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CLIMATE CHANGE The Technology Challenge

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14

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of **WHAM-O**

8



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Moral Rights
vs Public Utility

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CLIMATE CHANGE

THE TECHNOLOGY CHALLENGE

This article sets the scene for WIPO Magazine's new series on the challenge to find technological solutions to climate change. The series will look at examples of climate-friendly innovation, and will explore how intellectual property can contribute to the development of low carbon technologies and their transfer to developing countries.

Tuvalu, South Pacific. A tropical island dream of perfect blue seas, coral reefs and waving coconut palms? Or the beginning of a nightmare? With its highest point just 4.5 meters above sea level, tiny Tuvalu is one of the world's most low-lying countries. And as global sea levels rise, its inhabitants face the grim prospect of their land gradually disappearing beneath the waves. Climate change, caused by the release of greenhouse gases into the atmosphere, is already taking its toll on the life of the Tuvalu islanders. The underground rainwater tanks from which they draw their drinking water are contaminated by flooding. And salt water seeping into farmland has destroyed crops, making the islanders dependent on canned imports.

Tip of the iceberg

Tuvalu is just the tip of the proverbial iceberg. Delivering their latest report in November, the world's scientists on the Intergovernmental Panel on Climate Change declared climate change to be "unequivocal." Few any longer question the reality of global warming, nor the potential consequences if it continues unchecked. Experts forecast melting glaciers, rising sea levels, droughts, floods, hurricanes, leading to crop failures, conflicts, famine, disease. Describing this as the "one of the most complex, multi-faceted and serious threats the world faces," UN Secretary General, Ban Ki-moon has called for a massive mobilization by governments, the private sector and civil society.

To this end, over 11,000 participants gathered in Bali, Indonesia, for the UN Climate Change Conference in December. Government representatives rubbed shoulders with environmentalists, industry groups with development lobbyists, human rights activists with carbon traders. Temperatures rose inside and outside the conference rooms as delegates differed over questions such as targets for reductions in carbon emissions. But all were agreed on one thing: that innovation and new technologies will play a crucial role in meeting the challenge.

Looking to innovation to save the planet

Developed and developing countries are equally anxious to avoid the sort of cut-backs, or restrictive energy policies, which would undermine their industrial growth or competitiveness. What everyone wants are solutions which are not only good for the planet, but also good for business and good for development. Technological innovation is seen as the best hope of delivering this triple whammy.

Technological solutions are needed for the challenges of both *mitigation* and *adaptation*, as they are referred to in climate change terminology. Mitigation is about slowing down global warming by reducing the level of greenhouse gases in the atmosphere. Among the many mitigation technologies already on – or nearing – the market are renewable energy sources, such as biofuels, biomass, wind, solar and hydro power; low carbon building materials; and emerging technologies which aim to capture carbon out of the atmosphere and lock it away.

Adaptation involves dealing with the existing or anticipated effects of climate change, particularly in the developing, least developed and small island countries, which are most severely affected. In addition to "soft" technologies, such as crop rotation, hard technologies for adaptation include improved irrigation techniques to cope with drought, and new plant varieties which are resistant to drought or to salt water.

The uptake of mitigation technologies has accelerated in recent years, encouraged by proactive government policies. Yet it is not enough for environmentally minded consumers in Europe and the US to install solar panels on their homes and trade in their gas-guzzlers for hybrid cars. The impact and effectiveness of technological solutions depend on their being deployed on a global scale. The International Energy Agency estimates that, by 2020, 60 percent of greenhouse gas emissions will come from economies in transition and developing

“Climate change is one of the most complex, multifaceted and serious threats the world faces. The response is fundamentally linked to pressing concerns of sustainable development and global fairness; of economy, poverty reduction and society; and of the world we want to hand down to our children.” UN Secretary General Ban Ki-moon

countries, underlining that these countries will need to “leapfrog a technological generation or two” if they are to avoid the fossil-fuel trap and move directly to environmentally-sound technologies.

Technology transfer from developed to developing countries, and increasingly *between* developing countries, will therefore be needed on what the secretariat of the UN Framework Convention on Climate Change (UNFCCC) describes as an unprecedented scale. A major, ongoing focus of the UN discussions is how best to make this happen. Strategies include funding mechanisms, capacity-building, international collaborative research networks, public-private partnerships, and using multilateral and bilateral trade cooperation agreements to create incentives.

What's IP got to do with it?

The intellectual property (IP) rights system makes no distinction between environmentally friendly and other technologies. IP contributes to the development and diffusion of new technologies for combating climate change much as it does in any other innovative technology field: it encourages innovation by providing the means to generate a commercial return on investment in the development of low carbon technologies (particularly as demand builds when the market is primed by appropriate policies); it gives companies the confidence to license their proprietary technologies for use or further development where they are most needed. Patent information can also make a valuable contribution. Published patent documents offer a vast, freely accessible source of technological information on which others may build. The development of hydrogen fuel cells as a renewable energy source is just one example of how new innovation grew from research results contained in earlier patent information (*WIPO Magazine* issue no. 1/2007). Patent “landscaping” can also be used, for example, to chart the pace and direction of innovation in alternative energy technologies and identify future directions.

As efforts are made to accelerate the transfer of affordable climate-friendly technologies to developing countries, there will need to be on-going scrutiny in order to ensure that IP is working effectively to facilitate

Photo by Gary Braasch © 2005



Funafuti, Tuvalu. Photojournalist Gary Braasch has documented climate science since 2000. See www.worldviewofglobalwarming.org

this process, and to address any problem areas. Such scrutiny is already underway, with some groups, such as the Third World Network, expressing concern that patents on the new technologies may be keeping prices too high and restricting access by developing countries. European Parliamentarians recently proposed a study into the feasibility of amending the WTO Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) in order to allow for the compulsory licensing of “environmentally necessary” technologies. Other analyses, however, such as the detailed case studies¹ compiled by the Climate Technology Initiative, the International Energy Agency and the United Nations Environment Programme, conclude that one of the most significant impediments to the successful transfer of climate-friendly technologies is the lack of IP rights protection in some developing countries.

These questions are explored further in this edition of *WIPO Magazine* in an article by Professor John Barton (page 6), which examines the impact of patents in the transfer of renewable energy technologies to Brazil, China and India. We also talk to the inventor of a new environmentally-friendly construction material about his innovation and his IP strategy (page 4). Other articles in our series will illustrate how WIPO is helping developing countries to build capacity in technology licensing skills; to foster collaborative research and development; and to create enabling environments for innovation and technology transfer. Small steps on the steep road to meeting the technology challenge.

¹ Technology without Borders www.iea.org/textbase/nppdf/free/2000/ctifull2001.pdf

TOWARDS A GREEN STONE AGE?

A small German engineering firm, TechnoCarbon Technologies, has developed a new composite material that its inventors hope may contribute to cutting greenhouse gas emissions in the construction and manufacturing sectors. They talked to WIPO Magazine about the innovation process, about the use of IP in commercializing the resulting products, and about their plans for licensing the technology at low cost for developing country markets.

"This," declares Kolja Kuse, "is the past." He leans across the aisle of the bus to hand us a heavy steel joist. "And this," he says, with a rhetorical flourish, unsheathing a sleek, light-weight bar, "is the future."

"It looked great," he recalled. "But when the hob got above a certain temperature, the stone would always expand then crack, like an explosion." He tried compressing the edges with huge machines, but it was no good. "The mechanical engineers and material scientists told me, you can't stop the stone expanding. It's impossible. So I pretty much gave up on the idea."

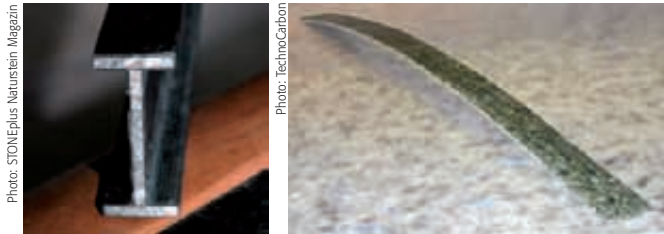


Photo: STONEplus Naturstein Magazin

Photo: TechnoCarbon

The ratio of pressure stability to specific weight of CFS is twice that of construction steel, aluminium or concrete. Shown here in the form of a granite beam and a flexible strip.

Inventor Kolja Kuse and two business partners were en route to the UN Climate Change Conference in Bali, Indonesia. Their mission: to seek partnerships to promote their innovative construction material, which they believe can play a part in reducing global carbon emissions.

Granite sandwich

The new, high performance composite, known as *CarbonFibreStone* (CFS), consists of a slice of granite with a fine laminate of carbon fiber on one or both sides. "A bit like a stone-and-carbon-fiber sandwich," explains Kolja. The resulting material is not only elastic, but is as strong as construction steel, as light as aluminium and has better vibration-damping properties than any other known pressure-resistant material.

The story began ten years ago in Kolja Kuse's garage. He was at the time an electrical engineer at Aachen University, specializing in energy production. His brother was a stone mason. Watching his brother at work one day as he cut a slab of granite to make a kitchen worktop, Kolja imagined a polished stone stove-top, with invisible induction coils hidden beneath a perfect, seamless working surface. Not given to idle dreaming, he built one.

Break through

There followed one of those moments of serendipity, which often precede a technological breakthrough. Flying home to Munich from a meeting, Kolja picked up a brochure about carbon fiber production which had been left on the seat. Carbon fiber, he learned, shrinks longitudinally when heated. Intrigued, he wondered what might happen if he were to coat his beloved granite with carbon fiber. He teamed up with a carbon fiber specialist and gave it a go. Somewhat to their astonishment, the experiment was a success. No matter how high they heated the new hob, the stone never fractured.

The explanation, as they subsequently discovered, lay in a complex field of applied mechanics well outside Kolja Kuse's own area of expertise. But the hunch had paid off. Engineers at the University of Munich subjected a prototype leaf-spring made of CFS to extensive testing and found an outstanding resistance to fatigue. With several more years of research, testing and refinement, the new composite was ready for the market. In 2007 it was awarded a Material of Excellence certificate by the trade publication, *Material ConneXion*.

Rock on

The stone stove is now a reality, marketed by Spring Switzerland AG. As indeed is an award-winning¹ ski with a CFS core, produced by Swiss manufacturer, Zai. Further licensing deals with several other com-

¹ Best Product at the Materialica 2007 trade fair, awarded jointly to TechnoCarbon Technologies and Zai: www.materialica-presseinfo.de/html/design_award_2007_winner.html

“Without international IP rights, we would have no business model.”

panies are under negotiation. But this is only the beginning of what the TechnoCarbon team sees as virtually unlimited industrial applications.

