



International Chamber of Commerce

The world business organization

Summary of ICC panel discussions

“Making IP work for Development”

Geneva, 30 and 31 May 2006

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Panel 1 : National innovation strategies

■ **Anthioumane N'diaye, Director General, Organisation Africaine de la Propriété Intellectuelle**

Director General N'diaye described the process of technological innovation and the factors required to make this possible (e.g. legal protection through patents, and the necessary human and financial resources). He stressed the importance for businesses to devote resources to innovation. Governments should also take measures to raise awareness of the importance of innovation for a country's future and well being, and to help businesses – including in the informal sector - innovate and integrate new technologies. These included mobilizing national technical resources and institutions, fiscal incentives and providing structural support for businesses.

OAPI – which represents 16 African francophone countries and is the sole organisation to deliver a unitary regional patent – provides support to inventors at three key stages. Before he/she begins research, OAPI provides a detailed report on prior art in the relevant field; during the research phase, OAPI provides financial support ; and after the research is finished, OAPI subsidises patent applications for applicants with few resources, and helps inventors to commercialize their products by organising an invention and innovation fair to bring together inventors and businessmen. OAPI has also set up a fund to help build up SMEs based on their innovations and inventions.

The aims of the Libreville Initiative for the protection and development of African inventions in the area of medicines included creating national strategies for optimizing the results of research into traditional African medicine, protecting (including through the intellectual property system) traditional medical inventions, creating research network and industrial production units for traditional medicine, and improving the conditions for the approval for and distribution of traditional medicines. OAPI has taken measures to implement this including working towards the harmonising of procedures for the approval of traditional medicines and for the identification of traditional practitioners.

■ **Tegan Brink, Third Secretary, Australian Permanent Mission to the WTO**

Tegan Brink described Australia's national innovation policy – Backing Australia's Ability – which was launched in 2001 after a lengthy public policy process involving consultations between government, business and the research community, an innovation summit and the work of six working groups, including one on intellectual property.

The National Innovation Strategy had three aims: strengthening Australia's ability to generate ideas and undertake research, accelerating the commercialisation of ideas, and developing and retaining skills. Overall, this involved an AUD\$8.3 billion integrated 10 year commitment to science and innovation.

Intellectual property was a small but important part of the overall innovation strategy and was considered to be central to building a strong innovation system in Australia. A review of the intellectual property system found that it was generally efficient but required improvement in certain areas. A 12-month grace period as well as an innovation patent to cover lower-level inventions had been introduced, examination of patent novelty and inventive step had been strengthened so as to be more closely aligned with the standards of major trading partners, and Australia had decided to accede to the Madrid Protocol.

Initiatives had also been taken to improve awareness of the intellectual property system such as: establishing a "one stop shop" Internet intellectual property portal; creating an intellectual property research centre to provide independent multidisciplinary input into intellectual property policy formulation; boosting intellectual property awareness in the tertiary and research sectors; and incorporating intellectual property into education curricula.

As Australia had a poor track record of commercialising and capturing the benefits of its inventions, especially in the public research sector, initiatives were being taken to improve intellectual property management in public research agencies and universities, such as making funding conditional on applicants having in place intellectual property policy and commercialisation strategies.

Ms Brink concluded that it was essential to involve business and all relevant government departments when dealing with intellectual property and innovation as this was a complex and multidisciplinary issue. Access to intellectual property systems by SMEs was an important part of the debate on intellectual property and development.

Panel II: Helping SMEs and the informal sector gain access to the intellectual property system

■ Anil Gupta, Professor, SRISTI and the Indian Institute of Management

For Anil Gupta, economically poor people in all countries were knowledge-rich, and should not be looked at as a sink hole for assistance but as a source of innovation. Local inventions were solutions to local needs e.g. many inventions were premised on multi-functionality, a necessity in poor countries.

Intellectual property was one small part of the innovation matrix. The three main elements were innovation, investment and enterprise. It was rare for one person to have all these three elements which had to be brought together for innovation to function.

Intellectual property rights were a means to prevent those who had not made an invention from unscrupulously benefiting from it. They did not necessarily lead to a monopoly as different models of commercialisation and dissemination were possible. Consumption of knowledge also did not reduce supply.

A national innovation institute had been set up in India and over 50,000 grassroots innovations had been recorded. This registry allowed venture capital providers and entrepreneurs to identify inventions in which they might want to invest. Professor Gupta provided examples of inventions such as a coconut tree climber (which had been licensed in California) and a bicycle convertible into a hoeing machine.

Professor Gupta stressed the importance of incentives to encourage creativity. These could be material (such as intellectual property rights, endowments etc or non-material (such as recognition and honours) and could be applied to individuals or communities (e.g. in the form of trust funds).

