WTO

Hannu Wager reported on the latest news from the Doha Round and TRIPS.

Since February the Doha Round negotiations resumed, also on the bilateral front. Three issues were at the forefront: agricultural subsidies in the US, agricultural subsidies in the EU, industrial tariffs in Brazil. IP was discussed shortly as a side topic on GIs, but there was no major development.

Regarding TRIPS, Brazil, India and a few other countries proposed to introduce disclosure mechanisms to avoid the grant of illegitimate patents on genetic material. However, no progress is yet in view, as long as the core issues remain unaddressed.

Similarly, talks on registration systems for GIs did not progress further as the membership remains divided. The question was raised whether GIs are part of the negotiation package.

The TRIPS and Public Health amendment needs 100 out of 150 ratifications before the end of the year to come into force. At this stage a few countries have already ratified, including India, El Salvador, Norway and Switzerland.

No consensus has yet been reached as to methods of enforcement. It was agreed that the WIPO Committee on Enforcement is the right forum to address this issue, and it is unclear whether it will remain on the TRIPS agenda.

On the topic of dispute settlement the US made a new request for consultations on market access to copyrighted material.

WIPO

Francis Gurry reported on the latest intergovernmental conference, with focus on GRTKF.

In the area of TKF it separately considered defensive and positive protection. On the defensive protection side, Japan (and independently the WTO) proposed to establish a database for searching purposes, to avoid granting patents erroneously. Although only few instances (at most in the hundreds) of bio-piracy are known and these do in no comparison match the billions of dollars counterfeit and piracy cost the world economy, the negative publicity of these cases is so enormous that the investment in these resources may be worth the effort. The database would be public and for patent examiners to consult. It will be linked to other databases, such as the WIPO’s or the Chinese database on traditional medicine. Hopefully it will become available already this year.

On the positive protection side, the question was raised as to how TK (scientific or folklore) can be protected. The previous meetings ended in a deadlock about documents submitted by WIPO, as no consensus could be achieved between developing countries (who wanted to go forward) and
industrialised nations (who were unhappy with the substantial issues). A breakthrough was achieved at the last conference by discarding the documents and introducing a set of questions to be answered by the member states by July. The answers will hopefully help determining which elements are protectable and why.

In the area of GR the conference handled the interface with IP, in the context of the Convention on Bio-Diversity (CBD).

The EU made a proposal for patent applicants to disclose the origin of the GR, while Switzerland withdrew its similar proposal to have it addressed elsewhere. However, the fundamental question as to the definition of GR remains unaddressed. Nevertheless, the TKF database project may be also relevant in this context.

**Esteban Burrone reported on WIPOs’ Development Agenda.**

The whole process of the Development Agenda was started at the General Assembly in 2004 by Argentina and Brazil. It involved not just technical assistance, but also all other activities of WIPO and lead to an intergovernmental intersessional meeting. The committee meet met three times in 2005, but with no result, as few countries actually involved themselves. This changed dramatically at the General Assembly in 2006 where a large number of Member States submitted a total of 111 different proposals. Although this huge amount of proposals could be partitioned into six large clusters, its sheer amount raised some concern at the General Assembly, and it was decided not to renew the mandate but to bring more structure into the process. As a result 40 proposals were analysed and discussed during the previous PCDA session last February, and the remaining 71 proposals will be handled at the next session in June.

The February session considered those proposals which were perceived as being easy for reaching a consensus. The intense exercise of narrowing to avoid duplication, separating into actionable and principle proposals, filtering out activities on which WIPO is already active (It was at the same time worrying to realise the some Member States are unaware of WIPO’s activities, and gratifying to demonstrate WIPO’s pro-activeness.) resulted in the drafting an agreement of 24 proposals without duplications into the so-called Annex A.

The next June session of the PCDA will address the remaining more controversial 70 proposals, dealing i.a. with TK, TTs etc. and hopefully end up with a similar Annex B. The productive experience of the last session resulted into more optimism, as we experienced now a true spirit of negotiations through a real dialogue between the different groups.

Ultimately it will be up to the General Assembly to decide on the final proposals of the PCDA. Ultimately no proposal is to be dropped and there remain lots of open questions, and although there is a lot of trust in the Chair of the PCDA and the Secretariat.

**José Cavazos Trevino reported on WIPO activities in its SMEs Division.**

In September 2000 WIPO’s General Assembly approved the creation of this division, on the ground that worldwide SMEs are the major driver of R&D and the economy. Purpose of the division is to enable SMEs to make informed decisions. The divisions achieves this goal mainly by forming partnerships with local institutions such as patent offices, and by demystifying IP through its publications and website.