Companies within the carbon fiber industry have been quick to see the benefits of collaboration. Because of very high production costs, carbon fiber itself has tended to be used mostly in specialized applications, such as Formula One racing cars, aircraft parts, or high end sports equipment. The option of combining carbon fiber with CFS technology opens a range of new possibilities in the manufacturing and construction sectors which would not otherwise have been thought economically viable.

The team’s vision is that CFS technology will lead to greener building and contribute to sustainable development by replacing steel, aluminium and even concrete. 60 percent of the earth’s mantle consists of granite, they point out. And as it comes out of the ground “ready baked,” it needs no smelting. TechnoCarbon’s initial calculations suggest that CFS production generates less than half of the carbon emissions of steel, aluminium or carbon fiber production, including the energy required to quarry and process the stone. “It is true that, by volume, CFS would consume as much energy to produce as aluminium,” notes Kolja Kuse. “But it has ten times more tensile strength. So even with a 5:1 ratio of stone to carbon fiber for high load bearing cases, the production energy would decrease by something approaching a factor of four in comparison to aluminium.”

Building on IP

Kolja Kuse is animated on the subject of IP. “Without international IP rights, we would have no business model,” he says emphatically. He now has published PCT applications relating to the technology and its applications, filed on the advice of his lawyer uncle as the most efficient means to protect the invention in international markets. “Though what patent lawyers don’t warn you,” he adds ruefully, “is how much it might cost to defend your patent once you’ve got it.” They have also registered CFS (*CarbonFibreStone*) and *Techno Carbon Technologies* as trademarks, with a view to developing a “CFS inside” branding strategy.

Courtesy of Zai AG



Zai’s Spada ski has a core of CFS using granite from the Swiss Alps. Elastic, and with greater vibration-damping properties than carbon fiber, the CFS provides what Zai describes as incomparable smoothness and agility.

Photo: STONEplus Naturstein Magazin



A seamless stone cooking hob.

He and the ten staff now working for TechnoCarbon Technologies are committed to using their IP to help make the technology available for industrial use in developing countries. They have partnered with Granidus, a small NGO in Berlin run by Matthias Bieniek, to explore technology transfer opportunities. The company plans to channel up to 80 percent of their profits from commercial licensing deals into subsidizing the transfer of CFS to developing countries. “We are also looking at possible cross-licensing arrangements with technology companies in developing countries,” Matthias told us. “The ideal would be to encourage them to develop their own new CFS applications for local needs, and then to help them with the patenting.”

The newest member of the team, Peter Kriebel, joins us on the Bali bus. Inspired by the potential of CFS, he had just left a lucrative banking career in Switzerland to head up TechnoCarbon’s business development. “It was a no brainer!” he says, “a project for the heart as well as for the head.”

More information:

www.technocarbon.com

PATENTING AND ACCESS TO CLEAN ENERGY TECHNOLOGIES

in Developing Countries

For the world to make the transition to a low carbon economy, renewable energy technologies must be made available globally. One concern often flagged is that the intellectual property (IP) system may hinder access by developing countries. In a paper¹ for the International Center for Trade and Sustainable Development (ICTSD), **JOHN H. BARTON**, Professor of Law at Stanford University, explores whether IP is a bottleneck in the solar, biofuels and wind energy sectors. He briefly summarizes his conclusions in this article, focusing on Brazil, China and India.

In the pharmaceutical sector, patents often have a substantial impact on price, as there may be no substitute for a specific new drug. In such circumstances, the patent holder is in a strong market position and may be able to charge a price well above production cost. In contrast, in the three renewable energy sectors considered here, solar photo-voltaic (PV), biomass and wind, the basic technological solutions have long been off-patent. What are patented are usually only specific improvements or features. Thus, a number of competing patented products exist – and as a result of the competition, prices are brought down as compared to the royalties and price increases that would be charged under a monopoly. In addition, there is competition not only between firms within a specific sector, but also between the sectors and between other sources of fuel or electricity.

The photo-voltaic sector

Basic PV technology involves manufacture and treatment of a silicon slice used to create electricity when illuminated by the sun. There are a number of PV firms, organized in a loose oligopoly; the leading 5 firms make up about 60 percent of the market. Hence, the benefits of the basic (silicon-slice) technology are likely to be available to developing countries even in the face of patents.

Similarly, if developing country firms wish to enter the field as producers, they are likely to obtain licenses on reasonable terms because of the large number of firms in the sector. The possibility of entry is demonstrated by Tata-BP Solar, an Indian firm based on a joint venture, and Suntech, a Chinese firm, which has not only been able to develop its own technologies but has also purchased developed country firms.

Biofuel technology

Typical biofuel technology is based on the conversion of sugar or maize into ethanol. In this context, again, developing countries have reasonably good access to current technologies. Indeed, Brazil has long been a leader.

The questions become more challenging with regard to *future* biofuel technologies. There are government and venture-capital funded efforts underway to develop new processes, enzymes, or microorganisms for producing biofuel, that is not now readily available for fuel use. There will be many patents in these areas. Nevertheless, production is necessarily decentralized and there is competition among biofuel manufacturing methods and between alternative fuels. Hence, it again seems likely that the holders of patents in this area will be willing to license their technology, and that the licensing fees for these technologies are unlikely to remain high for very long.

There have been patent battles with respect to some steps in biofuel production and with respect to standards for fuels. Nevertheless, the key barriers encountered by developing countries will probably not be related to IP, but to the tariffs and other trade barriers against the international sugar and ethanol markets. For example, the US has a tariff in place on Brazilian ethanol – which is cheaper, economically and environmentally – than US maize-based ethanol.

The wind sector

The wind sector is more concentrated than the PV sector – here four firms make up roughly 75 percent of the industry. The sector is, however, competitive enough to allow developing nations to build wind farms incorporating equipment from the global market without enormous IP costs.

¹ *Intellectual Property and Access to Clean Energy Technologies in Developing Countries: An Analysis of Solar Photovoltaic, Biofuel and Wind Technologies*, by Prof. John Barton, is available on the ICTSD website at: www.trade-environment.org/page/ictsd/projects/BARTON_DEC_2007.pdf



Photo: CC-Wim Koedhonen



Photo: Eclipse.sx

Basic photovoltaic technology is widely available. Here, a solar panel on a remote hut in Khevsureti, Georgia; and a PV plant in Freiberg, Germany.

It could be more difficult for developing nations themselves to enter the global market for wind turbines, however. The current industrial leaders are strong, and are hesitant to share their technology for fear of creating new competitors. There have been significant patent battles in this sector in the US. In addition, the engineering aspects of technology transfer have sometimes proven difficult. Nevertheless, both China and India have succeeded in building major firms over the last 10 years. The leading Indian firm has been buying developed country competitors.

Exports, firm purchases and IP

To summarize, there do not seem to be significant IP barriers hindering the world from benefiting from reduced carbon emissions in developing countries. When it comes to developing country opportunities to enter the export markets for PV cells, biofuel and wind engines, the picture is slightly more mixed. Certainly, for ethanol, the key concerns would relate to tariff and similar barriers, not IP barriers. For PV, the IP system is unlikely to be a significant barrier. For wind energy, there is some ground for concern, but again, IP problems would probably be minor.

The world is also seeing a new technology transfer mechanism in the form of developing countries purchasing developed country firms. However, there is a simultaneous risk of global concentration, particularly in the wind sector, so the world should be alert to the risks of cartel behavior.

The three renewable energy sectors discussed above serve as examples of other important questions developing countries are facing. Should they strengthen their IP protection in order to make foreign investors more willing to transfer technology? The evidence from these sectors suggests a possibility that stronger IP might help in the more scientifically advanced developing nations, and offers little indication of risks associated with such strengthening. The answer may be different in poorer nations.

The role of subsidies

The three sectors examined also show that the economics of renewable energy often require government support or regulation if the technology is to be developed (e.g. a feed-in law requiring that a portion of the electricity on a grid be supplied from renewable sources). Developed country governments are likely to seek to ensure that national manufacturers are favored in the process of licensing technology that has benefited from public funding at the development stage. This builds a bias against developing nations. It is possible to eliminate this bias if developed countries will agree to forego their national favoritism in licensing publicly funded inventions, at least with respect to technologies of global environmental importance. This would be similar to the “humanitarian clauses” being considered in the medical and nutritional areas. It would be far better to go even further – for developed countries to commit themselves to devote a portion of their technology development to the special needs of developing countries, and to ensure that developing country firms have the opportunity to participate in the efforts.

Removing trade barriers

Finally, the most important task would be to remove unnecessary barriers to trade in renewably sourced fuels. Unless the world moves to a global carbon tax, renewable energy subsidies are essential. However, current subsidies are often designed in response to domestic concerns, particularly domestic agricultural concerns, and may end up discriminating against developing countries. A more equitable structuring of environmental market intervention would itself create stronger incentives for technology transfer to developing nations.

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BRIDGING MORAL RIGHTS AND PUBLIC UTILITY

A recent decision by a court in Bilbao, Spain, has broken new ground in weighing the moral rights of an architect in his work, as protected under Spain's copyright law, against the public interest. This account of the case was written for *WIPO Magazine* by **JUAN JOSÉ MARÍN**, Professor of Civil Law at the University of Castilla La Mancha and an expert in Spanish copyright law.

Two bridges

Here are the facts. The world renowned Spanish architect, Santiago Calatrava, was commissioned by the Bilbao municipal authorities to design and oversee the construction of a bridge over the river Nervión, which runs through the middle of the city. The bridge was part of Bilbao's urban development project to unite the two sides of the river. Construction was completed in May 1997, and the work was received by the city Council to their apparent satisfaction. The bridge, known by its Basque¹ name *Zubi Zuri* (white bridge) became one of the city's landmark attractions.

Photo: Josean Prado (2006)



Calatrava's bridge was heralded as a symbol of the new Bilbao: "The intelligence, vitality, and originality of the bridge's curved configuration challenged the ordinariness and slow decline of the urban setting, bringing a message of hope," writes architecture critic Alexander Tzonis.

Some years later, two companies began work on the construction and promotion of new riverside complex close to the *Zubi Zuri*. This too was part of the Bilbao urban regeneration plan. The complex of buildings, for mixed residential, office and leisure use, consisted of two 83 meter high glass towers, which were designed to resemble an open gateway, plus five more buildings arranged in a form described as a "folding screen." The complex was designed by the prestigious Japanese architect Arata Isozaki, after whom it was named *Isozaki Atea* (Isozaki's Gate). In order to con-

nect the new development to the other side of the river via the *Zubi Zuri*, Arata Isozaki built an extended walkway supported by two concrete pillars. This was attached to Santiago Calatrava's bridge in 2006 by removing a section of the balustrade.

