen, it describes a means of genetically modifying the responses of plants to external stimuli, such as pollutants in soil.



Photo: Henrik Frenk

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Red Detect™ plants growing near a buried landmine

With this, Carsten Meier re-engineered a common weed, Thale Cress, to make it change color from green to red when – and only when – growing near buried landmines or explosives. Using the pigmentation that causes leaves to change color in cold weather, the cress is genetically programmed to react to the traces of nitrogen dioxide which seep into the soil from explosives.

“Carsten and the team want to use the genetic modification technology for a good purpose,” explained Simon Østergaard, Chief Executive of **Aresa Biodetection**, which was set up to develop the project. “We hope it can become a valuable addition to demining methods,

by helping to identify landmines on arable land more quickly and cheaply, so that the land can be released for local crop production.” The UN estimates that landmines cause some 15 to 20,000 civilian deaths and injuries each year.

Thale cress occurs naturally in many countries and thrives in a range of soil types and climates. To prevent any uncontrolled spread, the modified strain cannot produce seeds, nor even germinate without being fed a missing hormone. The seeds would be sown from a crop-spraying plane or with an off-the-shelf pump.

The Danish Armed Forces have been testing the **Red Detect™** plant with **Aresa Biodetection**. In their latest results the plants changed color within three weeks and identified all the hidden explosives. With the viability of the system unproven as yet, a number of demining organizations have naturally reserved judgement. But several are enthusiastically supporting **Aresa’s** development of the technology.

And why did they patent via the PCT? “It just seemed the obvious choice,” says Simon Østergaard. (For more see: www.aresa.dk)

One man and his tent

Inventions and patents are not the unique preserve of research institutions and business.

Australian Gary Lewtschenko is a 23-year-old camping and outdoors enthusiast. Since childhood he has spent his leisure time climbing mountains and hiking deep into bush land. But he grew frustrated by the limitations of tents on the market, which were ill-suited to rough terrain. At age 18, encouraged by his inventive grandfather, he set about creating his own solution to the problem.

The result was his **Anywhere Touring Tent**. With strong, telescopic legs and a hammock-like, raised base, the tent is designed to provide a level sleeping surface on any terrain. “It can be pitched on the side of a mountain but still remain flat, on rocky ground without needing tent pegs, and over water up to 80 centimeters deep,” says Gary. The company he set up to manufacture and sell the tent, **Unique Creations**, is growing steadily.



Photo: Unique Creations

The Anywhere Tent
- living up to
its name

Gary Lewtschenko is featured in the Australian government’s “Smart Start” IP studies. He filed a PCT application in 2003. “I knew it was a really good idea, so I wanted to own the invention from the start,” he explained, adding “I’ve got another five ideas up my sleeve that I want to develop.” (For more see: www.uniquecreations.com.au)

SCIENTISTS WITH VISION

Professor Zohra Ben Lakhdar, Tunisia

As the International Year of Physics draws to a close, the third in our series of interviews with distinguished scientists from around the world features Zohra Ben Lakhdar, Professor of Physics at the University of Tunis and a founding member of the Tunisian Physics and Astronomy Societies. Professor Ben Lakhdar works with new spectroscopic methods to study the influence of pollutants, such as methane and metals, on the quality of air, water, and plants. Her studies have potential applications in diverse fields, from astrophysics to agriculture, medicine, pharmaceuticals, and the chemical industry.

Biodata



Photo: Micheline Pelletier/GAMMA

Born: 1943
in Tunis.

Education: B.Sc. in physics, University of Tunis; PhD in Atomic Spectroscopy, University of Paris VI.

Occupation: Since 1978 Professor of Physics, University of Tunis; Director of research laboratory in atomic and molecular spectroscopy and applications; President of Tunisian Optical Society.

Honors: 1994 elected to the Islamic Academy of Sciences; senior associate member at the Abdus Salam International Centre for Theoretical Physics (ICTP); Ministry of Culture award for the development of research activities in Tunisia; 2004 L'Oréal-UNESCO Women in Science Award.

Professor Ben Lakhdar, could you begin by explaining your field, spectroscopy, to the uninitiated among us?

Spectroscopy is about analyzing bodies according to the spectrum of light emitted or absorbed by matter. What does that mean? Think of the planets, stars, galaxies, which are beyond our reach. – How is it that man is able to get information about them and photograph them? It is thanks to light. Light is the messenger of the universe. Light informs us about the state of matter throughout the universe and even about the universe's past.

