



Summary Report: IP Offices and the Implementation of the WIPO Development Agenda: Challenges and Opportunities

This report was established under the responsibility of the organizers and does not necessarily reflect the opinion of the speakers.

On Friday September 18th, 2009 the International Centre for Trade and Sustainable Development (ICTSD), in collaboration with the United Nations Conference on Trade and Development (UNCTAD) hosted a dialogue entitled *IP Offices and the Implementation of the WIPO Development Agenda: Challenges and Opportunities* as a side event to the WIPO Global Symposium of IP authorities.

In the past decade, IP offices worldwide have been engaged in an important process of modernization to upgrade their technical capabilities and streamline their operations in order to implement new global IP rules and to meet the growing demand in IPRs. At the same time, global debates have centered on the achievement of a more balanced and development-oriented IP system, which is supportive of public policy objectives in the areas of innovation, health, climate change, food security and biodiversity. The World Intellectual Property Organization's (WIPO) Development Agenda (2007) - as well as other outcomes such as the Doha Declaration on TRIPS and Public Health (2001) and the WHO Global Strategy and Plan of Action on Public Health, Innovation and Intellectual Property (2008) - is a milestone in this process, in particular highlighting assistance to infrastructure of IP offices in Recommendation 10.

Mr. Irfan Baloch, Acting Director of the Development Agenda Coordination Division at WIPO stated that the WIPO Development Agenda, as an outcome of Geneva negotiations has not yet been adequately tackled by national IP offices. But "WIPO cannot keep implementing activities in isolation," said Mr. Baloch. Therefore, the debate that is occurring within WIPO needs to be extended to national IP offices. Concerning the role of IP offices, they need partners in the member states with several focal points in the government, for instance competition authorities, as well as closer coordination of authorities and policy strategies for this coordination. Furthermore, it should be ensured that local partners fully commit to the projects undertaken. According to Mr. Baloch, technical assistance and aids to developing countries will only be sustainable if their governments make efforts and commitments to implementation. Given the locally different needs of each country, the Development Agenda must also respond to the real needs and interests of member states and IP offices should be responsive to those needs.

Prof. Ruth Okediji of the University of Minnesota Law School addressed the role and function of IP offices in accordance with their organizational structure. Historically, colonial administrations had the choice to establish IP offices, as for instance they did in India. However, in a lot of developing countries and former colonies, IP offices have been established much later, finally when WIPO came into play. Today, three principal types of IP offices can be identified. First, under the regulatory model, for instance in the US, IP offices generate norms according to general principles and administer the IP system in practice. Second, in the coordination model, common in eastern European and Latin American states, IP offices work with related offices, such as those on consumer protection and competition, and coordinate the administration of IP with the opinion of other agencies. Finally, the agency model known in Africa, parts of Asia and in the CARIFORUM countries of the Caribbean, attributes no real mandate to IP offices to elaborate or administer norms and these offices function – similar to clearing houses – as agency administering international and multilateral treaties.

However, to implement the WIPO Development Agenda and to execute its goals IP authorities have to play a more independent and active role. IP offices should be the focal point and local allies for innovators and entrepreneurs, as well as, they should engage in “norm competition,” Okediji said. In respect to the TRIPS Agreement very few IP offices of developing countries have made use of the various exceptions designed for developing countries. To conclude, Prof. Okediji presented five policy recommendations: First, IP offices should be legally, institutionally and structurally empowered to address development issues. Second, the IP offices should identify innovators and collaborate with them. Third, putting “norm competition” into practice, IP offices should follow a pro-competitive approach and leave unpatentable elements in the public domain. Fourth, the WIPO Development Agenda should not be treated as an annex to the existing IP system but as a part of it by national IP offices and multilateral authorities. Finally, IP offices, as well as courts have the role to define the flexible concepts in IP and address development issues.

The Director of IP Division at the Brazilian Ministry of Foreign Affairs, *Mr. Kenneth Nobrega*, commented that developing countries should assess their specific needs for technical assistance and find their own model of development strategy to use the flexibilities in the TRIPS Agreement. For instance Brazil is struggling to find its own model for the role IP and competition authorities between the European and US example. However, the value of cultural aspects of a country should be considered as a strategic asset and IP offices should make their own public policy in accordance with national needs and priorities.

Prof. Carlos Correa of the University of Buenos Aires insisted that IP Offices, despite high political pressure to grant certain patents, should nevertheless consider the implications of exclusive rights on competitiveness and on access to medicine. He also presented the patentability guidelines for the examination of the pharmaceutical products to assist patent offices in the examination of the pharmaceutical products from a public health perspective (<http://ictsd.net/i/publications/11393/>).

The head of IP Office from Ecuador highlighted the need to establish cultural and educational issues at the national governments to strengthen the influence of IP Authorities. Finally, Ms. Ruth Okediji highlighted the problem of patent settlement agreements which – by paying out the competitors – neglect public concerns on competition and consumer law.