Unhappy with this situation, Mr. Calatrava took legal action against the Bilbao city council and the two companies responsible for constructing the foot-bridge extension. He claimed infringement of his moral right to the integrity of his work, citing the fact that the extension had been added without his authorization, and nor had his permission been

Photo: Gabriel Prat



Arata Isozaki's extension to the bridge was based on a different design and supported by conventional concrete pillars.

sought for the removal of part of the balustrade. He demanded that the bridge be restored to its original state and Isozaki's walkway demolished, plus 250,000 euros for moral damages and publication of the judgment in the national and specialist press. Alternatively, if the bridge could not be restored, he requested a compensation payment of €3 million.

The arguments

The case, which came before the Bilbao Court in November 2007, attracted widespread interest. Among the most hotly disputed points was the central question of whether Spanish copyright law in-

¹ Bilbao is in the region of Spain known as the Basque Country, where the Basque language is spoken alongside Spanish.

cludes the protection of architectural works. Spain's 1987 Intellectual Property Law (article 10.1) refers to the protection of the "plans, drawings, scale models and designs of architectural and engineering works." The way that this is expressed legally could be interpreted to mean that the protection applies *only* to the plans, drawings, models and designs relating to the work, but not to the final work itself resulting from the construction which was planned or designed by the architect.

Judge Edmundo Rodríguez Achútegui did not accept this restrictive interpretation. He recalled that the list of protected works in the Spanish law was not an exhaustive *numerus clausus* (closed number), and that the key criterion for protection was that the architectural work must be original. He also recalled the existence of legal precedents for the protection of an architectural work in itself, citing for example the March 2006 decision of the Provincial Court of Barcelona, which recognized copyright protection in the case of the Expiatory Temple of Barcelona's *Sagrada Familia* (Holy Family) cathedral. Finally, he noted that the Berne Convention (article 2.1) establishes explicitly that the term "literary and artistic works" also includes works of architecture.

The judge ruled furthermore that an original architectural work is covered by copyright law independently of its function, thus regardless of whether the purpose of the work is to "provide living or working quarters, to promote spirituality, to offer a cultural space or to serve communications."

The other disputed issue was whether the conduct of the city council and the construction companies violated the moral rights of the architect. In this regard, article 14.4 of Spain's Intellectual Property Law, analogous to article 6*bis* of the Berne Convention, enshrines the unalienable right of the author to "demand respect for the integrity of the work and prevent any deformation, modification, alteration or attack on the same which implies harm to his/her legitimate rights or detriment to his/her reputation." The judge agreed that Santiago Calatrava's bridge had suffered an alteration: a section of balustrade had been removed, and a walkway had been attached which was built in a completely different style, using a support structure which broke with the design of the plaintiff's bridge. The grayish color also contrasted markedly with the white bridge. He concluded that the addition to the *Zubi Zuri* had without question altered its character.

The Spanish Law makes a clear distinction between the rights of the owner of the material work (Bilbao City) and the rights of its author (Mr. Calatrava). The fact that the city council is the legal owner of the ar-

chitectural work does not entitle it to make alterations to the work which damage its author's moral rights. Nor does the fact of the evident practical utility of the work – i.e. enabling the citizens of Bilbao to cross the river – prevent the application and validity of the author's moral rights.

Prioritizing the public interest

In the final analysis, however, the judge determined that the legitimate (private) interests of Mr. Calatrava with respect to the integrity of his work must be weighed, not only in terms of his case against the city council, but also with respect to the (public) interest of the citizens. For the people of Bilbao, the addition of the walkway to the *Zubi Zuri* enabled them to access the new *Isozaki Atea* complex on one level, without the difficulty and inconvenience of walking up and down several flights of stairs.

“In addition to constituting a singular artistic creation suitable for protection, the work is public one, offering a service to the citizens, and thus satisfies a public interest. If we weigh these interests, the public must prevail over the private.”

In the conflict between these private and public interests, it was the moral rights of the architect which lost. Judge Achútegui rejected Mr. Calatrava's demand and ruled that, while alteration of the work had certainly taken place, "the right to the integrity of the work was not breached because the author is obliged to tolerate this in consideration of the public service that his work provides."

The judge criticized the actions of the city council, stating that it had been wrong not to have put Mr. Calatrava himself in charge of the extension to his bridge. But no penalty was imposed.

The case has not yet run its course. While a spokesperson for Santiago Calatrava described the judgment as providing "moral satisfaction," his lawyers have now filed an appeal before the Bilbao Provincial Court. Architects, engineers, planning authorities and copyright lawyers in Spain are waiting with keen interest to see whether the decision in this test case on limitations to moral rights will be upheld.

THE EUROPEAN COMMUNITY JOINS THE **HAGUE SYSTEM**

On New Year's Day this year, the long anticipated accession of the European Community (EC) to the Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs came into effect. The accession creates an interface between WIPO's international industrial design operations and those of the EC's industrial design system, allowing users – individuals and businesses in all participating countries – to obtain protection in the whole of the EC as well as in the other member countries of the Geneva Act of the Hague Agreement by filing one single application for the registration of their industrial designs.

Such an international registration will have effect in as many members of the Geneva Act as identified in the application for registration, except any that refuse protection within the required time-limit. If protection is not refused by the EC's industrial design office, the Office for Harmonization in the Internal Market (Trademarks and Designs) (OHIM), protection of the industrial designs in question will be effective in all 27 EC member states just as if the applicant had applied or registered directly with OHIM.

Under the Geneva Act, an intergovernmental organization can join the Hague System if it has an office through which industrial design protection can be obtained in all the territories covered by the organization. This is the second time that the EC has signed up to a WIPO-administered treaty, having already acceded to the Madrid Protocol for the international registration of trademarks in 2004. So far, the EC is the only intergovernmental organization

to have acceded, as a bloc, to a WIPO treaty. The EC becomes the 47th member of the Hague System.

Changes to the Hague System

On January 1 a number of changes to the administration of the Hague System came into effect, simplifying and revising the fee structure as well as reducing filing costs for applicants from the least developed countries (LDCs).

The simplification of the fee structure eliminated the distinction between reproductions to be published in black and white and reproductions to be published in color, and fixed a single fee per reproduction at 17 Swiss francs. The fee per page – where the reproductions are submitted on paper – remains unchanged, but this fee may be circumvented by filing the application through the new WIPO e-filing facility.

Secondly, the standard fee structure has been revised. It will be recalled that an international application is subject to the payment of a standard designation fee in respect of each designated Contracting Party that has not made an individual fee declaration. Apart from the case of an intergovernmental organization, the possibility of making an individual fee declaration is open only to States whose registration office carry out an *ex officio* novelty examination.

In order to better reflect the nuances that exist between minimal formality examination and *ex officio* novelty examination, the Hague Assembly approved

Geneva Act of the Hague Agreement

Operational since 2004, the Geneva Act of the Hague Agreement enhances the Hague System by making it more compatible with the procedures for the registration of industrial designs in countries such as the United States and Japan where protection of industrial designs is contingent on examination to determine the acceptability of an application. The Geneva Act offers flexibilities such as:

- Giving design owners the option to defer publication of their new design for a grace period of up to 30 months – time for market research and the option of withdrawing a design in a designated country before publication, thereby avoiding wasted expenditure.
- Giving the examining offices of Contracting States the option to extend the refusal period to twelve months instead of the standard six months; as well as greater flexibility in setting fees.
- Providing for the accession of intergovernmental organizations.

“The accession of the European Community is a major step towards broadening the geographical scope of the international design registration system.” WIPO Director General Kamil Idris.

E-Filing for Hague System

On January 14, WIPO launched an online facility for the filing of international industrial design applications under the Hague System. This new facility allows applicants to enter the bibliographic data and upload the images for their industrial design applications via a secure web interface. The first two electronic applications were received within 24 hours of the facility being made available.

The online filing facility is designed not only to make the application process easier for users, but also to simplify the examination process at WIPO. With the accession of the European Community to the Geneva Act of the Hague Agreement, the number of applications under the Hague System is expected to increase substantially.

In 2007, WIPO received 1,147 applications for international registration of industrial designs under the Hague System, covering a total of 6,481 designs and equivalent to 12,749 country registrations (i.e. designating a total of 12,749 countries).

an amendment of Rule 12(1)(a)(ii) and (iii) of the Common Regulations under the Hague System, along with amendment of the Schedule of Fees, for the purpose of introducing three different levels of the standard designation fee, as follows:

- level one, for Contracting Parties whose registration office does not carry out examination on substantive grounds;
- level two, for Contracting Parties whose registration office carries out examination on substantive grounds other than novelty (for example, on issues such as the definition of a design, public order and morality, or the protection of State emblems); and
- level three, for Contracting Parties whose registration office carries out examination on substantive grounds, including a limited examination as to novelty (for example, an examination as to local novelty only, when the criterion for the validity of the design right is worldwide novelty), or examination as to novelty following opposition by third parties.

The application of levels two or three will be dependent on the making of a declaration by Contracting Parties, indicating the level of examination carried out by their Office. Otherwise, level one will apply by default. This requirement of a declaration will ensure that users are aware of the precise level of standard designation fee applicable in respect of any given Contracting Party. The making of any such declaration, which cannot take effect before April 1, 2008, will

be announced under Information Notices on the WIPO webpage www.wipo.int/hague/en/.

Lastly, in order to enable design creators from LDCs to benefit more easily from the Hague System, the Hague Assembly approved an amendment to the Schedule of Fees, reducing the filing costs for applicants from LDCs. Apart from the individual fees which a Contract Party may elect to receive, the amendment will consist of a reduction to 10 percent of the regular amounts of all the fees prescribed in the Schedule of Fees under the Hague System, rounded to the nearest full figure, for ease of administration. The reduction will be offered to all applicants whose sole entitlement to file an international application for industrial design protection under the Hague Agreement is a connection with an LDC, in accordance with the list established by the United Nations. If there are several applicants, each will be required to fulfill such criterion.

With respect to the payment of individual fees by design applicants from LDCs, the Assembly of the Hague Union approved a recommendation to encourage Contracting Parties that make, or have made, an individual fees declaration, to indicate that for international applications filed by applicants whose sole entitlement is a connection with an LDC, the individual fee payable with respect to their designation is reduced to 10 percent of the fixed amount.

