

INTELLECTUAL PROPERTY-RELATED TECHNICAL ASSISTANCE: THE PHILIPPINE EXPERIENCE

In the Philippines, the national Intellectual Property Office (IPO) has been main beneficiary of direct, foreign intellectual property-related technical assistance. The Department of Science and Technology (DOST) has not received any foreign direct technical assistance.¹ This paper reviews the sources and nature of technical assistance received by the IPO and concludes with reflections and recommendations.

I. The Philippines Intellectual Property Office

In 2000, the IPO identified the following as its long-term goals:

- To provide strong protection of intellectual property rights of stakeholders;
- Expeditiously settle disputes to create conducive business environment;
- Register technology transfer agreement to ensure its enforceability; and
- Pro-actively promote IP as a tool for economic, technological and cultural development.²

To achieve these long-term goals, the IPO first focused on institutional development in terms of human resources, financial capabilities, computerization, and capacity building.³ The IPO had the benefit of continuity in its leadership⁴ that enabled it to develop a long-term plan to achieve its objectives.

After the IPO identified the strengthening of its administrative capabilities as its priority, it applied with the different donor agencies for additional funding and support. Fortunately for the IPO, these were also the areas where foreign donors focused their technical assistance efforts. Donor agencies also approached IPO to partner-up or co-sponsor projects, usually in the form of seminars, which were of interest to them. The IPO accepted these offers as it gave them an opportunity to add to its portfolio of projects.

II. Sources of Technical Assistance

The IPO's donors are bilateral donor agencies such as the Japanese Government through the Japan International Cooperation Agency (JICA), the US Government through the US Agency for International Development (USAID), and the European Commission through

¹ Interview with DOST Undersecretary Maripaz Perez on 6 July 2005.

² "Riding the Tides of Change," IPO Annual Report, Intellectual Property Office, 2000, page 1 [hereinafter referred to as the 2000 IPO Annual Report].

³ Interview with former Director-General Emma Francisco on 18 June 2005.

⁴ Atty. Emma Francisco first served as the Director of IPO's predecessor organization, the Bureau of Patents, Trademarks and Technology Transfer (BPTTT). Upon the abolishment of the BPTTT and the establishment of the IPO, Francisco was appointed as the Director-General of the IPO on February 16, 1998. Her term ended on 16 February 2005.

the EC-ASEAN Intellectual Property Rights Cooperation Programme (ECAP). The IPO has also received assistance from international institutions such as the World Intellectual Property Office (WIPO), US Patent and Trademark Office (USPTO), Japan Patent Office (JPO), European Patent Office (EPO), and the Korean Intellectual Property Office (KIPO). The IPO has not received assistance from non-traditional donors and providers.

Except for the automation program funded by Japan through JICA where the IPO prepared an Implementation Completion Report, the IPO kept scant documentation on the technical assistance it has received save for brief descriptions of such assistance in the IPO annual reports. Due to the lack of documentation, it is difficult to determine the total cost of the technical assistance or assess the quality of the assistance. This is understandable since most of the assistance is in the form of short-term training courses and seminars, both local and foreign, for IPO personnel as well as for enforcement agencies, academics, IP practitioners, and the private sector that were handled and processed by the IPO. The IPO did not maintain a centralized record of the various foreign training seminars attended by IPO personnel except for 2004. Also, although it is the IPO that recommends participants from other government agencies and from the private sector to donor agencies, it did not keep a centralized record of the participants it had recommended. The data on foreign training and seminars had to be culled from separate records.

III. Types of Assistance Received

Policymaking and development of legislation

In terms of policymaking and the development of legislation, the IPO identified WIPO as the main source of such assistance. The WIPO provided legal advice to the IPO in the implementation of the TRIPS Agreement.⁵ The IPO also utilized the WIPO model laws in the drafting of IPO-sponsored legislation such as the law on lay-out design circuit.⁶ The WIPO also provided opportunities for the IPO to participate in international discussions on IP topical issues such as traditional knowledge and geographical indications.