Light is a set of waves through space. So the "messages" are presented as waves. Each atom has its own way to send its message. This is its "spectrum", its own set of waves. So spec-

troscopy is the common language of atoms. When you know how to read these waves, you understand the language of atoms and molecules.

You grew up in a time and culture where female scientists were few. What effect did this have on you?

When I was young, everyone used to say that science was difficult for men, and impossibly difficult for women. Only men were supposed to be any good at calculus, and the only goal for a woman was to get married and have a family. I wanted to show that there was no difference of ability between men and women, and to demonstrate to the world that I could work in science.

I did my primary schooling, in the 1950s, in cities (Mahdia and Jemmal) where the highest diploma



Photo: Micheline Pelletier/GAMMA

"We have to be where we are most useful." - Professor Ben Lakhdar with her physics students,

women obtained was the Certificate of Primary Studies, and none of the girls I was with obtained it. In those days, girls went to school for three, four or maybe five years, and then got married at the age of 15. No girl thought of going on to secondary school. That meant going to another city. For me the nearest city was Sousse, which was 25 kilometers away, and that was quite a trip when there were no buses or cars.

Luckily for me, my family always gave me their backing, judging that any choice I had made was an act of will, and therefore good. I was very close to my mother who always had an open mind. I tried to explain science to her. At each stage in my career my mother would say, *"Yayia el Elm"* ("science be praised!").

Who inspired you during your studies?

In 1967, after completing my first degree at the University of Tunis, I was given a fellowship from the Tunisian government with the cooperation of the French government to study atomic spectroscopy in Paris. In Paris I was in another world – in the world of atoms, of stars, of cells, of scientists! Every Tuesday I would attend lectures on quantum mechanics by Claude Cohen-Tannoudji. He was a great teacher, who would guide you step by step into the world of the atom. Atomic physics seemed crystal clear when you listened to him. Abdus Salam was another Nobel laureate I admired. He created the International Centre for Theoretical Physics in Trieste, Italy, where research physicists from developing countries can study along-



Photos: Micheline Feiler/CAL/MMA

"Light is the messenger of the universe." Professor Ben Lakhdar interpreting the language of atoms.

side fellow scientists in a stimulating atmosphere and with the use of a well-resourced library. I have benefited a lot from the Centre.

What made you decide to return to Tunisia?

My husband – who is also a physicist – and I both had job offers in France, and were tempted to continue our careers there. But we chose to return to our country in spite of the fact that it lacked a scientific environment. It was hard, but we do not regret our decision. One of my career objectives is to contribute to the national needs of Tunisia, including the need for well trained people in our universities and better facilities for research. We have to be where we are most useful.

What dreams do you have of what science might achieve in future?

I am grateful for what science has already brought to people's lives. My mother had open-heart surgery, and her life was saved. There are no borders in science, people are equal:

scientists are not separated by color, gender, religion, or money.

In future, nothing should be impossible. I long to build a center for optics and photonics for African research scientists in Tunisia, just like the Trieste center. But I also have wilder dreams – of using science to control the climate, to create rain, make deserts fertile, and to get drinking water cheaply from sea water.

Finally, what words of advice might you offer to aspiring physicists – particularly young women – in developing countries?

Be aware of the importance of culture; be open-minded as a scientist and as a person. Seek independence. Understand how important it is to be a responsible citizen. Be of good heart and be confident.

Acknowledgement: With thanks to *L'Oréal-UNESCO Women in Science* for use of interview material incorporated in the above.

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Tunisia: encouraging scientists to use IP

The number of Tunisian patent applications is rising. The Tunisian government has welcomed this trend as evidence of the impact of national measures designed to encourage research and innovation, and to spread greater awareness of the IP system among research institutions.

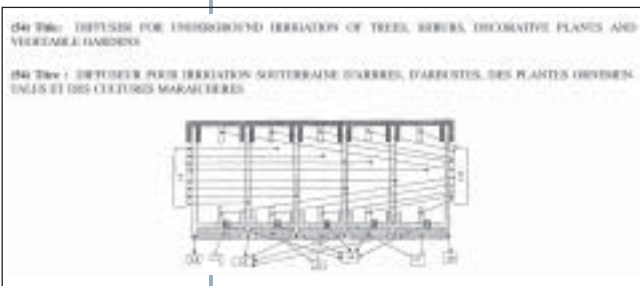
The Tunisian presidential program (2004 – 2009) highlights the need to strengthen research and innovation in order to meet future challenges; and flags the importance of solid incentives to stimulate and protect inventions. The government target for investment in research and development is set to reach 1.25 percent of GDP by 2009.