DESIGN LAW IN THE EUROPEAN FASHION SECTOR



Following the entry into force of the Geneva Act of the Hague Agreement in the European Community, Dr. **FRIDOLIN FISCHER**, an attorney-at-law* in Zurich, Switzerland, and author of *Kleidermode – Phänomen ohne Rechtsschutz?* an analysis of legal protection for fashion designs, discusses in this article for *WIPO Magazine* the relevance of design law in the fashion sector.

The European Union trade deficit for clothing in 2006 was a whopping €33.7 billion. From 1994 to 2006, the total production volume for clothing within the 27 countries which now make up the EU decreased by some five percent each year. Still, the EU counts some 1.5 million people working in this sector, generating a value added of €22 billion (about 1.2 percent of the total value added of EU-27's industry).¹ Over the coming years, European manufacturers will probably be forced to further downsize their production volume in favor of niche products with a high value added.

Some representatives of the European clothing industry are calling for a stronger worldwide intellectual property (IP) protection for fashion designs because they fear major losses from counterfeiting.² Yet some modern economic theories consider competition to include a dynamic interaction between innovation and imitation: innovation generates superior products; imitation makes them available to a greater number of consumers, so a lively imitation process is crucial for dynamic competition. Is this reasonable?

To answer, we must look at the time taken by the imitator to catch up with the innovator. Does the innovator, after launching the innovation, have sufficient time to amortize development costs and generate profit? If the time is too short, then innovators may lose their motivation to generate further innovations, and prolongation through legal measures makes economic sense. However, the fashion industry is a particular case.

Many fashion aficionados cannot afford the original items created by Chanel, Dior, Versace, etc. Instead, they buy cheaper copies, fully aware that these are not originals. The sale of these counterfeit products cannot be equated to loss of sales of the originals as they primarily target consumer groups that are not in the market for the originals. Certainly, plagiarism can confuse consumers and, in case of inferior product quality, damage the designer's good reputation.

Nevertheless, it could be argued that counterfeit products bring fashion labels more publicity, stimulating nascent fashion trends and increasing demand for the originals. Gabrielle "Coco" Chanel was not alone in her assertion that imitation reflects the highest form of flattery.³ In this context, what is the relevance of design law to the European fashion industry?

Intellectual property rights for design

A creative idea, for example for a certain flowered cloth pattern, is intangible and can be reproduced without any asset erosion. Therefore, exclusive rights to specific physical things, like the flowered cloth pattern, would not suffice to grant the design IP protection. The intellectual idea itself must be protected. This can only be achieved by prohibiting the imitation of the physical things through which we perceive the intellectual good. The ban of imitation for a certain time period "enables people to reap where they have sown. Without that prospect the incentive to sow is diminished."⁴

On the other hand, since we can only perceive intellectual goods if they are incorporated in physical things, non-materialized ideas cannot be protected. As a consequence, fashion styles like mini-skirts or jeans in general as much as manufacturing processes, such as innovative techniques to cut, sew or print clothing, which allow the manufacturing of a wide range of different physical results, cannot be protected as such under design law. Protection can only be sought as far as the idea is materialized in a specific physical thing.

From royal privileges to the Community design regulation

The development of European design law goes hand in hand with the history of the textile industry. In the 15th century, the French King granted exclusive rights,

* www.moderecht.ch

1 Office for Official Publications of the European Communities, European Business. Facts and Figures, Luxembourg, 2007.

2 See e.g. *Euratex* (European Apparel and Textiles Organisation), Annual Report 2006: "Let us not forget, counterfeiting is nothing less than theft, and this cannot go unpunished."

3 *Paul Morand, L'allure de Chanel*, Paris 1996.

4 *Landes, William M. / Posner, Richard A., The Economic Structure of Intellectual Property Law*, Cambridge (Massachusetts) 2003, page 13.

or privileges, for the fabrication of textiles. A government ordinance penalized the counterfeiting of weaving patterns for the first time in 1711 in Lyon. In England and Scotland, the first statute concerning the protection for designs was initiated by textile producers in 1787. In 1876, Germany issued a law concerning the copyright on patterns and models, again mainly as a consequence of requests of the textile industry. More recently, the drive to harmonize Europe's design laws led to the European Regulation on Community designs, which came into force in 2002.⁵

The European Community Design Regulation protects only designs that are new and have individual character. The degree of visual difference from pre-known designs, resulting from one-to-one comparisons and examined from the perspective of an informed user, is the only decisive criterion as to whether or not a design can be protected. Differences between two designs which are of minor importance to a casual observer, such as the arrangement of buttons, the shape of a collar or the length of a skirt, may produce a different overall impression in the eye of an informed fashion user.⁶

To register or not to register

Fashion designers are actually quite limited in their scope for creativity: clothing must fit the human body; and the general social need to conform to accepted dress codes tends to lead to uniformity. Thus few new designs on the market are truly exceptional in form. But since difference is assessed by one-to-one comparisons, a single distinguishing feature – such as an embroidered jeans pocket, an oversized zipper or a dominant print – may be enough to produce a unique overall impression and justify the protection either of the extraordinary feature or of the whole item.



An extraordinary evening gown by Pierre Cardin, 1988.

In 2007, WIPO registered only 27 international designs (0.2 percent of total registrations) under class 2 of the Locarno Classification (clothing and haberdashery) through the Hague System, while the EU Office for Harmonisation in the Internal Market (OHIM) registered 7'421 (9 percent of total). Yet, most of the designs registered by fashion houses are not for clothing, but for accessories – watches, bags, sunglasses, etc., which fall under sev-

Photos: OHIM



Diesel Jeans Pocket
(registered Community Design
No. 000673173-0001)



Mega Zipper
(registered Community Design
No. 000823414-0002)



Snowflake alike pattern
(registered Community Design
No. 000772058-0003)

A single distinguishing feature may produce a unique overall impression and justify protection.

eral different Locarno classes – an important source of income for fashion labels. The majority of fashion designers consider that, with fashion seasons lasting only a few months, the five-year minimum protection period offered by these registration systems is not appropriate for often ephemeral fashion designs, and that their time and money would therefore be better spent on creating new designs than on registration.

European designers do have an effective solution in the unregistered Community design. This is obtained without any formalities simply by making the design available to the public, and lasts for three years. Since most designers become concerned with protection only after becoming a victim of counterfeiting, the unregistered Community design provides a welcome alternative to registration.

Design vs trademark protection

In conclusion, design registration tends to be appropriate primarily for protecting exceptional designs or features, or those which might be expected to become long lasting icons. However, if a design is counterfeited, the endless numbers of designs on the market make it hard to detect violations. Instead of design protection, most fashion designers rely much more on their fashion labels, applied directly on their products and often protected under trademark law. Fashion labels make it easier for designers to detect imitations and help fashion users to identify preferred items. Fashion houses invest large amounts in advertisements to promote the attributes of their trademarks in order to attract fashion users. But it is no surprise that counterfeiters also try to free-ride on the sales-promotional effects of trademarks by copying both the designs and the corresponding labels. For this reason, major fashion designers incorporate special treated yarn or other security elements into their labels, so facilitating the distinction between originals and imitations.

⁵ Parallel to the European Community design Regulation, the national design laws of the EU members are still in force but were harmonised by the Directive 98/71/EC of 13th October 1998 on the legal protection of designs.

⁶ See the amended Proposal for a Council Regulation (EC) on Community Design, COM (1993) 342, page 14.

SIXTY YEARS OF

WHAM-O®

By any historical measure, the innovations of the Wham-O toy company pale in significance when compared with, say, the discovery

of the polio vaccine or the development of the world wide web.

But this is not to say that they are without a place in history. The Hula Hoop, the Water Wiggly sprinkler, the Slip'n' Slide, the SuperBall and the Frisbee all hold a rightful place in the annals of

innovation as products which – while perhaps not life-saving, ground-breaking, or even necessary – were hugely successful in bringing enjoyment to millions of people throughout the world.

The career of Richard Knerr, who with his partner Arthur “Spud” Melin founded Wham-O in 1948, and who died last month at the age of 82 in Arcadia, California, is a testament to the power of the creative impulse to brighten the lives of multitudes. The fact that the pair left a lasting impact on popular culture was no small feat either.

Knerr and Melin saw commercial potential in what became the Hula Hoop when an Australian friend visiting California demonstrated a wooden ring used in children’s gym classes down under. The duo refashioned the hoop from brightly-colored, tubular plastic, added beads inside that produced a rhythmic sound to accompany the circular hip-shaking necessary to keep the

hoop aloft, and sold 40 million of them in 1958. By 1960 they had sold 100 million worldwide, a record at the time for any toy.

Crazes

The Hula Hoop was perhaps the first fad that was spread by the new medium of television, and remains, according to social historian Richard A. Johnson in his book *American Fads*, “the standard against which all national crazes are measured.” Indeed, any book or film attempting to capture the zeitgeist of the early years of the Cold War is as likely to feature an image of starry-eyed, gyrating Hula-Hoopers as that of another, more menacing innovation of the era, the mushroom cloud.

Knerr and Melin (who died in 2002) were as much re-inventors as they were inventors. As the Hula Hoop craze was beginning to fade near the turn of the decade, they happened upon the Pluto Platter, a flying disc invented – and sold from his station wagon up and down the California coastline – by Walter Frederick Morrison. Wham-O bought the rights, re-engineered the disc to give it more levitational, flying saucer-like qualities, and re-christened it the Frisbee. The disc has since become standard gear for generations of university students, surfers, and dogs, and has served as the inspiration for a number of competitive sports, many of them invented by Wham-O.

While the bright red-and-white Wham-O trademark became synonymous – at least in the minds of small boys, the company’s core base – with the heights of quality

and innovation, Knerr and Melin were not immune to an occasional commercial misjudgement. The Instant Fish (“just add water”) fizzled when dried fish eggs imported from Africa failed to hatch. And the pair’s attempt to capitalize on another craze of the early ‘60s – the fear of nuclear annihilation – fell flat when their US\$119, do-it-yourself bomb shelter kit failed to capture the public’s fancy.



“If Spud and I had to say what we contributed, it was fun.” - Richard Knerr and Spud Melin.

Still, the two embodied the rare combination of inventiveness, creativity, and an appetite for frequent, over-the-top risk-taking that is often necessary to turn inspiration into tangible products and commercial success. Knerr often credited Wham-O’s achievements to working in an environment that encourages innovative thinking and an entrepreneurial bent. “If Spud and I had to say what we contributed, it was fun,” Knerr said in a 1994 interview with the Los Angeles Times. “But this country gave us the opportunity to do it.”

For information on WHAM-O’s 60th Anniversary Kid Inventor Contest visit www.wham-o.com/contest/



The Hula-Hoop sold 100 million in two years. It was never patentable, but the trademark kept the dollars rolling in.