USAID through its local consultant (AGILE) aided in the drafting of rules to strengthen border control measures.⁷ It also funded the institutionalization of mediation as an alternative dispute settlement process.⁸

The type of assistance given in the area of legislative development is principally compliance driven. Legislative assistance focuses on aiding the Philippines, through the IPO, to comply with international commitments in terms of the standard of IP protection and to strengthen enforcement. Assistance in the form of seminars to orient the IPO and other stakeholders on new IP conventions to which the Philippines is not yet a party were

⁵ Interview with IPO Assistant Director Rolando Saquilabon on 5 July 2005.

⁶ Id.

⁷ 2000 IPO Annual Report, *supra* at page 7.

⁸ "Breaking Barriers, Facing Challenges, Creating Opportunities, Through the Years," the Report of the Director-General, 2005, p. 65 [hereinafter referred to as the 2005 Director-General Report].

also sponsored by the WIPO. The national seminar in 1998 on Collective Management of Copyright and the WIPO Internet Treaties⁹ attended by the policymakers, academe and stakeholders paved the way for the IPO to lobby successfully for the ratification of the Internet Treaties.

IP administration and enforcement

In terms of strengthening IP administration, the WIPO assisted the IPO in capacity building in terms of various training opportunities for IPO personnel. The USAID through a local consultant (AGILE) helped the IPO develop performance evaluation systems that was designed to encourage examiners to increase their output.¹⁰

The EPO funded the collection of searchable bibliographic pages of patents issued by ASEAN member countries from 1980-1996.¹¹ It also funded the compilation in CD format of patent documents registered in the Philippines in 1992. CD-ROMS covering 1990-1991 and 1993-1996 became available in 1998.¹² The EPO also sponsored the compilation in DVD format of full texts of Philippine invention patents issued from 1948-1980, utility models from 1955-1984 and industrial design from 1949-1983.¹³

Pursuant to a bilateral arrangement between the IPO and the EPO, a bilateral program was established to create the IPO Manual for Patent Examination. Based on the IPO Annual Report, the manual will "standardize the examination practice of Philippine patent examiners, serve as a guide for applicants and patent agents for the filing and prosecution of patent applications, increase the transparency of the examination process and help ensure that Philippine patents meet world standards."¹⁴ The Manual was completed in 2003 and is now being used by Philippine patent examiners as their guide in examining patent applications.

In terms of training, all donor agencies gave technical assistance to the IPO. The EPO sponsored a seminar/workshop on the drafting of patent applications in February 1999.¹⁵ The Japan Institute of Invention and Innovation (JIII) sponsored the Sixth Japan-ASEAN Symposium on IP in 1999 attended by 150 participants from the government and private sector where the role of the patent system in the industrial development of the ASEAN region was discussed.¹⁶ WIPO also funded an ASEAN Sub-Regional Colloquium on the Enforcement of Intellectual Property Rights in the Context of the Trips Agreement in October 1999. The Colloquium was designed for the Philippines and other ASEAN countries to review compliance with TRIPS agreement, specifically in the area of

⁹ 1998-1999 Annual Report, Intellectual Property Office, 2000, p. 65 [hereinafter referred to as the 1998-1999 IPO Annual Report].

¹⁰ Interview with IPO IPRS Asst. Division Chief Arlene Prudenciano IPO on 29 June 2005.

¹¹ Id.

¹² Excerpted from http://www.ipophil.gov.ph/page_details.asp?sr=99 visited on 5 July 2005.

¹³ See note 10, supra.

¹⁴ 1998-1999 IPO Annual Report, supra at page 7.

¹⁵ See note 12, supra.

