

WIPO and Technology Transfer

WIPO history reviewed, its philosophy and program for aiding world technology transfer is outlined

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I am going to try to give you some idea about the overall objectives and activities of the World Intellectual Property Organization.

The overall objective of WIPO is to maintain and increase respect for intellectual property throughout the world. This respect is mainly maintained and increased through multilateral treaties, legally binding multilateral treaties. The words "intellectual property" are of course understood differently in different language, but in our terminology they comprise both industrial property and copyright.

In a few sentences, the short history of this organization is as follows. Among the treaties which secure international respect for intellectual property, there are two which are far more important than all the rest: one is the Paris Convention for the Protection of Industrial Property, dealing with patents, trademarks, etc. The other is the Berne Convention for the Protection of Literary and Artistic Works. The first was concluded in 1883 and the second in 1886. At that time, as far as their administration was concerned, both treaties were placed under the supervision of the Swiss Federal Government, and the few persons who were needed to carry out the administration of the two treaties were in Berne.

At the very beginning there were two offices, one for industrial property and one for copyright. In 1893, they were united. The name of the organization has undergone several changes in the course of its history. The most recent of its names, before it became WIPO, was BIRPI (Bureaux internationaux reunis pour la protection de la propriete intellectuelle). In 1960, under the directorship of a Swiss, formerly an eminent law professor at Lausanne, Professor Secretan, BIRPI was moved from Berne to Geneva.

WIPO Formed

In 1967, there was a diplomatic conference in Stockholm at which all the administrative clauses of all the ten existing treaties administered by BIRPI were revised and a new convention was signed. This was the convention which established the World Intellectual Property Organization. The convention of course required a number of ratifications before it went into ef-

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fect, and that happened in 1970.

The reason for the administrative reforms were that it has become the general desire of the Member States to make this organization — which is, of course, an organization of governments (it is an intergovernmental organization) — independent of the Swiss Government and to give it the same status as all other comparable intergovernmental organizations have,

LES International Conference, Geneva

and at the same time to pave the way for the organization to become a specialized agency of the United Nations system of organizations.

An international organization becomes such a specialized agency pursuant to an agreement between the United Nations and the organization. Thus, WIPO has been, since 1974, one of the 15 specialized agencies of the United Nations system of organizations. Among the others, the best known are the International Labor Organization, the United Nations Educational, Scientific and Cultural Organization and the World Health Organization.

Why did we aspire to become a specialized agency of the United Nations system? At that time, it was a matter that aroused quite a bit of controversy among our Member States. The main reason for which we aspired to become a specialized agency was that we wanted to secure the jurisdiction of our organization on the international scene in matters of intellectual property. As long as an intergovernmental organization is not a specialized agency, the other United Nations organizations can very well say that, as far as the United Nations is concerned, intellectual property is not taken care of, so it could be entrusted to another organization. The other one was that we needed increased status and credibility in the eyes of the developing countries.

I shall go into the question of relations between developed and developing countries and their role in our organization in more detail subsequently. But you can imagine that developing countries, which play such an important role in the formulation of the policy of the United Nations, feel more at home in an organization which is part of the United Nations family of organizations than one which is outside.

Treaties

Respect for industrial property is mainly based on treaties. At the present time, there are some 10 or a dozen such treaties. They can be classified in several ways. One way is to classify them in three categories. Those in the first category provide basic rules for the international protection of industrial property. Those

in the second category provide easier procedures for securing protection in international relations, so they are mainly of a procedural kind. Those in the third category deal with classifications

In the first category, the treaties — there are two — which provide for basic protection are of very unequal importance. By far the more important one is the Paris Convention of 1883, for the Protection of Industrial Property. The other is the Madrid Agreement of 1891 for the Repression of False or Deceptive Indications of Source on Goods.

In the second category, that of the treaties providing easier procedural means for securing international protection, there are today six treaties. The oldest of them is the Madrid Agreement of 1891 which provides for the international registration of trademarks.

It is a valuable treaty and it functions very well. Unfortunately, its rules are such that it is accessible almost exclusively to continental European countries. Because this means the exclusion of the Anglo-Saxon legal territory — the United States of America, the United Kingdom and other countries following the Anglo-Saxon traditions in the field of trademarks — a new treaty, the Trademark Registration Treaty, abbreviated TRT, was concluded in Vienna in 1973. This Treaty will come into existence in a few weeks' time for five countries. Only one of them, the Soviet Union, has considerable trademark activity, but we hope that in the coming years other countries will accede to the Treaty and that it too will become a real living reality. So much about trademarks.

In the field of patents, there is first of all the Patent Cooperation Treaty, or "PCT", which was concluded in 1970, came into effect two years ago, and is now a going concern.