Possible measures to help encourage grass roots innovation included setting up small business incubators and micro venture capital funds. The aim should be to create financial self-reliance through licensing which Professor Gupta believed there was possible in all countries.

Professor Gupta concluded that creativity had to be rewarded and that innovators could not be expected to subsidise society or to put everything in the public domain. Innovators should be able to choose how to distribute and commercialize their inventions.

- **Teresa Mera, former Director of Trademarks, INDECOPI (intellectual property and competition office) Peru**

Teresa Mera described Peru's new export commercial policy. This focused on value added products, and was designed to take advantage of increasing consumer demand for products produced by traditional methods, and for more information about the origin and production of products.

77.5% of Peruvian businesses were micro-enterprises with less than 10 people, which were dynamic but had difficulties in accessing finance and suffered from organizational weaknesses. Intellectual property rights could help SMEs differentiate their products and be more competitive.

Trademarks, collective trademarks and appellations of marks could not only help differentiate products and protect names from misuse, but also lead towards standardization of quality and better quality control systems. Producers had to be convinced of the value of protecting their distinctive signs. Ms Mera cited some successful examples of appellations of origin (Cusco corn, Pisco) and collective marks (PIVES for Villa El Salvador producers, Chirimoya Cumbe, Agap)

With its limited resources, INDECOPI's strategy was to approach relevant bodies such as producer associations and chambers of commerce, organise workshops including at the producers' location, and use media and promotional materials.

Its work had become much more effective when the government put in place mechanisms to coordinate efforts of different government bodies including INDECOPI, export promotion and SME support agencies, and regional authorities. This gave the strategy high level political support and allowed resources to be shared in working towards common objectives.

Panel III: Access to educational and scientific information

■ Maurice Long, Publisher Coordinator, HINARI/AGORA/OARE

Maurice Long described the HINARI, AGORA and OARE programmes set up by the science, technical and medical publishing industry. These gave free access to current research material in over 4000 journals on healthcare, agriculture and the environment to research institutions in countries with GNP P/A of USD1000 or less. A tiered pricing structure was being put into place for medium developed countries. The commercial licensing value of the material accessible on the HINARI website was estimated at USD1.2 million.

In addition to the participating publishers, partners included the relevant UN agencies (WHO, FAO and UNEP), institutes of higher learning such as Yale and Cornell Universities, and foundations and libraries in developed countries.

Over 2000 institutions in 103 countries were benefiting from the HINARI program and over 700 institutions in 64 countries were benefiting from the AGORA program. The programs were being used well in some countries and less well in others. Barriers to usage included lack of awareness, insufficient bandwidth, and lack of equipment. The programme managers were aware of the risk of swamping local publishers with free material, and supported local publishing programs as much as possible.

■ Brian Wafawarowa, Publisher, New Africa Books

Brian Wafawarowa said that African publishing, which was almost wholly dependent on educational textbooks, was in a very poor state despite its great potential. Africa consumed more than 12% but contributed less than 3% of all books read in the world. This revealed a dependence on imported knowledge and a decline in Africa's ability to generate its own knowledge. This was due to the lack of a secure environment conducive to creation and publishing. Because piracy was rife, banks also did not consider publishing to be a viable business so were unwilling to provide funds. The instability of curricula and extensive illegal copying of textbooks severely damage local publishers who are then unable to develop more general publishing.

The fact that unauthorized copying increases usually follows reductions in education budgets clearly suggests that lack of access to content in African education is more a financing than an intellectual property or pricing issue. Reducing piracy would increase the market for legitimate publications, thereby reducing the unit cost of each book as publishers would be able to take advantage of economies of scale.

While the idea of broader copyright exceptions can be seductive in poor countries, they will decimate the local industry and lead to a decline in local creativity and content. Local publishers were more vulnerable than multinational companies which operate in other more secure markets. New technologies of production and regional approaches to take advantage of economies of scale should be examined as means to reduce costs before tampering with the intellectual property system.

Mr Wafawarowa felt that any solutions had to set Africa on a road to self-dependence and equitable exchange in knowledge with the rest of the world. The best way to protect knowledge was not to defend it but to exploit it through publishing and copyright protection. Any approach to the problem of access should focus on the real problem, which is funding. Free content from the rest of the world will not be as useful to Africa as content it can generate by itself to become an equal global player in knowledge production and dissemination.

■ **Pascal Phlix, Coordinator, Future Member States Unit, European Patent Office**

Pascal Phlix introduced the European Patent Office which had 31 member states and whose main function was to process European Patents (bundles of national patents).

Patents prevented others from exploiting the patented invention. In exchange for this protection, the inventor had an obligation to publish the technical information necessary to exploit the patent. This technical information was publicly available. Of the 56 million published patent documents from 70 countries in the EPO, 52 million could be freely used as they did not relate to valid patents. In addition, in countries where a patent is not filed or is invalid, the information can also be freely used. In Africa, for instance, only 10,000 patents are valid in the OAPI 16 francophone countries so that the technology disclosed in almost all the patent documents can be used to the benefit of the local economy.