“Towards a Patent Culture,” a campaign launched by the Ministry of Scientific Research, Technology and Competency Development (MRSTDC) in 2004, is teaching scientists how to protect their research results. The Ministry also offers practical and financial assistance to scientists to enable them to submit patent applications, both nationally and internationally.

Another new training program by the Ministry will aim to create a pool of experts in the drafting of patent applications and of technology transfer contracts. Meanwhile, the Tunisian Industrial Property Office (INNORPI) has created an online patent database, to encourage the active exploitation of patent information.

Tunisian participation in WIPO’s University Initiative has resulted in the opening of an IP documentation center in the Borj Cédria Science and Technology Park.

Filing facts



Tunisian scientists and research institutes are filing more patent applications nationally and via the PCT, such as this one from the Medenine Institute of Arid Regions.

- ▶ INNORPI receives approximately 250 patent applications per year, of which 80 percent are from non residents.
- ▶ Applications filed by Tunisian publicly funded researchers has risen from zero in 1990 to 20 in 2005.
- ▶ Among applications by Tunisian residents, approximately 13 percent are currently filed by research institutions; 22 percent by businesses; and 65 percent by individuals.

- ▶ Some recent successes: the Tunisian Institute for Arid Regions has patented a diffuser for the underground irrigation of trees, vegetables and other plants. The Sfax Biotechnology Centre has patented a means of isolating a specific micro-organism for use in a bio-insecticide. Since Tunisia’s accession to the Patent Cooperation Treaty in 2001, both institutes have filed international applications via the PCT.

Sources: MRSTDC and INNORPI, November 2005.

NESTLÉ: STREAMLINING IP TO STAY ON TOP

Nestlé – a brand-driven company and world leader in the food sector, with US\$70 billion sales in 2004 – has over the past 3 years carried out a fundamental review and overhaul of its intellectual property (IP) management structures. Nestlé's IP General Counsel, Paula Nelson, speaking at the WIPO Worldwide Academy in Geneva on September 22, outlined the principal changes made by her team, and some thoughts on the Nestlé experience.

Nestlé is a highly focused company in that 96 percent of its business is food and drink. The company's stated aim is to be number one in all its product lines, which include soluble coffee, infant nutrition, confectionery, dairy, chocolate milk, bottled water, pet foods, ice cream – to name but a few. Nestlé's sales figures show it outselling its rivals in all these lines, except for in the ice cream sector, where it shares the top spot with Unilever. But competition is harsh and the importance of active promotion and defense of its IP assets in order to stay ahead has long been understood by Nestlé's top management.

Streamlining the structure

Nestlé carries out research and development worldwide, but the parent company owns all the company's IP, which it licenses out to subsidiaries.

Prior to the overhaul of the IP department, 55 lawyers around the world were involved in trademark

issues. All 55 made recommendations separately to the IP lawyers back in headquarters on how things should be done on a national or regional level, "generating more heat than light," said Ms. Nelson. The company now has 16 regionally based IP advisors reporting to headquarters, who form part of a single team.

The IP Department also revised their mission statement. This focuses on the central business goal of the company's IP-related activity: "To generate competitive advantage through development of IP rights." All decisions as to which products to protect, how, and where, flow from this.

Tackling brand proliferation

Having unified the IP Department at headquarters, the team set about tackling a second major problem. Nestlé's strongest corporate brands



Nestlé's top six worldwide strategic brands

worldwide are *Nescafe*, *Nestlé*, *Nestea*, *Maggi*, *Purina* and *Buitoni*. But additional brand names were being created each year for the local marketplaces, with the number increasing exponentially. Some were being actively used, others were not and others merely doubled up with other Nestlé brand names. This had become counterproductive. The local brands were diluting the strength of the main strategic brands – in effect competing with them – while at the same time requiring a tremendous amount of work and expense to maintain.

Following a strategic review to identify which of the brands were revenue makers, Ms. Nelson's team drastically reduced the number of local brands to 6,000 and the strategic brands to 340. "And if you think that is still a lot, you should have seen what we had before," she says. Some of the remaining 6,000 brands are now licensed out to third parties, who are not Nestlé affiliates, for use on unrelated products such as clothes or toys. This enables Nestlé to increase the return on its IP assets while achieving wider exposure of the brand names.