Applications

It is a Treaty which is not yet used by very many applicants. There are at the present time about 3,000 international patent applications per year. The membership is expected to grow, although a good number of the most important countries in the field of industrial property have already acceded to it, such as United States of America, the Federal Republic of Germany, France, the United Kingdom, Japan, the Soviet Union and Australia.

Among the countries that are still missing and whose accession will be particularly important are Italy, Belgium and Canada. In the field of industrial designs, there is the Hague Agreement of 1925. Only a few countries, mainly from Western Europe, are party to it, but it is a living and good treaty.

Then there is the Lisbon Agreement of 1958 on the Protection of Appellations of Origin and their International Registration, and, lastly, a treaty concluded in 1977, the Budapest Treaty for the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure. The latter provides for the recognition of the deposit of a microorganism made in one member state by all the other member states, so that when the subject matter of a patent application is a microorganism or includes a microorganism, one does not have to make a deposit in every country.

The third category comprises treaties on classifications. There are four of them. One is on patent classifica-

tion, concluded in 1971. The Nice Agreement on the International Classification of Goods and Services for the Purposes of the Registration of Marks, was concluded in 1957. Also, there is the Locarno Agreement of 1968 Establishing an International Classification for Industrial Designs. Finally, there is the 1973 Vienna Agreement—not yet in force—Establishing an International Classification of the Figurative Elements of Marks.

Need Adjustment

In order to be a living reality all these treaties and particularly the basic treaty, the Paris Convention, need to be adjusted from time to time to the requirements of changing circumstances and their growing membership. Today, the Paris Convention has a membership of 90. As one can imagine, the situation is far from being the same as it was when the Convention was founded in 1883 by 11 countries, practically all of them European. During the almost 100 intervening years of its history, the Paris Convention has undergone several revisions, and we are now in the middle of the latest revision exercise, which started last February. The revision conference was unable to conclude its work, which will go on, and, we hope, be concluded next year.

Naturally, this revision differs very much from earlier revisions, which were mainly efforts on the part of industrialized countries—although this term did not exist at the time—to make protection more secure, more elaborate, more detailed.

This time, the revision has been asked for by two groups of countries. One is the Group of Developing Countries, and the other is the group of Socialist countries. The two main desires of the developing countries concern compulsory licenses and geographical denominations. The rules of the Paris Convention concerning compulsory licenses provide that nobody can ask for a compulsory license, if it is for reasons of nonworking, until after a certain period of time, generally three years after the grant of the patent, and that compulsory licenses can never be exclusive in the hands of the compulsory licensee.

The developing countries would like to have a shorter waiting period, and they would like to have the right to grant compulsory licenses which are exclusive. Their argument is that if the patent holder, or patentee, is given a certain period of years before he is obliged to work the patented invention, on the assumption that he needs time to tool up and otherwise get ready for working, so does a compulsory licensee once he has acquired his compulsory license, and thereafter the compulsory licensee needs some time during which he is protected from any competition, including competition from the patentee himself.

Controversial Argument

Naturally, this is a highly controversial argument in the field of patents. It will still cause a lot of discussion at the Paris Convention Revision Conference. The other main desire of the developing countries is protection for geographical names in their countries against use of the names by others as trademarks outside their countries. Why, they ask, when the Congo River flows

through several countries of Africa, should the name "Congo" be used for articles manufactured in the Federal Republic of Germany. And they add that, since they are not yet ready to submit all the geographical names which they think may be of particular value for registration as trademarks in all the countries of the world which have trademark registration, the right to use those geographical names should somehow be reserved for them for a certain period of time.

The other main issue in the revision of the Paris Convention is the Socialist countries' desire that inventors' certificates—a title of protection for inventions issued in some Socialist countries, mainly the Soviet Union—should be recognized in the Paris Convention as a title just as worthy of respect as patents. Under inventors' certificate the holder of the certificate—the inventor, that is—has the right to certain material benefits whose limits are provided for in the law itself. He has no bargaining power, and the exclusive right to prohibit the use of the invention belongs to the state.

The major controversy is the following: is it permissible for only inventors' certificates to be available in *certain fields of technology*, or should it be obligatory for both patents and inventors' certificates to be available in all fields of technology, whereupon it is up to the inventor to decide whether he wishes to obtain a patent or an inventor's certificate. According to the Western countries, only patents are of any value in international relations, because they give right to negotiate the price of the licensing. Consequently, the market economy countries continue to urge very strongly, as the price for full recognition of inventors' certificates in the Paris Convention, that it should be expressly provided that any country which has inventors' certificates must also have patents in the traditional sense and must allow the applicant to choose between these two forms according to his own desire.