Access to EPO patent information was possible for EPO examiners and member states through EPOQUE, the EPO search system (which included a section on traditional knowledge), and for the public through its free simplified search service esp@cenet. The latter gave access to a worldwide database with over 50 million patent records as well as to national patent collections.

Mr Phlix gave examples of technological patent information that had been made available to researchers in Africa to help resolve problems e.g. stabilisation of hibiscus concentrate and water, portable hearing aids functioning with solar energy. The latter had allowed a non-profit association to develop solar powered hearing aids for children in Ethiopia.

In conclusion, patent information is freely available on the Internet and the majority of patents are not protected in developing countries. To exploit this, however, local communities had to have expertise in interpreting patent documents (often in another language), financial resources, and experience in reverse engineering. Countries could help by integrating intellectual property into the curricula of technical universities and encouraging the private sector to finance the technical risk related to R&D.

Panel IV: Genetic resources: development of local enterprise, investment and know-how, technology transfer; protection of traditional knowledge

■ Bo-Hammer Jensen, Director, Senior Patent Counsel, Novozymes

Bo Hammer Jensen introduced Novozymes, which was the global leader in industrial enzymes and micro-organisms with a strong presence in emerging markets. Novozymes worked in developing “white” or industrial biotechnology (e.g. biological processes for vitamin production; enzymes for industrial processes) and their enzymes were used in products ranging from beer and fruit juice to detergents.

The development process for enzymes took place in several stages: collection of samples from nature; testing for and isolating enzymes; refinement in the laboratory; and production.

Novozymes’ main products had been isolated from Denmark. They did not build on traditional knowledge to discover enzymes, relying instead on local collaborators to take samples.

Their guiding principles were: not to include material obtained without prior informed consent from the country providing access; all materials screened should be covered by a contract or material transfer agreement which includes benefit sharing, intellectual property rights, technology transfer and is cleared by the proper authority in the country providing access; and the country providing access should do the collections and be named in relevant publications and patent applications.

Novozymes aimed to establish win-win collaborations which included both monetary and non-monetary (technology transfer and capacity building) compensations to the country providing access for the mere option to screen accessed strains, and for benefits if later commercialized. One such example was collaboration with BIOTEC, an institution in Bangkok. BIOTEC did most of the sampling and screening while Novozymes contributed to research and education at BIOTEC, undertook technology transfer, and would give royalties to Thailand if a product was commercialized. It also sponsored community projects. Although this collaboration had begun since the 1970’s, no products had resulted to date.

Mr Jensen described the five pitfalls that could arise in bio prospecting under the CBD:

- There was often a mismatch of expectations. Governments believed they were selling a goldmine while companies viewed bio-prospecting more as buying a lottery ticket. This resulted in difficult negotiations;
- Middlemen sometimes took all the benefits;
- There were difficulties in obtaining PIC as it was often not clear whom to ask;
- Obstacles existed to scientists – scientist collaboration;
- Academia was not fully implementing the CBD.

Mr Jensen concluded that access to biological resources should be done with PIC under MAT, preferably through scientist-to-scientist collaboration leaving a copy strain in the country of origin. He referred to the BIO and Europabio code of conduct which had been established by industry to help companies comply with the CBD requirements.

Turning to traditional knowledge, Mr Jensen did not see any difference between this type of knowledge and any other. A wealth of traditional knowledge also existed in Europe. While knowledge could not be owned, the exploitation of knowledge could be controlled by granting rights. While many in industry believed that traditional knowledge should be protected, it was essential that the objectives be clearly defined, as other key factors such as scope, duration, and protectable subject matter depended on this.

Industry was used to working with rights that were identifiable, limited in time and space, with easily identifiable ownership to ensure freedom of operation and a high degree of legal certainty (as biotech developments was costly). Industry also needed transparency and flexibility and easily identifiable ownership. He concluded that industry was needed to promote the sustainable use of traditional knowledge as without industry, the benefits to be shared would be smaller.

■ **Anthioumane N'diaye and Pascal Phlix**

Mr N'diaye discussed OAPI's initiatives to harmonise the procedures for the approval of traditional medicines and for the identification of traditional practitioners in its member countries (see above).

Mr Phlix explained that the novelty criterion in the EPO was absolute i.e. everything that was accessible to the public, whether written or oral, was considered to be part of the prior art. Traditional knowledge was therefore considered to be part of the prior art. The EPO was currently integrating the new category in the international classification system for traditional knowledge as well as integrating articles and other materials on traditional knowledge into its database. EPO examiners were careful not to give out traditional knowledge information to third parties but to refer them to the holder.

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