Nestlé's IP Assets

Trademarks

- ▶ 340 strategic brands protected by 75,000 trademark registrations in different countries around the world in accordance with Nestlé's business interests.
- ▶ 6,000 local brands protected by 28,000 trademark registrations.

Patents

- ▶ 9,018 granted patents covering countries on every continent
- ▶ 6,127 pending patents



	Genuine	Counterfeit	Notice
Courtesy of Nestlé			Guala Cap. The gap between the tamper-evident ring is bigger, and the printing is less colorful and clear
			Neck. The gap between the cap and the bottle neck is bigger, and the printing is less colorful and clear
			Barcode. Unclear, a little grayish In addition, the bottle of the genuine Maggi Seasoning is a little taller than the counterfeit.



Beating back infringement

Enforcement was the third main area targeted by the Nestlé IP overhaul. Counterfeiting is on the rise, particularly within the food industry. The 2004 European Union statistics show a 12 percent increase in the value of seized counterfeit goods over 2003, and 1000 percent increase over 1998. In the food sector, seizures of counterfeit foodstuff, drinks and alcohol increased by 200 percent over 2003.

Combating counterfeiting has always had been a high priority for Nestlé, not least since counterfeit food and drink products, which do not meet health and safety standards can pose a threat to the welfare of consumers. Each Nestlé subsidiary is tasked to look out for counterfeit goods and to report all cases back to headquarters, where a decision is taken on the appropriate action. Cases can involve imitation goods sold under fake Nestlé trademarks; unauthorized use of patents; Internet and domain name misuse and the derogatory use of trademarks.

No case is ignored. With the cooperation of local authorities, the goods are seized and samples sent back to headquarters for analysis and future reference. As counterfeiters become ever more skilled at replicating packaging, chemical testing is sometimes required to confirm that the product is not genuine. Analysis of the products often reveals common sources with goods seized elsewhere, thus creating chains of evidence. While most cases do not go to litigation, Nestlé prosecutes several hundred major infringement cases every year. The message is clear. As Ms. Nelson puts it, "Nestlé is no longer too polite to sue. Infringement will not be tolerated."

Nestlé has put increased resources into in-house training to spot counterfeits, as well as working with governments on training programs for police and border enforcement agents. Each case of infringement has to be studied on an individual basis, taking into account the legal system of the country in question.

"No longer too polite to sue"

Ms. Nelson notes that the lack of harmonization between national IP laws greatly complicates the task of effective enforcement for multinational businesses.

Lessons learnt

The streamlining of the IP Department shed light on the problems relating to the proliferation of trademarks, and made it possible to formulate a strategy to decide which were worth keeping. It also permitted Nestlé's IP Department to work more efficiently in their fight against counterfeiting.

Ms. Nelson and her Nestlé colleagues believes that much more can be gained by working with international organizations, such as WIPO and the World Trade Organization (WTO), industry groups and enforcement agencies in countries around the world. This an area that the IP Department aims to develop further.



"It is virtually impossible today to develop an audio or video coding standard with a reasonable performance that does not require the use of one or, more likely, several patents," writes the ISO Bulletin.¹ The statement holds true for a number of other products, particularly in the fields of telecommunications and electronics. This means that companies wishing to manufacture products that comply with certain established industry standards may need to use patented technology associated with those standards, for which they will need prior authorization from the patent holder.

This article outlines how intellectual property (IP) issues are addressed during the standard-setting process, and the implications for businesses seeking to adopt technical standards. While this article deals only with patents, standards for products protected by copyright, such as those relating to computer programs, may also be important in this context.

The need for standards

Industry standards are present in almost every facet of our lives, in the production of the food we eat, in our means of communication, travel, work, play and so on. Almost every reputable product in the marketplace has been developed in compliance with one or more voluntary or mandatory standards. Mandatory standards generally pertain to health, safety or the



October 14 – World Standards Day

environment and are set by, or on behalf of, governments. Most standards, however, are voluntary.

The International Organization for Standardization (ISO) defines a formal standard as "a document, established by consensus that provides rules, guidelines or characteristics for activities or their results." A standard, therefore, is generally a set of agreed specifications and criteria to be met by a given type of product, process, service, interface or material.