MANAGING IP AS A SET OF BUSINESS ASSETS

The authors of this article, **PATRICK SULLIVAN** and **SUZANNE HARRISON**, run the ICM Gathering – a group of knowledge-based international corporations in the U.S., which meet three times a year to share insights and develop best practices on how to obtain value from managing intellectual property. The findings of the ICM Gathering have formed the basis of a number of reference works by the authors, including: *Technology Licensing – Corporate Strategies for Maximizing Value*; *Profiting from Intellectual Capital*; *Value-Driven Intellectual Capital*; *Einstein in the Boardroom*; and *Edison in the Boardroom*. Their article for *WIPO Magazine* summarizes a recent lecture by Dr. Sullivan at the WIPO Academy, where he is a visiting faculty member of the Executive Program.

It is now generally accepted in the business community that intellectual property (IP) is a set of business assets as well as legal ones. As business assets, however, they have no significant value by themselves. This is a fundamental property of intangibles, such as IP. They become valuable only in the context of the business. That is to say, when their roles in supporting the corporate business strategy are made explicit, and/or when they are processed through the organization's other business assets (such as manufacturing or distribution) to produce a protected product or service that is attractive to customers. In order to be able to manage IP effectively as business assets, it is necessary to understand what a patent, or trademark, or registered design, actually does for the business.

Consider, for example, the case of one large US company which in the early 1990's was basing the promotions of its R&D staff, in part, on the number of patents each person was awarded. This not uncommon practice came to a halt when the company looked at how many of those patents had subsequently been commercialized. They were surprised to find that the number was very small. The company rapidly changed its criteria for investing in a patent to include a description of the value that the prospective patented innovation would provide for the business. Now, some fifteen years later, the company can identify for each patent in its portfolio the value that it provides, and to which business unit(s).

So how does a company set about focusing the business dimension of its IP management? Although a full answer to this question requires some complex analysis, a good starting point is to think in terms of this simple three-step process:

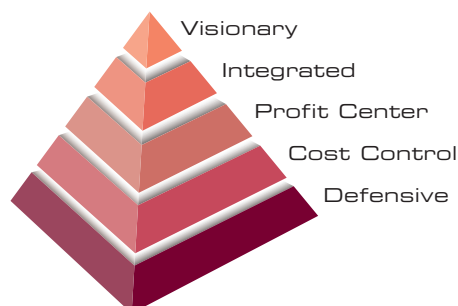
1. Define what your company expects to gain from the management of its IP;
2. Determine the specific roles IP can play in support of your company's business;

3. Select and pursue a basic IP strategy to meet these objectives.

Let us look in more detail at these three steps.

What does your company expect from its IP management?

In *Edison in the Boardroom*,¹ the authors identify five levels of sophistication in the way that companies approach the management of their IP. This hierarchy, shown in the pyramid below, is a useful way to think about company expectations.



A hierarchy of IP management, from *Edison in the Boardroom*.

Beginning with the bottom of the pyramid and working up:

- **Defensive level.** Companies at this level use their IP for defensive purposes only. Their goals are to protect their own innovations, to ensure that they don't infringe the IP of others, and to obtain more IP. The costs in filing fees, enforcement and other legal expenses can be high.
- **Cost control level.** Companies at this level still have a defensive approach, but now focus on finding ways to obtain protection while simultaneously minimizing the costs of creating and maintaining their IP.

¹ *Edison in the Boardroom: How Leading Companies Realize Value from Their Intellectual Assets*, by Julie L. Davis and Suzanne S. Harrison



- **Profit center level.** Companies reach this level once they begin to license out their IP, or otherwise to use it in support of their company business activity.
- **Integrated level.** Here the company's business units have grasped the power of using IP for a range of business roles. IP use for business becomes integrated across all of the company's business activity.
- **Visionary.** At this level of IP management sophistication, companies take a long-term view of the company's role in business and in its industry. They seek to use the company's IP to create more strategic value.

It should not be inferred from this pyramid that the highest level of sophistication equates to the "best" level of IP management. What matters is to determine which level best suits the needs and capacity of your particular company. A thorough understanding of what the company at large, as well as its executive management, expects from IP is an important first step toward determining whether, and to what degree, the firm aspires to obtain business value from its IP, or whether it wishes to obtain purely defensive value.

Further, an understanding of the level of IP management desired by the company is important for the next step of identifying the roles IP can best play in support of the business.

What business roles can IP play?

The companies participating in the ICM Gathering (Procter and Gamble, Hewlett Packard, Microsoft, Philips, Visa, Johnson, Du Pont – to name but a few) have identified over 40 different business roles that their companies have assigned to their IP. These are shown in the table below.

OBJECTIVE	PATENTS	TRADEMARKS	KNOW-HOW	RELATIONSHIPS
Conflict avoidance/ resolution	<ul style="list-style-type: none"> ■ Protection (exclude others) ■ Design freedom ■ Cross-licensing (defensive) ■ Litigation bargaining power 	<ul style="list-style-type: none"> ■ Protection (exclude others) 	<ul style="list-style-type: none"> ■ Protection (trade secret) 	n/a
Revenue generation	<ul style="list-style-type: none"> ■ Patents: sales, licenses, infringement policing ■ Increased bargaining power ■ Market penetration ■ Increased speed to market 	<ul style="list-style-type: none"> ■ TM: sales, licenses, co-branding, infringement policing 	<ul style="list-style-type: none"> ■ Sales, licenses, joint ventures, strategic alliances, integration, increased speed to market 	
Cost reduction	<ul style="list-style-type: none"> ■ Tax donation ■ Litigation avoidance ■ Access to technology of others ■ Improved knowledge transfer 	<ul style="list-style-type: none"> ■ Litigation avoidance ■ Access to technology of others 	<ul style="list-style-type: none"> ■ Litigation avoidance ■ Improved knowledge transfer 	<ul style="list-style-type: none"> ■ Reduced marketing costs
Strategic position	<ul style="list-style-type: none"> ■ Reputation / image ■ Competitive blocking ■ Barrier to competition ■ Consumer / supplier control ■ Optimization of core technology 	<ul style="list-style-type: none"> ■ Name recognition ■ Consumer loyalty ■ Barrier to competition ■ Joint venture ■ Strategic alliance 	<ul style="list-style-type: none"> ■ Reputation / image ■ Barrier to entry 	<ul style="list-style-type: none"> ■ Reputation / image ■ Consumer loyalty ■ Barrier to entry

To determine which of these roles make sense for your company, bearing in mind the company's expectations for its IP management, try the following:

- a. Review the company's strategic vision and its corporate strategic plan.
- b. Ask yourself what IP might do to support the company's business strategy and hasten its journey toward the long-term vision.
- c. Look at the table and select the IP business roles that seem most applicable to your company. (Most companies actually focus on three to six roles.)

Basic IP strategies

There are a range of IP strategies available to your company, many of them tailored specifically to unique business needs, industry position, or business tactics. Nevertheless, four basic IP strategies can act as a foundation for later refinements. These correspond broadly to the levels of expectation described in the pyramid of IP management:

- **A path to minimize risk.** Companies following this strategy see IP as a legal asset. Programs to minimize risk are usually grounded in the legal department, and focus on process compliance, processing product clearances and protecting innovations in the marketplace. A key activity for those pursuing this strategy is portfolio building and cross-licensing to avoid litigation.
- **A path to cost reduction.** Virtually all companies above the first level of the hierarchy follow a cost reduction strategy. They look to maintain the effectiveness of their IP protection program while cutting the cost of doing so. This involves screening the portfolio to eliminate unnecessary patents, tightening the criteria for protecting innovations with patents, creating a standard country-filing list, minimizing exceptions, tightening internal review processes, and aligning the trademarks and brands with products.
- **A path to value.** Companies following this strategy view their IP as a business asset as well as a legal asset. IP is managed centrally, with the company seeking out business opportunities for its IP (e.g. out-licensing and use in joint ventures). The companies seek to profit from direct use of the IP itself, rather than only through the products and services protected by the IP.
- **A path to strategic value.** Companies following this strategy see their IP as corporate and business assets which can produce a range of value (both revenue and strategic value) for the organization. The focus is on utilizing IP to change the nature or direction of competition, relying on strategic patenting, refocusing R&D and rethinking partnerships with customers, suppliers, or any other relevant parties.

Extracting value from IP

If you follow strategies 3 or 4 above, you will be concerned with extracting value from the firm's IP. To do so, one option is to process the company's protected innovations through one or more complementary assets (e.g. manufacturing or distribution) and then sell the resulting product or service. Alternatively (and simultaneously) you may convert the IP directly into revenue. Experience has shown that there are only six ways to convert an innovation or an IP right into cash:

1. Sell it;
2. License it out;
3. Use it as the basis for a joint venture (to provide access to needed physical assets);
4. Use it as the basis for a strategic alliance (to gain access to markets you may otherwise be denied);
5. Use it to protect products and services in order to extract premium prices for them;
6. Create and spin-out a new company based on the IP.

Companies seeking to maximize the amount of value extracted from each protected innovation do their best to "turn on" as many of these six cash conversion mechanisms as possible. Few companies are capable of using more than two, but those that can are able to generate significant additional revenue.

Managing IP to extract business value is a new and still evolving field. The greatest advances have been made in North America, driven by the need to produce ever more sustainable revenue streams to satisfy the capital markets. But companies in many other parts of the world are becoming increasingly aware of the potential of IP to enhance existing revenue streams or to create new ones.

IP INTRIGUE

FROM PATENT BATTLE TO BESTSELLER

Once thought esoteric or dull, IP is becoming a favorite subject for thrillers, theatrical drama and charged historical debate. Readers may recall the 2006 best-selling novel *Errors and Omissions* by Paul Goldstein, in which a copyright lawyer is embroiled in international intrigue while verifying IP rights for a spy movie franchise. Goldstein's inspiration came from a case in which he helped defend the rights of MGM and United Artists to the James Bond series. Recently, two new works inspired by patent battles have been attracting media coverage.

TV drama

The Farnsworth Invention opened on Broadway in December to packed audiences. Aaron Sorkin's fast moving play follows the race to invent television that pitted farm boy genius Philo T. Farnsworth against media mogul David Sarnoff.

patent for the "Image Dissector," the first completely electronic television system, in 1927. He demonstrated the Image Dissector to the press in 1928 – sending a dollar sign as a first image to his worried investors – and transmitted the first human images a year later. Farnsworth was granted patents for his moving picture broadcasts in 1930.

Like many inventors, Farnsworth built on the technological advances of other inventors before him. But he was the first to invent an electric television with no mechanical parts – he recognized early on that the broadcast of a satisfactory image required speed that would be impossible to generate mechanically.