¹⁶ Id.

enforcement. There were 188 participants composed of judges, prosecutors from ASEAN countries, practitioners, businessmen, Filipino IP owners, and representatives from the academe.¹⁷ The USAID has also provided technical assistance in improving the IP system and increasing the level of IP expertise of IPO personnel, enforcement agencies, judges and businesses through seminars.¹⁸

In 2002-2003, a total of 24 local seminars were conducted by the IPO that were funded by the WIPO, ECAP, JICA, JIII, and USAID.¹⁹

The donors also funded foreign seminars and participation in international IP conferences. In 2004, 35 IPO personnel received training abroad. The various foreign training in 2004 was sponsored by the WIPO, JICA, ECAP, EPO, and USPTO and focused primarily on administrative capability, introduction to intellectual property, and enforcement. Based on the data culled from different IPO records, a total of 218 IPO personnel have attended foreign training programs from 1996-2004 sponsored by IP offices and international organizations such as the JPO, JIII, AOTS, JICA, ECAP, WIPO, and EPO.²⁰ Considering that the IPO currently has 300 employees, a substantial number of its personnel have already attended or received foreign training.

Foreign donor agencies also fund foreign training for the private sector and other government agencies that is handled and processed by the IPO. Based on the culled data, about 85 participants from the private sector and from other government offices also received foreign training from 1996-2005.²¹ The JIII and the Association for Overseas Technical Scholarship (AOTS) have annual study seminars for IPO personnel, private practitioners, academe and private sector representatives. The recipients of such study program, with the help of the AOTS, have formed an organization to advocate for stronger IP protection. The EPO also has annual training programs in Europe.

In September 2001, the IPO and the Korean Intellectual Property Office (KIPO) launched their partnership agreement. KIPO is now the international searching authority and International Preliminary Examining Authority of Philippine PCT applications.

While most donor agencies focused their assistance on short-term training and seminars, Japan through the JICA provided for funding for the automation of IPR administration. The first JICA sponsored project was the Trademark Word Search system that was completed and formally launched on 6 March 1997. 67,846 trademark documents were encoded and the system is now being used by researchers to find any trademark registered or filed with the then BPTTT.²²

¹⁷ Id.

¹⁸ See note 10, *supra*.

¹⁹ Data was provided by IPO IPRS Asst. Division Chief Arlene Prudenciado on 5 July 2005.

²⁰ Data was provided by IPO IPRS Asst. Division Chief Prudenciado on 5 July 2005.

²¹ Id.

²² Excerpted from http://www.ipophil.gov.ph/page_details.asp?sr=99 visited on 5 July 2005.

The second JICA funded project involved the automation of the patent system. Prior to the JICA funded project, the IPO had previously conceptualized an automation project under its 1995-1999 Information System Strategic Plan which resulted in the development of a system called PACRES. This was a stand-alone system used by patent examiners in storing and retrieving patent applications for purposes of tracking and monitoring. However, its use was limited and the increased patent workload demanded a more enhanced system.

Both EPO and JICA offered to fund the computerization program of the IPO. The EPO offered to the then BPTTT information on and requirements for the use of a Common Software, a software system covering the administration of both patents and trademarks that was developed by the EPO for former centrally-planned economies of the former Soviet Union. The Common Software was a finished product that required modification to adapt to the Philippine system while the system to be developed under the JICA Project-Type Technical Cooperation Program involved technology transfer. The BPTTT evaluated its options and chose the JICA project since the Common Software required the payment of a license fee while the JICA Project-type did not. The Common Software also required the setting up and hiring of a separate Electronic Data Processing (EDP) Unit prior to providing the system while the JICA Project-type would provide experts who would work with local counterparts already working in the different areas of the IPO. The local counterparts would be recipients of technology transfer thereby ensuring the capability of the IPO to use and maintain the system after completion of the project. Also, the cost for adapting the Common Software was to be borne by the Philippines. The Common software included patents and trademarks that could not be unbundled. At the time, the IPO already had a trademark system and needed only the patent system. In view of the budget limitations and manpower resources, the IPO, after evaluating its options, decided to choose the JICA Project-type program.²³