In addition to health, safety and environmental concerns, standards are important for many reasons. Critically, the existence of standards makes it possible for different firms to develop compatible or interoperable products. Without standards, buying a nut to fit a bolt would be a nightmare; and CDs manufactured by different companies would not work in the same

player. Standards for interoperability are particularly important for network markets, such as railroads, electricity, telegraph/faxes, telephones, cellular phones and the Internet. Product standards are often critical to the effective functioning of markets and play an important role in international trade. For consumers/users, standards provide information and assure quality.

In today's competitive context, where companies invest significantly in the development – and protection – of new technologies, it is not uncommon that the best technology on which to base a particular technical standard is protected by one or more patents. Indeed many of the international standards developed by the ISO incorporate patented technology. The MPEG-2 standard for visual and audio compression, for example, requires the use of some 100 patents by companies implementing the standard.

The incorporation of patented technology in industry standards raises a number of questions for businesses that own such technology, for those involved in the standards-setting process and for the companies that adopt the standards.

How is IP treated in the creation of new technical standards?

Technical standards are generally developed and revised by the technical committees of Standard Devel-

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¹ ISO, "MPEG Strides Forward with ISO/IEC 14496-2" in ISO Bulletin May 2002. www.iso.ch/iso/en/commcentre/isobulletin/articles/2002/pdf/mpeg02-05.pdf

opment Organizations (SDOs), which include experts in the relevant fields, as well as stakeholders representing both industry and user interests. During the standard-setting process, the committee considers all technology that is essential to meet the proposed standard, including patented technology. However, most SDOs work on the principle that the use of proprietary or patented technology in standards should if possible be avoided unless – as is sometimes the case – it is clearly justified on technical grounds. Patented technology that must be included to meet the standard is referred to as **essential patents** (or more precisely “essential patent claims”).

How is blockage by patent-holders prevented?

It would, of course, be counter-productive to adopt a standard if an IP rights holder could block its implementation either by refusing to grant a license or by requiring excessively high royalties. To ensure that this does not happen, the SDO technical committee contacts the holders of the relevant patents in order to seek their agreement to negotiate licenses with users of the proposed standard on **reasonable and non-discriminatory terms and conditions** (generally referred to as RAND terms and conditions). If a patent holder refuses, the technical committee goes back to the drawing board. Some SDOs go beyond the RAND terms and conditions, requiring the rights holders to license their technologies on a **royalty-free** (or compensation-free) basis. This is true of certain consortia dealing with Internet standards (see box).



Industry standards are present in almost every facet of our lives

Web Standards

As the Internet became more commercially prominent and the number of software and business process patents increased, some patent holders sought license payments for use of patented technology which was necessary to implement Web standards. In some cases, these same patent holders had participated in the development of the standards. The World Wide Web Consortium (W3C), which develops interoperable technologies (specifications, guidelines, software, and tools) for the Web, concluded that it is essential to have a clear patent policy governing the development of standards. The patent policy they adopted was designed to safeguard the extraordinary dynamics of innovation and interoperability that made the Web successful.

One of the principles that guided the development of the W3C Patent Policy is that participants in the standards setting process benefit by working in an environment where intellectual property risks are known rather than hidden. The policy provides transparency with minimum burden: instead of requiring Working Group participants to disclose their patents, the participants all commit to license on a non-discriminatory and royalty-free basis any patents which are found to be essential for implementing the Web standards developed. Disclosure is only required if a participant wishes to exclude a patent from the royalty-free licensing obligation. Non-participants have a good-faith obligation to disclose patents of which they have knowledge. Thus any user who implements a W3C Recommendation gains royalty-free use of essential patented technology committed by the Members of the Working Group that authored the Recommendation.

Source: W3C Patent Policy www.w3.org/Consortium/Patent-Policy-20040205/



How are relevant patents identified?

SDOs follow different practices about if, when and how much information must be disclosed by those participating in the standards-setting process. However, the IP policies of many SDOs nowadays require companies to disclose any relevant patents or published patent applica-

tions. For large companies with thousands of patents and patent applications this may be a cumbersome task, and some such companies instead provide blanket statements in which they agree to RAND terms for the licensing of any of their proprietary technology that might prove essential for compliance with the standard under development.

While technical committee members are invited to participate in the standard-setting process because of their expertise in the specific technical field of the standard to be negotiated, they may also have vested interests, which makes the standard-setting process a delicate matter. For example, a participating company which owns relevant proprietary technology would not wish the adopted standard to render its own technology irrelevant. It may indeed be interested in ensuring that its own technology becomes the basis for the standard. The technical committee must ensure, therefore, that the new standard is created on the basis of purely technical considerations.