Further information can be found on [www.wipo.int/sme/](http://www.wipo.int/sme/).

**Francis Gurry reported on the PCT.**

PCT growth is strong, with a 7% increase last year. These statistics can easily be retrieved online with WIPO’s search engine PatentScope. The statistics can be displayed with very user-friendly graphics. PatentScope will be linked to the new terminology database, to facilitate searching in foreign language applications. This is becoming increasingly important as filings from China, Japan and Korea already amount to 25% of all applications, and it increases the search statistics. Users can subscribe on the PatentScope site for regular reports by email.
There has been a strong upsurge from North East Asian countries, notably with a 60% growth from China last year, which now overtook Switzerland and Sweden. Similarly, Korea now overtook France and the UK. This raises new linguistic problems for searching prior art. The PCT helps by providing English and French translations of the abstracts and English translations of the preliminary patentability report. Nevertheless, the problem remains and will increase with time, as the SIPO has already grown larger than the EPO by now.

WIPO addressed this issue in the context of the PCT reform with a proposal for an optional supplementary search by another international authority. The vast majority of Member States, including the US, liked the idea, but Japan opposed it fiercely because of the possible extra workload that this may generate.

The EPO intends to invest EUR 70m on translating Chinese patents into English.

**Markus Höpperger reported on the Standing Committee on Trademarks (SCT).**

The Standing Committee on Trademarks (SCT) is currently addressing 3 issues: new marks, oppositions and designs.

New marks include 3-D, tactile, olfactory, taste marks. The interest for these appears somewhat disproportionate, considering the limited number of filings. The 16th session of the SCT started two working documents, which currently a still merely list of recipe-like rules. The first document deals with reproduction issues and is largely non-controversial within the SCT. The second document handles trademark law principles (such as distinctiveness, descriptiveness etc.) and because these issues are more substantive one cannot yet be sure about the degree of consensus within the SCT.

It is universally agreed within the SCT that opposition procedures are a good thing for all players, including the applicants and the trademark offices. The question remains on what the rules should be like, and the Member States have participated to a questionnaire and a large study to be compiled into a summary document.

Work is under way to define design registration procedures, but it is still unclear whether there is enough momentum. The Secretariat is preparing a draft questionnaire to be approved at the next SCT session. Having learned from past experience, these questions will remain simple in order to prompt a better response and allow for an easier analysis.

**Denis Croze reported on the Standing Committee on Copyrights (SCC).**

Activities of the SCC currently mainly include on the one hand database protection and on the other hand the Treaty on broadcasters’ rights, for which it remains unclear whether it will include the controversial scope widening to new technologies such as simulcasts and webcasts. In the near future the SCC will also address limitations and exceptions for disabled people.

In July WIPO will organise a meeting in Singapore on the legitimate use of P2P technologies and the liability of internet intermediaries. In September WIPO will organise a meeting in Geneva on the rights management of information and the diversity of national systems.

The WIPO website contains several studies and manuals, such as a manual for photographers.

In the context of the TKF database Francis Gurry described, the vast experience that collective management organisations have in the area of copyrighted material may be of great use when registering TKF.

**Wolfgang Starein reported on enforcement.**

The Global Congress on Counterfeit and Piracy that WIPO organised together with Interpol, WCO, INTA, BASCAP and a few other NGOs in January was with more than one thousand participants one of the largest events WIPO ever hosted. It was an excellent congress and the PCDA session that followed immediately probably benefited from its excellent atmosphere. The next congress will be hosted by the WTO in Dubai.
ICC

Tim Roberts reported on the views within ICC regarding the database on TK.

The deadline for answering the questionnaire sent to the different ICC chapters just expired, and a wide range of views is already apparent. However, a few main conclusions can already be drawn.

As a matter of principle all like the idea of the database, because as an additional source of prior art it has the potential to avoid patenting existing knowledge and it has the virtue of disseminating little known knowledge.

Regarding the positive protection, three main questions emerged:

1. Does this all make sense?
2. How is it going to work? Only extremely sound reasons should be invoked to remove anything from the public domain.
3. What is it going to stop us from doing? As always, the industry is prepared to abide by new rules, but it needs certainty.

The obligation to disclose the origin of GR in patents raised strong concerns. Starting with the question, how this will be implemented. If there is a box to tick, what should the applicant do if he ignores the answer? What are the penalties if he gets it wrong? What is meant by the country of origin? (After all, GR don’t know about nationalities.) What if where it originated from is not where you found it?

The IGC should seriously address these matters.

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