Sarnoff, in charge of radio broadcasting at the Radio Corporation of America (RCA), and its president from 1930, saw the massive potential for television. In 1928 he decided to fund engineer Vladimir Zworykin's research on an electric television. Zworykin thought he would need only US\$100,000 and two years to bring his project to fruition. Instead it took eight years, a visit to Farnsworth's laboratory – where Farnsworth gave him some of the answers to the technical problems he was having – and some US\$50 million.

In 1931 Farnsworth refused Sarnoff's US\$100,000 offer for his patent, starting a long legal battle with RCA which left him broke and unable to commercialize his patent. Farnsworth won the battle in 1939 when RCA was ordered to pay Farnsworth US\$1,000,000 in royalties. But Sarnoff won the war when Zworykin's became the accepted standard for television.

The Broadway play blurs some of the historical facts – for example Farnsworth's patents were upheld in court, a fact the play denies. But as reviewer Vindu Goel (*The Mercury News*) comments, "It's great fun to watch... and offers some enduring lessons about business and technology."

Born in 1906, Farnsworth came up with the idea for what would become the television while still a schoolboy. Blackboard drawings from his high school chemistry class would even serve as evidence in a patent interference case. He filed a



"You go get a generator. Cliff and I are going to start building a lab." Jimmi Simpson as lone genius Philo Farnsworth.



"If we make him an offer, it means he invented television." Hank Azaria as media mogul David Sarnoff.

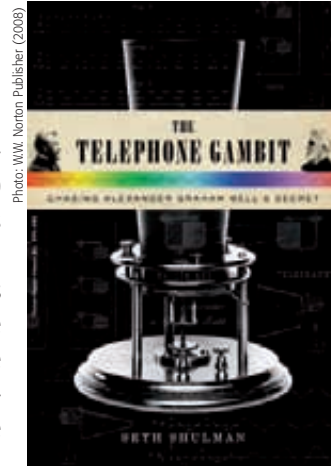
Telephone's inventor on the line

Fanning the flames of contention – now smoldering for well over 100 years – journalist Seth Shulman's new book, *The Telephone Gambit*, draws on Alexander Graham Bell's notes which, he claims, provide proof that Bell stole the telephone patent from Elisha Gray. The controversy over the true inventor of the telephone began 1876 when Bell filed his patent.

The race to invent the telephone heated up in the middle of the 19th century. Many inventors filed patents for devices that ultimately failed. In its first 18 years, the Bell Telephone Company fought and won over 600 legal battles with inventors and tinkers, all claiming to have priority over Bell's invention. Most demonstrated devices that could transmit noises – a click, a buzz, a ping – but none could transmit intelligible speech. Among the more successful claimants were Elisha Gray and Antonio Meucci.

In 1871, Meucci filed a patent caveat (a notice of intent to file a patent, which bars the issue of a patent to any other person regarding the same invention for a one year period) for the "teletrofono." Meucci renewed the caveat in 1872 and 1873, but failed to do so after 1874, leaving Alexander Graham Bell free to file his patent in 1876. When he did, Meucci sued for infringement.

In the early stages, Meucci appeared to be winning his case: not only did the U.S. Government move to annul the patent issued to Bell on the grounds of fraud and misrepresentation, but the Secretary of State also issued a statement that "there exists sufficient proof to give priority to Meucci in the invention of the telephone." However, Judge William J. Wallace favored Bell in his decision of 1886, noting that the Meucci phone was mechanical, not electric. The Meucci case against Bell was then postponed from



Did Alexander Graham Bell steal the telephone patent? Seth Shulman investigates the evidence from Bell's note books.

ed Bell on his invention, later sued him for stealing his idea. In *The Telephone Gambit*, Seth Shulman argues that Elisha Gray was right in his affirmation.

Shulman claims that not only do Bell's lab notes condemn him, but so does a signed confession from a patent examiner admitting he showed Gray's patent filing to Bell on February 26. Gray's patent file gave details of his discovery that wire immersed in water could transmit sound more easily. Shulman claims that Bell's notes show a sudden discovery of immersed wire as a conductor for sound on March 8, just in time for the now famous "Watson, come here. I want to see you" public demonstration of Bell's invention on March 10.

It also seems that Gray's application was filed earlier in the day on February 14 than Bell's, but that Gardiner Hubbard, a well-known patent lawyer who also happened to be Bell's father-in-law and business partner, used his connections at the U.S. Patent Office to have Bell's application fast-tracked and approved before Gray's. The book makes for good reading and calls for a re-writing of history.

Never a dull day in the world of patents! Who knows, a bit of digging in those dusty files may be enough to turn up the plot of the next best-seller or Broadway hit.

year to year until Meucci's death in 1896, when the case was dropped.

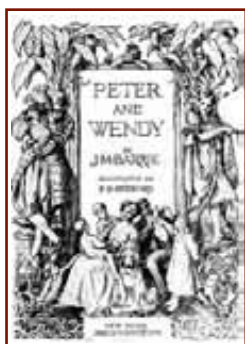
But others picked up his fight and, over 100 years later in 2002, the U.S. House of Representatives issued a Resolution (HRES 269 EH) that "the life and achievements of Antonio Meucci be recognized, and his work in the invention of the telephone should be acknowledged." That may have satisfied some, but others cried foul. There are arguments from both camps on the Internet.

Bell and Elisha Gray both filed patent applications on February 14, 1876. Gray, who at first congratulated

WELCOME TO THE PUBLIC DOMAIN

Jurisdictions with a 70 year period of post-mortem copyright protection will be welcoming into the public domain this year a wealth of works from authors, artists and musicians who died in 1937. This selection was compiled by **MIRIAM PHILLIPS**, a student of music at Cambridge University, UK, for the IPKat weblog.¹

Sir James Matthew Barrie (1860-1937). Born into a large Scottish family, JM Barrie grew up listening to tales of adventure and fantasy told by his mother every evening. At the age of thirteen, Barrie left his home village to pursue his studies. In 1888, Barrie's first successful book was published – *Auld Licht Idylls*, a humorous sketch of Scottish life.



After the dramatization of his novel, *The Little Minister*, Barrie focused on writing for the theatre. *Peter Pan or The Boy who would not Grow Up* (first entitled, *Peter and Wendy*) was originally produced for the stage in 1904. The characters evolved from stories told by Barrie to the five young sons of his good friend Sylvia Llewelyn Davies.

A Gift of Copyright

In 1929 J.M. Barrie donated his copyright in *Peter Pan* to the Great Ormond Street children's hospital in London. The royalties from book sales, stage performances and the many film adaptations have provided a major source of income to the hospital ever since, helping it to become a centre of excellence in pediatric medicine.

With the expiry of the copyright term in Europe approaching, the Hospital trustees came up with a creative solution. They ran a competition to select an author to write a *Peter Pan* sequel, with royalties from the new book to be split between the author and the hospital. The new work, *Peter Pan in Scarlet*, by Geraldine McCaughrean, was published in 2006 to critical acclaim. The film and TV rights were sold shortly afterwards.

Jean de Brunhoff (1899-1937). From an early age, Jean de Brunhoff was inseparable from his books. However, he originally intended to become

Illustration by Jean de Brunhoff



The world's most controversial elephant? Barbar's admirers see in him a benevolent monarch and model parent – with impeccable dress sense. His critics accuse him of sexism, elitism, colonialism and racism.

a professional artist, and studied painting at the *Academie de la Grande Chaumière*. After the birth of his sons, Brunhoff invented a bedtime story about a little elephant. His children took part in the creation of the storyline and Brunhoff himself illustrated the tale and turned it into a book. The original series traced six stages in the life of Babar the elephant: his birth, the loss of his mother, his journey to the city, his education, his return home, his marriage, his coronation, the birth of his children, and the development of his kingdom. After Brunhoff's untimely death at the

age of thirty-eight, his elder son Laurent expanded the series to the fifty-odd Babar books that exist today.

George Gershwin (1898-1937). Born Jacob Gershowitz, to a family of poor Jewish immigrants, George Gershwin was to become one of America's



Photo: Carl Van Vechten

leading composers. He taught himself to play by ear until he began formal tuition at the age of twelve. Within a few years, Gershwin had published his first song and was already attracting the attention of Broadway composers before being propelled

to fame by *Rhapsody in Blue*, written in the early 1920s. Subsequently, he began to collaborate with his brother Ira, a lyricist, to write Broadway musicals, their first being *Lady Be Good* (1924). Gershwin also continued to write for the classical orchestra and for piano solo, achieving international acclaim in both 'traditional' circles and modern society.



Antonio Gramsci (1891-1937). Antonio Gramsci had a difficult childhood. His father was unable to get a job after a stint in prison charged with maladministration. The family of nine struggled with financial problems, and the young Gramsci suffered

from ill health which left him a hunchback. After winning a scholarship to study at Turin University, he became involved with the socialist movement. When the Italian Communist Party was founded in 1921, Gramsci was elected as a member of the central committee and, after a year in Moscow, returned as Party leader. He was jailed in 1926 for opposing Mussolini, and forbidden to write for three years. From 1929, Gramsci kept prison notebooks. When he died in prison at the age of forty-six, he had written thirty-three books. Tatiana, his sister-in-law, managed to smuggle these books out of prison and arranged for their publication in Moscow.

Ahmad Javad (1892-1937). Ahmad Javad Akhundzade is best known for writing the words of the Azerbaijani national anthem, as well as a number of poems. In 1918 he became a member of Azerbaijan's *Musavat* Party and later became a member of the central committee. He was also the leader of the *Musazat* Literature Union. The Soviet regime was always suspicious of him, and had him arrested in the early 1920s on 'counter-revolutionary' charges. Several years later, accused of encouraging nationalism and independence, he was arrested again and executed in October 1937.



Ikki Kita (1883-1937). In his student days, Kita was attracted to the socialist cause and met with many influential figures in his native Japan. After the outbreak of the Chinese Revolution in 1911, Kita traveled to China to help oust the Qing dynasty from power.

But by the time he returned to Tokyo eight years later, he had grown disillusioned. A founding member of *Yuzonsha*, an ultranationalist organization, Kita replaced his socialist philosophy with a pro-fascist one. While promoting national unity, Kita also believed that the way forward was a military *coup d'état*, followed by a totalitarian Imperial regime

which would suspend the constitution and remove corruption. Part of his 'reorganization' plan involved limits on individual wealth, and land reforms for the farmers. Kita's writings became influential in pre-war Japan, and contain a unique blend of fascism, Marxism, agrarianism and militarism.