I come now to the second part of my presentation. It deals with the activities of WIPO apart from its treaty activities. With some 250 employees, the Secretariat of WIPO is a very small secretariat, compared with those of other intergovernmental organizations. The staff is completely international in its composition: our colleagues represent 50 nationalities. Our budget of about 30 million Swiss francs per year is very modest, compared with those of other organizations. Almost half of this money is not paid in the form of contributions by the governments of the member states but earned by the organization in the form of fees paid by trademark owners or patent applicants who use the Patent Cooperation Treaty or the Madrid or Hague Agreements.

Two Objectives

We have two main objectives outside our treaties. One is to stimulate inventive activity, and the other is to promote the transfer of technology.

How does one stimulate inventive activity, in particular in developing countries? First of all, we firmly believe, and propagate the idea, that industrial property protection is in itself the best stimulus because, if the inventor can hope for both moral and material recognition and profit, he of course has a potent incentive to

invent. He should not only try to invent, but also publish his inventions and thus make them available for the general benefit and knowledge of mankind.

We also try to encourage the constitution of inventors' associations, again mainly in developing countries. We stood godfather to the recently created International Federation of Inventors Associations, which is growing steadily, with more and more national groups being formed. The associations try to explain to inventors the usefulness of patenting their inventions and also help them in this very difficult task, since for the average inventor in a developing country, obtaining assistance for the drafting and filing of patent applications is quite a difficult matter.

We write and from time to time revise model laws for the use of developing countries on all aspects of industrial property. One of the chapters forming part of one of our model laws deals with a matter for which we invented ourselves a word, namely *technovations*, meaning technical innovations. The aim of the model provisions on technovations is to give developing countries a pattern for the relations between the employer and the employee-inventor, so that the inventor is not unduly exploited and relations are so fair between the two parties that the inventor is encouraged to invent and declare his inventions. Finally, we ourselves stimulate inventive activity by presenting prizes and awards to inventors, for example at the yearly Inventors' Exhibitions in Geneva.

Licensing Role

The second of our activities outside the treaties is to promote the transfer of technology, and this brings us quite close to LES. We very much believe that the most effective way of promoting the transfer of technology is by licensing, because then technology is received from the right source and, in all normal circumstances, with the wholehearted assistance of the licensor. Nevertheless, one has to recognize that some developing countries, and many enterprises in such developing countries, have far less experience in negotiating licensing contracts than their counterparts, in highly-industrialized countries, and one must recognize that the prospective licensee is frequently in a much weaker bargaining position.

So what can we do? We do two things. One is highly controversial and the other less so. What is highly controversial is that in our model law we have a chapter on government control of licensing contracts, which enumerates those clauses that allow the weaker position of the licensee to be unduly exploited.

However, our model clauses say that one has to look at the contract in its totality, and not at each clause in isolation. What counts is the total impact of the contract on the economy of the country. For people from countries which do not have a planned economy, that is, an economy planned by the government and controlled by the government, such a system may be difficult to comprehend.

How can we approach the government, they ask, whose employees may know even less than the potential licensee, to find out what technology is desirable and what the right price for it is? Those provisions of our model law are not written for such countries. It is

not a model law for highly-industrialized countries. It is a model law for countries which are in a weak bargaining position and have very little experience, and therefore a certain amount of caution on the part of the government is considered to be necessary. It is a political decision for each country to determine whether government control of licensing contracts — an ugly concept in the eyes of most of the industrialized countries — should be adopted or not.

The last activity I mention is not controversial, indeed it is absolutely in the line of your Society: it is concerned with licensing procedure and the negotiation of licensing contracts. We have a very interesting book on the subject. It is our main teaching material in this respect. Its main author is Mr. Gust Ledakis, Legal Counsel of WIPO. Our "Licensing Guide" is our best-seller, and, curiously enough, it is mostly read by young lawyers in big corporations in Western countries as a very useful checklist and reminder of all the things that have to be covered in a licensing contract.

We organize seminars in different developing countries in different parts of the world in which, on the basis of this book, we try to make the people in the developing countries who are concerned with the negotiation of licensing contracts aware of the usual pitfalls for which they have to look out.

I conclude by stating that our organization relies very heavily on the advice of nongovernmental organizations and on the views of private circles. After all, what our treaties deal with, in the great majority of countries, is private property, property free from government control. Consequently, the specialists in our field are mainly people from the private sector. That is why we regularly invite international nongovernmental organizations to our meetings, and we hope and trust that our links with the Licensing Executives Society may be even stronger than they are today, and that your great experience and advice may be available to WIPO.