



REPORT

MEETING OF THE COMMISSION OF THE INTELLECTUAL PROPERTY THE INTERNATIONAL CHAMBER OF COMMERCE

PARIS – MARCH 15 2005

by Dariusz Szleper

At least twice per year, the International Chamber of Commerce organizes in Paris the meetings of the Commission of the intellectual property.

The last meeting was held on March 15 2005 and was chaired by Mr. Urho ILMONEN assisted by Mr. Peter Dirk SIEMSEN and Mr. Ronald MYRICK.

The Commission tackled many subjects for which intervenes the International Chamber of Commerce and with which are charged the particular sub-commissions.

The presidents of each one of these sub-commissions presented, during the meeting on March 15 2005, the state of their activities.

They also informed the ICC of the state of work of the international organizations such as WIPO, the EUROPEAN UNION or WTO, in the fields concerning each one of these commissions.

And thus Mr. MYRICK informed the ICC of the state of the work undertaken within the European Union about the protection of inventions implemented by the software and Mr. Peter SIEMSEN presented the state of the discussions within WIPO on the relations between the intellectual property and the development.

In the same way, Mr. Ivan HJERTMAN held informed the Commission of the projects of WTO in the field of the intellectual property.

But the activity of the Commission had not been limited to a discussion on the general orientations taken by various international organizations in the field of the intellectual property.

Indeed, four other particular subjects were tackled by the Commission after being followed by completely complete talks.

- First of all, Mr. Tim ROBERTS co chaired of the task force on the IP road, made known at the Commission the current state of work on the question of disclosure of origin/source of biological material in patent applications.

Mr. ROBERTS lengthily exposed the stakes of the subject and the difficulties which it presents.

Indeed, there exists, with regard to the living resources, a potential conflict between the TRIPS agreement and the Convention of Rio on the biodiversity.

And the question of the compatibility of these two international agreements is the subject of the debates between the developed countries and the developing ones.

This debate has just re-appeared within WIPO within the framework of the discussions on the SPLT.

Apart from the difficulties resulting in particular from the choice of the mode of protection (*sui generis* or a protection corresponding to the traditional mode of protection such as patent) the difficulty of the definition of the origin of the vegetable material is posed.

Not only the term "*origin*" can raise problems when it is a question of determining with precision the source of a biological material, but moreover this problem combines with the difficulty in defining the biological type of material for which the obligation to disclose its origin must apply: does the obligation concern only a vegetable material or it also applies to the genetic resources?

Lastly, is also discussed the question of the possible sanctions of violation of this obligation of disclosure of the origin of the biological material.

Taking into account the complexity of the situation, the CCI decided to encourage its members, and in particular the companies to be actively interested in the discussions concerning Rio Convention on the biodiversity so as to enable them to make hear their voice on the questions concerning the application of this convention.

- The second presentation consisted in the intervention made by Professor DE MEYER, teaching to the INSEAD, which tackled the subject of the influence of the systems of intellectual property on the innovation from the point of view of the Asian countries.

He gave a report on economic research that he carried out in certain countries of Asia by analyzing the behavior of small and medium-sized enterprises and their aptitude to organize the creation of the innovation so as to draw the best advantage from it.

His presentation dealt with the different aspects of the problems like on the one hand about a social problem (legitimacy of the IP monopolies) and on the other hand the inadequacy between the offer from the Western companies and the needs of the local consumers.

These two aspects of the analysis of the advantages or the disadvantages of the intellectual property are often used as justification for non compliance with the rules of the intellectual property rights.

And he stressed that the Asian companies often use alternative modes of protection of their markets while especially trying to build long relations with their customers and by often using the secret as a way of protection of their innovations.

But he also recognized that the interest for the intellectual property becomes increasingly strong in this region of the world.

- The Commission also heard the presentation of one representative of the company " E-BAY " which presented the problems to which is confronted its company within the framework of its activity.

Indeed, the biddings open to any user of Internet can constitute an easy mean to sell the counterfeiting products.

E-BAY is thus obliged to cooperate with the principal holders of the intellectual property rights to identify the counterfeiting products and to fight against the counterfeit.

However, the exercise of this control presents multiple difficulties in particular because of the national disparities concerning the system of protection of the personal data.

E-BAY also carries out a control of its customers within the framework of the checking of their identity and eliminates those which were already identified as suppliers of products infringing the IP rights.

- Lastly, the Commission of the intellectual property had the occasion to greet the work of the Task Force devoted to the establishment of the " IP Roadmap " for the ICC members.

This sub-commission draws up each year a report " IP Roadmap " which constitutes a particularly rich source of information concerning the current developments of the intellectual property throughout the world.

It is a document which, on the one hand points out the principles concerning the intellectual property, but on the other hand informs the persons in charge for companies of the topical and relevant subjects, while proposing the actions which could be undertaken by the interested States and parties.

It is about a publication the most asked among all the publications of the ICC and the Commission paid homage to the president of the Task Force and the activity which he has carried out for several years.