Participating companies should also bear in mind that contributions to a standards-setting process are generally not confidential; so any technical information revealed to the members of a standards-setting committee may be considered prior art for the purpose of examining or invalidating a future patent application.

What IP-related steps must a company take before adopting a standard?

Any company that plans to adopt a technical standard for its products, processes or services, must first verify whether a license is required for the use of any essential patented technology incorporated in the standard. If the SDO technical committee had detected any essential patents and obtained an agreement to

Case: Cellular Phone Standards

New technology has led to an explosion in mobile phone sales in the last few years. But although the sector counts a number of big players, none has established a dominant enough role for their own product specifications to become a *de facto* standard for the industry. The lack of international standards has created problems with interconnectivity, interoperability and billing, and makes it impossible for the mobile phone user to make calls with the same phone while traveling from continent to continent.

Industry experts claim that new 3G technology, which has made video reception possible on cellphone screens, will not break through until standards are set for the industry. Therefore, both operators and phone makers have potentially much to gain. In the immediate term, a number of different software solutions are being grafted on to manufacturer software – in rather complicated and messy ways – to resolve some of the problems. “As a result, an operator with 30 different phones will have 5 to 10 different platforms and will somehow have to manage all of them,” said Dean Bubleby of Disruptive Analysis, a British technology consultancy.

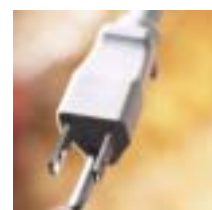
Open Mobile Terminal Platforms, an organization set up by a group of cellphone operators, is working at standardizing screen sizes and making sure that different applications, like Internet browsers, video calling and reception and e-mail software, work with each other. Some progress has been made. However, the technology in the phone, the manufacturer software and the software added to the phones by various operators are all protected by IP rights. Any standards set in the industry will probably include both patented and copyright-protected technology.

(Source: “Wireless: In search of breakthrough, 3G lacks simple standards” by Robert Clark International Herald Tribune, February 7, 2005)

issue licenses on RAND terms from the patent holder, then the necessary information on the patent and how to obtain a license is generally included in the standard itself. If the license is to be obtained directly

from the patent holder, then the licensing agreement should be negotiated and signed before the company takes any concrete steps to adopt the standard.

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In some instances, a company may have the option of choosing between a number of different technologies in order to comply with a given standard, only some of which may include patented technology. In such cases, the patents would not be considered essential but *useful* patents.

In certain cases, a number of essential patents may be pooled by the patent holders to facilitate dissemination of the standard. A "patent pool" of this sort enables companies to obtain licenses for a group of patents through a single agreement. This is the case for the previously cited MPEG-2. The patent holders may agree to grant royalty-free licenses, but this cannot be assumed to be the case.

Getting it right

A company planning to adopt the industry standards of any market sector must always obtain in advance the licenses for any essential patents or IP. A company which is considering actually participating in the standard-setting process, should first look carefully at the IP policy of the committee. Although a patent holder may have a vested interest in seeing a particular technology become part of a standard, there is also a risk that disclosure obligations could invalidate a future patent application.

For more information on various practical aspects of the IP system of interest to business and industry, please visit the website of the SMEs Division at www.wipo.int/sme.

The next article in the IP and Business series will discuss patent claims.

NEWS ROUNDUP

Lance Armstrong defeats cybersquatters

The American cycling champion, Lance Armstrong, who fought cancer with the same determination that made him a seven-time winner of the *Tour de France*, has notched up another victory – this time against cybersquatters.



Courtesy of Lance Armstrong Foundation

Lance Armstrong's cancer charity has sold over 50 million LIVESTRONG bracelets.

The California-based respondents had been cashing in on the popularity of LIVESTRONG bracelets. These distinctive yellow rubber bracelets are sold by the nonprofit Lance Armstrong Foundation, which the cycle champion set up in 1997 to fund cancer-related research and to support cancer survivorship. CSA Marketing and Chris Angeles had registered three domain names incorporating the term *livestrong*, from which they were selling the bracelets for commercial gain. The Lance Armstrong Foundation brought two cases before the WIPO Arbitration and Mediation Center for resolution under the fast, low-cost Uniform Domain Name Dispute Resolution Policy (UDRP) procedure.