Maurice Ravel (1875-1937). Ravel began learning the piano at the age of seven and was composing five years later. His parents sent him to study at the Paris *Conservatoire*, where he was a pupil for 14 years under Gabriel Fauré. Despite his remarkable talent, Ravel never worked well with the French musical establishment. After a scandal in which he was robbed of the prestigious *Prix de Rome*, Ravel left the *Conservatoire*, and when awarded the *Légion d'Honneur* by the French government, he refused. He moved to the countryside and wrote from the seclusion of his home. In 1928, Ravel embarked on a hugely successful tour of America, where he befriended Gershwin. American jazz was to influence his later compositions. Although Ravel considered himself a classicist in terms of musical structures, his works featured innovative harmonies, favoring modal coloring rather than traditional major or minor tonalities. His works remain part of the standard concert repertoire of today.



Karol Szymanowski (1882-1937). The composer and pianist Karol Szymanowski was born into a wealthy Polish family. After studying music privately with his father, Szymanowski attended first the Gustav Neuhaus' Elizavetgrad School of Music, then the State Conservatory at Warsaw. In 1926 Szymanowski became director of the latter institution, but retired four years later. Opportunities for music making under the Russian occupation were limited, and Szymanowski found much inspiration on his extensive travels through Europe, America, North Africa and the Middle East. Despite this, the composer always retained a deep love for Polish folk music – an attachment which shows through clearly in his compositions. In addition to his many musical works, Szymanowski also produced a collection of poetry and a novel.

¹ <http://ipkitten.blogspot.com/>

WIPO HIGH LEVEL FORUM

for Least Developed Countries

Ministers and top officials from least developed countries (LDCs) highlighted the importance of intellectual property (IP) as a strategic tool for alleviating poverty and promoting wealth creation at a high level forum hosted by WIPO in December. The Forum enabled participants to explore practical solutions to questions about how the IP system can be used to ensure that it serves the interests of LDCs in meeting their development objectives.

“Using IP for development is not an option, but a necessity.”

Ambassador Debapriya Bhattacharya of Bangladesh

In his opening address, WIPO Director General Kamil Idris outlined WIPO's assistance to LDCs and pledged further support in helping these countries develop their IP capacity in order to support the development of new products and services, and to increase market access, investment and trade.

Ambassador Debapriya Bhattacharya, Permanent Mission of the People's Republic of Bangladesh to the United Nations and other International Organizations in Geneva, who is the current Chairman of the Coordination Council of LDCs, described how IP can serve as a “strategic tool to promote innovation and give a boost to the SMEs, generate income for our artisans and performers, protect our traditional knowledge, healing practices and cultural heritage from misappropriation, help increase food production, bring benefit from geo-



Photo: WIPO/M. Martinez

graphical indicators, expand innovative and non-traditional ways of learning, facilitate investment and transfer for technology and generate wealth.”

Among the LDC ministers who addressed a special plenary session on the theme of Building IP Capacity and a Knowledge Base for Wealth Creation, Social and Cultural Development, Mrs. Mpeo Mahase-Moiloa, Lesotho's Minister for Law and Constitutional Affairs and for Justice, Human Rights and Rehabilitation, and Chairperson of the Council of Ministers of the African Regional Intellectual Property Organization (ARIPO), suggested that enhancing awareness and illustrating how the IP system can lead to economic gain was one of the greatest challenges in African countries today. Senegal's Minister for Mines and Industry, Mr. Madicke Niang, underlined the need to promote better understanding of the benefits of the IP system and to develop further training programs for IP professionals.

Mr. Mamady Traoré, Minister for Industry, Commerce, Tourism and Handicraft of the Republic of Guinea, highlighted IP capacity building as a priority for his government, referring to an IP component in the government plan of action for 2007-2009, which is designed to breathe new impetus into the national economy. While Mr. Fredrick Ruhindi, Deputy Attorney General

and Minister of State, Ministry of Justice and Constitutional Affairs, Uganda, called for the “transformation of economies through intellectual property” and emphasized the importance of promoting better understanding of IP among policymakers. He called on developed countries to support initiatives which would be of future mutual benefit and underlined the need for concerted action in this area.

Mr. Bebele Negesso, State Minister of Capacity Building of Ethiopia, said that IP had undergone “tremendous changes with profound implications for least developed countries” in recent years, making it mandatory for LDCs to adopt comprehensive new legislative instruments.

Summarizing the discussions, Mr. Bhattacharya said that the success stories presented at the Forum – from Ethiopian coffee to Ghanaian chocolates – illustrated the potential for LDCs to reap economic benefits by using the different tools of the IP system to enhance competitiveness. The Forum called for WIPO to allocate additional resources to assist LDCs to raise awareness, enact and implement IP policies, build their capacities and institutions, support development of indigenous industries and promote innovation.

NEW PARTIES TO WIPO-ADMINISTERED TREATIES IN 2007

During 2007, 34 instruments of accession or ratification of treaties administered by WIPO were deposited with WIPO Director General Kamil Idris.

In the field of industrial property

Paris Convention – The Paris Convention for the Protection of Industrial Property was concluded in 1883 and is one of the pillars of the international intellectual property (IP) system. It applies to industrial property in the widest sense, including inventions, marks, industrial designs, utility models (a kind of “small patent” provided for by the laws of some countries), trade names (designations under which an industrial or commercial activity is carried on), geographical indications (indications of source and appellations of origin) and the repression of unfair competition.

In 2007, Angola (1) adhered to the Paris Convention, bringing the total number of States to 172.

Patent Cooperation Treaty (PCT) – The Patent Cooperation Treaty (PCT) was concluded in 1970. The PCT makes it possible to seek patent protection for an invention simultaneously in each of a large number of countries by filing an international patent application. Such an application may be filed by anyone who is a national or resident of a Contracting State. The Treaty regulates the formal requirements with which any international application must comply.

In 2007, Angola and the Dominican Republic (2) adhered to the PCT bringing the total number of States to 138.

Madrid Agreement and Madrid Protocol – The Madrid system for the International Registration of Marks (the Madrid system) is governed by two treaties: the Madrid Agreement Concerning the International Registration of Marks (Madrid Agreement) and the Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (Madrid Protocol).

The Madrid Agreement was concluded in 1891, and the Madrid Protocol was concluded in 1989 in order to introduce certain new features into the Madrid system. These address the difficulties that prevent certain countries from adhering to the Madrid Agreement by rendering the system more flexible and more compatible with the domestic legislation of these countries.

In 2007, Azerbaijan, Oman and San Marino (3) adhered to the Madrid Protocol, bringing the total number of States/IGOs to 74.

Trademark Law Treaty (TLT) – The Trademark Law Treaty (TLT) was concluded in 1994 and aims to approximate and streamline national and regional trademark registration procedures through the simplification and harmonization of certain features of those procedures, thus making trademark applications and the administration of trademark registrations in multiple jurisdictions less complex and more predictable.

In 2007, Oman (1) adhered to the TLT, bringing the total number of States to 39.

Singapore Treaty on the Law of Trademarks – The Singapore Treaty was concluded in 2006. The objective of the Singapore Treaty is to create a modern and dynamic international framework for the harmonization of administrative trademark registration procedures.

In 2007, Singapore and Switzerland (2) adhered to the Singapore Treaty, bringing the total number of States to 2. The Singapore treaty will enter into force three months after ten instruments of ratification or accession by States/International Organizations have been deposited with the Director General.

Strasbourg Agreement – The Strasbourg Agreement Concerning the International Patent Classification was concluded in 1971 and establishes the International Patent Classification (IPC). The International Patent Classification (IPC) divides technology into eight sections with approximately 70,000 subdivi-



sions. Each subdivision has a symbol which is allotted by the national or regional industrial property office that publishes the patent document.

In 2007, Argentina (1) adhered to the Strasbourg Agreement, bringing the total number of States to 58.

Nice Agreement – The Nice Agreement Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks was concluded in 1957. The Nice Agreement establishes a classification of goods and services for the purposes of registering trademarks and service marks. The Classification consists of a list of classes (based on types of products and services) of which there are 34 for goods and 11 for services and an alphabetical list of the goods and services.

In 2007, Argentina and Malaysia (2) adhered to the Nice Agreement, bringing the total number of States to 82.

Vienna Agreement – The Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks was concluded in 1973. The Vienna Agreement establishes a classification system for marks consisting of or containing figurative elements. The classification comprises 29 categories, 144 divisions and some 1,887 sections in which the figurative elements of marks are classified.

In 2007, Malaysia (1) adhered to the Vienna Agreement, bringing the total number of States to 24.

Locarno Agreement – The Locarno Agreement Establishing an International Classification for Industrial Designs was concluded in 1968. The Locarno Agreement establishes a classification for industrial designs, which consists of 32 classes and 223 subclasses based on different types of products. It also comprises an alphabetical list of goods with an indication of the classes and subclasses into which these goods fall. The list contains some 6,600 indications of different kinds of goods.

In 2007, Armenia (1) adhered to the Locarno Agreement, bringing the total number of States to 49.

Budapest Treaty – The Budapest Treaty on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure was concluded in 1977. The main feature of the Budapest Treaty is that a Contracting State which allows or requires the deposit of microorganisms for the purposes of patent procedure must recognize, for such purposes, the deposit of a microorganism with any “international depositary authority,” irrespective of whether such authority is on or outside the territory of the said State. This eliminates the need to deposit in each country in which protection is sought.

In 2007, The Dominican Republic and Oman (2) adhered to the Budapest Treaty, bringing the total number of States to 68.

The Hague Agreement – The system of international registration of industrial designs is governed by the Hague Agreement Concerning the International Deposit of Industrial Designs which dates from 1925 and has been revised at various times, in particular in London (1934 Act) and the Hague (1960 Act).

The Geneva Act of the Hague Agreement Concerning the International Registration of Industrial Designs was concluded in 1999. The Act is aimed at making the system more responsive to the needs of users and facilitating adherence by countries whose industrial designs systems do not permit them to accede to the 1960 Hague Act.

In 2007, Albania (1) adhered to the Hague Act and the Complementary Act of Stockholm of the Hague Agreement, bringing the total number of States to 34.

In 2007, Albania, Armenia, the European Community and Mongolia (4) adhered to the Geneva Act of the Hague Agreement, bringing the total number of States/IGOs to 25.

Patent Law Treaty (PLT) – The Patent Law Treaty (PLT) was concluded in 2000. The purpose of the PLT is to harmonize and streamline formal procedures in respect of national and regional patent ap-

plications and patents. With a significant exception for the filing date requirements, the PLT provides maximum sets of requirements which the office of a contracting party may apply: the office may not lay down any other formal requirements in respect of matters dealt with by this Treaty.