The independent panel appointed by the Center ruled on October 13 that ownership of the domain names should be transferred to the Foundation. The panelists did not mince their words as they concluded: "There is nothing, in short, to persuade the Panel that the registration and use of the domain names was anything other than opportunistic and abusive conduct of a kind that the [UDRP] Policy was designed to correct."

The Foundation first registered LIVESTRONG as a trademark in 2004. Under the UDRP procedure, a trademark owner whose mark has been registered as a domain name by someone else can file a complaint with the WIPO Arbitration and Mediation Center. The panel can order the transfer of the domain name to the Complainant if it determines that the Complainant owns trademark rights, that the domain name is confusingly similar to the trademark, that the Respondent has no legitimate interest in the domain name, and that the domain name is registered and used in bad faith.

See <http://arbitrator.wipo.int> for more information on the Arbitration and Mediation Center, which specializes in cases arising out of intellectual property and technology transactions

Strawberry “smell-mark” squashed

The latest attempt to register a smell as a trademark has been turned down by a European Union (EU) court.

French company Eden SARL had sought to trademark the smell of ripe strawberries for use in soaps, cosmetic products and accessories. The original application had been rejected by the European trademark agency (OHIM) on the grounds that it was not capable of being represented graphically, and was neither unequivocal nor precise. Eden SARL appealed to the EU Court of First Instance, which upheld the OHIM decision on October 27. The court cited test results in which examiners on a sensory panel were able to distinguish the smells of five different varieties of strawberries, concluding that “strawberries do not just have one smell.”

The judgment concluded: “At the present time, there is no generally accepted international classification of smells which would make it possible... to identify an

olfactory sign objectively and precisely.” But the judges left open the door for future applications, noting: “The olfactory memory is probably

the most reliable memory that humans possess. Consequently, economic operators have a clear interest in using olfactory signs to identify their goods.”

Very few smell marks have been successfully registered to date. Notable exceptions include the European Trade Mark registration by a Dutch perfume company of the smell of fresh cut grass for use in tennis balls; and UK trademark registrations of “a floral fragrance/smell reminiscent of roses” applied to rubber tires; and – wait for it – “the strong smell of bitter beer” applied to darts.



The Orchard comes to Kenya

In early September 2005, The Orchard, the world's leading distributor of independent music, extended its activities to Kenya, signing a licensing agreement with the Music Copyright Society of Kenya (MCSK) for its entire list of artists. With over 40 different ethnic groups and an immigrant population from Europe, India and the Middle East, Kenya's music includes a wealth of genres, such as classic *benga*, new *taarab*, rumba-based Swahili and Lingala music. The Orchard will promote the digital distribution of Kenya's music with over 125 international digital music stores, including *iTunes*, *eMusic*, *Napster*, *MSN* and *Yahoo!* The company has a track record of introducing indigenous music styles to western audiences, having launched a similar program in India in 2004.



Mzee Ingosi, the “Pied Piper of Kakmega” (in western Kenya)

Photo: Joe Kiagu

The MCSK is among the African copyright societies whose collective management operations have been computerized using WIPO's specially developed *AFRICOS* software for collective management.

“Thought Thieves” Film Competition

Courtesy of Microsoft's Thought Thieves Competition



U.K. competition winners Amy Sutton and Alex Clough. Young filmmakers are alive to the risk of having their ideas stolen.

The challenge to budding film-makers – issued by Microsoft Limited with the United Kingdom Film Education foundation and other partners – was to produce a short film depicting in less than 45 seconds how intellectual property (IP) theft affects individuals and society. The winners in the two age categories, announced on October 27, were Alex Clough and Amy Sutton.

“I wanted to get away from hi-tech and piracy, and show IP theft in its rawest form,” says 21-year old Alex of his film, *Pitfalls of a Stone Age Inventor*. With his sights set on a career in film-making, questions of copyright and protecting authorship are real to Alex. But he expressed skepticism about the effectiveness of some recent campaigns in the U.K. “A lot of my age group are quite cynical about advertisements which make out that if you buy pirate DVDs you are funding terrorists. Telling the facts without hype or threats probably works better.” He cautions, however, that anti-piracy campaigns alone can only ever go so far in tackling problems which, he believes, are exacerbated by young people’s negative perceptions of the music and other industries.

Amy, 15, also comments thoughtfully, “Lots of kids just blank out if you try and preach something to them. So I think things like these film competitions are good things which young people can really get involved in. If they’re actually working on it themselves it becomes much more interesting for them and they learn more.” Amy’s own enjoyment of the challenge shines through her film, *Jitterbug*, the tale of an entrepreneur whose rival steals his design for a novel toy and beats him to the market.

Representatives from Microsoft and Film Education were impressed by the creativeness of the many entries and expressed their hope that the competition will have contributed to raising awareness of the problems of IP theft. (For more information see www.msn.co.uk/thoughtthieves.)

IFRRO General Assembly

The International Federation of Reproduction Rights Organisations (IFRRO) held its General Assembly in Madrid on October 25. In her keynote speech, WIPO Deputy Director General Mrs. Rita Hayes referred to the Cooperation Agreement between WIPO and IFRRO, concluded in October 2003, and to the successful implementation of joint activities. She emphasized the role of digital rights management in the field of reprography and highlighted copyright challenges in the digital era, such as the enforcement of rights, licensing of content, exceptions and limitations, as well as the issue of the balance between the interests of rights owners and the public in the context of accessing protected works.

A WIPO-IFRRO joint working committee met to take stock of past and planned activities. WIPO also participated in a seminar, Copyright Creating Access, Collective Management of Copyright at the Service of Creators, Publishers and Users.



WIPO Deputy Director General Mrs. Rita Hayes, Spanish Deputy Minister of Culture Mr. Antonio Hidalgo, and IFRRO President Mr. Peter Shepherd.

INTELLECTUAL PROPERTY IN THE NEW MILLENNIUM

This is a celebratory volume of essays – or “festschrift” – in honor of William Cornish, recently retired from the Herchel Smith Chair in Intellectual Property (IP) Law at Cambridge University, United Kingdom. The editors are his successor in the Chair, Lionel Bently, and David Vaver, Professor of Intellectual Property and Information Technology Law at Oxford University.

The contributors are 22 specialists, all of them IP practitioners or University level teachers. The volume clearly has an appeal for specialists, but its lucidity will equally render it useful to students and to informed and interested general readers. The subject matter is divided into four sections, namely, general IP, patents and plant protection, trademarks and unfair competition, and copyright and related rights.

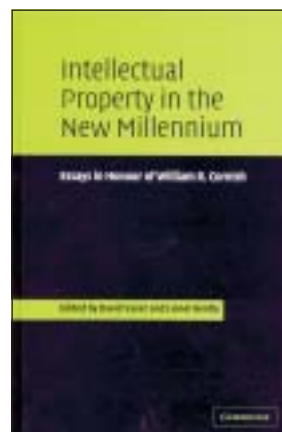
The book contains excellent coverage of newer developments in IP at the international level. Contributors show how the latest legal instruments reinforce or add to preceding instruments in their fields – for example, the 1991 revision of the UPOV Convention, and the compliance required by the World Trade Organization’s TRIPS Agreement and the WIPO Copyright Treaty with the norms of the much earlier Berne Convention. There are illustrations of the problems involved in the application of the Berne Convention, arising notably from developments

in information technology, and from the need for clarification of existing definitions.

Comparative law is well represented in essays which compare the merits of common and civil law systems in Europe and North America. Readers are guided through the difficulties of evaluating whether the twin criteria of satisfactory justice at justifiable cost prevail in common law countries where first instance trials usually conclude cases, or in civil law countries where more appeals are the norm. Another interesting essay weighs the advisability of using criminal sanctions to enforce IP rights, tending to a warning that this may weaken the advantages of civil remedies, while the threat of imprisonment is not necessarily sufficient to deter infringers.

Essays on topical issues contain thought-provoking material, such as on the demand for biotechnology to meet the world’s food needs. There is also interesting commentary on the extent to which WIPO’s Internet treaties (the WIPO Copyright Treaty and the WIPO Performances and Phonograms Treaty) fully meet new needs.

One element lacking in this volume is contributors from developing countries, or essays devoted specifically to issues affecting developing countries. This is despite a preface which identifies “conflicts between



Essays in Honour of William R. Cornish
 Edited by David Vaver and Lionel Bently,
 Publisher Cambridge University Press, 2004
 ISBN 0 521 84643 9 (hardback)
 Price: £60 or US\$100

developed and developing countries over the appropriate level of intellectual property protection” as one of the most pressing concerns of IP lawyers today.

A reviewer of such a collection is faced with the same kind of challenge as were its compilers – that of selection – and cannot do justice to all the essays. Overall, however, this *festschrift* is thoughtfully compiled and well written, on topics of considerable variety and importance, thus extending its shelf life beyond its immediate celebratory purpose.



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