In 2007, Hungary, Oman and Sweden (3) adhered to the PLT, bringing the total number of States to 17.

In the field of copyright and related rights

Rome Convention – The Rome Convention for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations, concluded in 1961, secures protection of performers on their performances, phonograms of producers of phonograms and broadcasts of broadcasting organizations.

In 2007, Algeria and Vietnam (2) adhered to the Rome Convention, bringing the total number of States to 86.

WIPO Copyright Treaty (WCT) – The WIPO Copyright Treaty (WCT) was concluded in 1996. It extends copyright protection to two additional subject matters: (i) computer programs and (ii) compilations of data or other material (“databases”) in any form, which by reason of the selection or arrangement of their contents constitute intellectual creations, and it grants new rights corresponding to the new forms of exploitation of works in the digital environment.

In 2007, Australia, Liechtenstein and the People’s Republic of China (3) adhered to the WCT, bringing the total number of States to 64.

WIPO Performances and Phonograms Treaty (WPPT) – The WIPO Performances and Phonograms Treaty (WPPT) was concluded in 1996. The Treaty deals with intellectual property rights of two kinds of beneficiaries: (i) performers (actors, singers, musicians, etc.), and (ii) producers of phonograms (the persons or legal entities who or which take the initiative and have the responsibility for the fixation of the sounds). They are dealt with in the same instru-

ment because most of the rights granted by the Treaty to performers are rights connected with their fixed, purely aural performances (which are the subject matter of phonograms).

In 2007, Australia, Liechtenstein and the People’s Republic of China (3) adhered to the WPPT, bringing the total number of States to 62.

Satellites Convention (Brussels) – The Convention Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite, concluded in 1974, provides for the obligation of each Contracting State to take adequate measures to prevent the unauthorized distribution on or from its territory of any programme-carrying signal transmitted by satellite. The obligation exists in respect of organizations that are nationals of a Contracting State. The provisions of this Convention are not applicable, however, where the distribution of signals is made from a direct broadcasting satellite.

In 2007, Bahrain (1) adhered to the Brussels Convention, bringing the total number of States to 30.

Treaty on Intellectual Property in respect of Integrated Circuits (Washington) – The Washington treaty was concluded in 1989, provides for the obligation of each Contracting Party to secure, throughout its territory, intellectual property protection in respect of layout-designs (topographies) in accordance with this Treaty. It shall, in particular, secure adequate measures to ensure the prevention of acts considered unlawful appropriate legal remedies where such acts have been committed.

In 2007, Bosnia and Herzegovina (1) adhered to the Washington Treaty, bringing the total number of States to three. The treaty will enter into force three months after the fifth instrument of ratification or accession by States have been deposited with the Director General.

IN THE NEWS

Blue Roses for Valentine's Day



Courtesy: Suntory

"Roses are red, violets are blue," go the St. Valentine's Day ditties. No more. This year, the world's first true blue roses will go on sale in Japan in time for February 14.

The quest for a blue rose intensified in 1840 when the horticultural societies of Britain and Belgium offered a 500,000 franc prize to the first plant breeder to produce such a flower. Over the next 160

years, plant breeders would create many new hues, with lilac and grey varieties coming closest, but the blue rose remained elusive and was dubbed an impossible dream.

Florigene Ltd in Australia, a subsidiary of Suntory Ltd, Japan, was founded in 1986 with the express goal of using gene technology to create the first true blue rose. In 2004, geneticists at the biotech company finally cracked the DNA code of the rose. The prototype they engineered was pale mauve,

but had the genetic potential to produce roses from the palest to the darkest of blues. After four years of further refining, Suntory is now bringing the blue rose to market in Japan. ■

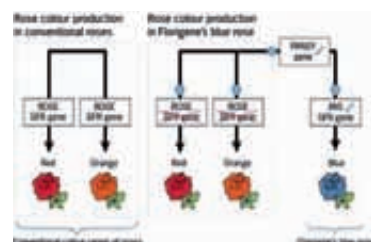


Photo: forums.hypography.com

Ports in China and EU Share Information to Fight Counterfeiting

Ports are the point of entry and exit for many of the counterfeited goods – fake medicines, foods, toys, etc – that endanger lives and threaten public safety. At the end of January, the European Union (EU) and China unveiled plans for an intelligence network to share information among ports to crackdown on counterfeiting. An EU anti-counterfeiting official will also be stationed in Beijing to work with Chinese authorities.

Despite the increased efforts of the Chinese authorities to crackdown on counterfeiting, EU Customs Commissioner Laszlo Kovacs said that China is currently the main source of counterfeit goods seized in European ports. The intelligence network will help to tighten enforcement, resulting in greater controls in both European and Chinese ports. ■

Happy Birthday to Toblerone®

A triangular shaped bar with a white, honey and almond center enveloped in rich milk chocolate – Theodor Tobler and Emil Baumann came up with the "secret recipe" for the first Toblerone in 1908. They registered the name – a play on the words Tobler and torrone, the Italian word for nougat – as a trademark in 1909. Owned and

distributed today in over 120 countries by the Kraft Company, Toblerone launched celebrations of its 100 birthday in Berne (Switzerland), the town of its creation, in January.

The triangular shape of the Toblerone was registered as a three-dimensional trademark un-

der the Madrid System (615992) in 1994. Tobler created the shape to resemble the Matterhorn mountain pictured on the packaging. Each chocolate triangle in the Toblerone is known as an Alp. A bear, the symbol of the city of Berne, is concealed in the logo. ■



© Kraft Foods Suisse SA

Jockeying for Invention Prize

Courtesy of K-Team



Robots like this one have replaced the use of small boys as jockeys.

A robot camel jockey carried off a top prize at the first International Invention Fair of the Middle East, held in Kuwait in October. The award went to Mr. Rashed Ali Ibrahim of the Qatar Scientific Club.

Camel racing is a popular sport in the Persian Gulf. Until recently, the camels were raced exclusively by child jockeys in hazardous and often abusive conditions. Responding to human rights concerns, the governments of Kuwait, Oman, Qatar and the United Arab Emirates banned the participation of children in the races, but did not succeed in eliminating the practice. In search of an alternative, the Qatar Scientific Club created a prototype robot jockey. But it was too big, so they approached K-Team, a leading Swiss robotics company, for help. The result was a 26kg robot jockey, with a child-like appearance and sprayed with traditional Arab perfume in order to trick the camels – very nervous creatures – into accepting them.

The robots are controlled remotely using a laptop and joystick. Following the success of the first trials in 2005, even the most skeptical camel owners were rapidly won over.

In two short years, the robots seem to have achieved their objective. Gone are the boy jockeys. One camel trainer in the Emirates claims the robots have transformed camel racing – there is no more worry about children falling off and being trampled by the camels, and race times have improved dramatically as the robots have gotten lighter. ■

Forum for IP Offices in Asia and the Pacific Region

More than 50 heads and senior representatives of national IP offices from 29 countries in Asia and the Pacific gathered in Singapore from December 4 to 6 to exchange views on current issues and developments affecting the IP offices in the region. The event was jointly organized by WIPO and the Intellectual Property Office of Singapore (IPOS).

Discussions at the forum revolved around seven broad themes: (i) current challenges and opportunities; (ii) development of IP policy and strategy; (iii) effective use of information technology for managing IP business processes; (iv) human resource skill sets and requirements for efficient administration of IP rights; (v) encouraging respect for IP through public outreach and awareness building programs; (vi) best practices in enforcing IP rights; and (vii) strengthening public-private partnership for effective use of IP system.

Participants shared their national perspectives, experiences and best practices in relation to each theme under discussion. Active deliberations during the three-day event led to the adoption of a com-

Photo: IPOS



mon document outlining common approaches and measures that could help in meeting the challenges, and identifying future priorities and needs of IP offices in region.

Facilitating the use of IP system for economic, social and cultural development and transforming the potential of IP into concrete and tangible benefits is a major challenge facing developing and least developed countries. The forum recognized the central position which IP offices have as drivers and agents of such transformation, and emphasized the need for them to play a proactive role in the process.

Corrigendum

The London Agreement, *WIPO Magazine* Issue no. 6/2007 (page 24): The official languages of the European Patent Organization are of course English, French and German, not English, French and Spanish as erroneously indicated in this news item.

Calendar of Meetings

MARCH 3 TO 7 ■ GENEVA

■ *Committee on Development and Intellectual Property (CDIP) (First session)*

This session, as approved by the WIPO General Assembly (September-October 2007), is to develop a work program for implementation of the adopted recommendations; monitor, assess, discuss and report on the implementation of all recommendations adopted; and to discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly.

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

MARCH 10 TO 12 ■ GENEVA

■ *Standing Committee on Copyright and Related Rights (Sixteenth session)*

The Committee will continue its ongoing work on the preparation of a diplomatic conference for a treaty on the protection of broadcasting organizations and will also examine questions of limitations and exceptions regarding libraries, education and visually impaired persons. It will also receive information regarding the Secretariat's work regarding audiovisual performances.

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

MARCH 31 ■ GENEVA

■ *Assemblies of the Member States of WIPO (Forty-fourth session)*

All Bodies of the Assemblies will meet in extraordinary session, with a view to approving WIPO's Program and Budget for the 2008-2009 Biennium.

Invitations: As members or observers (depending on the assembly), the States members of WIPO; as observers, other States.

MAY 5 TO 9 ■ GENEVA

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

The Working Group will consider issues relating to the legal development of the system, focusing in particular on possible means of improving the accessibility of information relating to the status of international registrations in territories of designated Contracting Parties.

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

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.

JUNE 2 TO 6 ■ GENEVA

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

The Committee will continue to work on key learnings concerning non traditional types of marks, consider an evaluation of the returns to the questionnaire on industrial design law and practice, as well as topical issues to be addressed as an outcome of SCT/17.

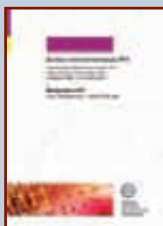
Invitations: As members, the States members of WIPO and/or the Paris Union and the European Community; as observers, other States and certain organizations.

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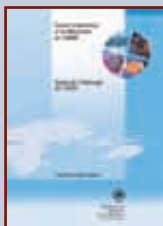
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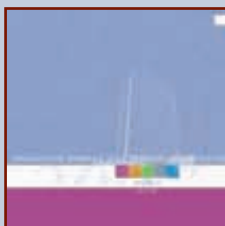
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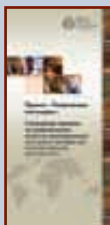
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