In October 1998, the IPO and JICA entered into a Project-Type Technical Cooperation for Modernization of Industrial Property Administration to improve the administration of patent through computerization. The 4-year project started on 17 May 1999.²⁴

The project was completed on schedule. However, it was not without its challenges. The participation of local counterparts was limited. The procurement of equipment and software development was implemented without the IPO's input in defining the specifications of the contract with the supplier/developer. As a result problems and issues cropped up that were solved only when the IPO finally gave its inputs.²⁵

There was also a problem with transparency. The total appraised cost of the project cost was P180.5 million with 86% to come from the Japanese government and 14% from the Philippine government. However, JICA did not provide the IPO with a detailed breakdown of the actual costs of the project resulting in insufficiency of data needed for

²³ Implementation Completion Report on the Modernization of Industrial Property Administration Project, Intellectual Property Office, 30 June 2003, pp. 9-10.

²⁴ Id. at page 4.

²⁵ Id. at page 16.

proper evaluation, monitoring, implementation, and post evaluation reports. The IPO had to compute the cost based on the value of the machinery, equipment and facilities. The available data showed that the actual cost was less than half its appraised cost in the amount of P73.14 million with P65.07 million from the Government of Japan and P8.07 million from the Philippine Government.²⁶

It was also pointed out that while the JICA experts conformed to recognized performance standards, the systems development methodology and designs of their contractors were replete with numerous technical problems resulting in delays in project implementation. The performance and participation should have been more substantial if the local counterparts were involved in project planning and design and in defining the work specifications and deliverables of contractors. Instead, the local counterparts' role was limited to mere corrections and comments to draft proposals. In the implementation, the local counterparts were mere testers or users in the systems/software development undertakings.²⁷

IV. Reflections

In summary, a review of the technical assistance extended to the IPO would show that the assistance in the areas of legislative and administrative development and enforcement was designed to enable the IPO to comply with international IP standards and enforcement. The purely compliance-driven nature of the assistance converged with the IPO's statutory mandate and orientation to strengthen the administration of the IP system; that is, the technical assistance only reinforced the compliance agenda of the IPO.

The IPO is the most active domestic agency in pushing for higher standards of IP protection and enforcement. As early as 2000, the IPO announced that its vision is "to be an active player in the IP Global community."²⁸ In 2003, its vision was modified to "as the prime mover of the country's IP system, IPOPhil envisions the Philippines as an active player in the IP global arena."²⁹ Thus, the IPO in calling itself as IPOPhil projected itself as part of an international network of intellectual property offices worldwide that share a common objective: advancing intellectual property protection. The IPO, in line with its vision of "making the Philippines an active player in the IP global arena", actively pursues harmonization. In its web-site, the IPO acknowledges that it pursued cooperation on intellectual property with foreign governments and institutions in line with its objective to harmonize the Philippine IP system with the rest of the world.³⁰ It developed a legislative agenda in order to comply with international commitments and to enter more conventions to protect intellectual property rights. With assistance from the WIPO, it successfully pushed for the ratification of the Patent Cooperation Treaty on 5 February 2001 and the Internet Treaties in 2002. The IPO also successfully pushed for

²⁶ Id.

²⁷ Id.

²⁸ 2000 IPO Annual Report, *supra* at page 1.

²⁹ 2003 IPO annual Report, *supra* at page 2.

³⁰ Excerpted from http://www.ipophil.gov.ph/page_details.asp?sr=99 visited on 5 July 2005.

the enactment of the law protecting lay-out designs of integrated circuits. It is actively lobbying for Philippine accession to the Madrid Protocol.

The IPO is a key agency in the formulation of the country's IP policy since it monopolizes IP policy in the Philippines. There is currently no inter-agency coordination on IP issues outside of IP enforcement. This is largely a result of the lack of specialized knowledge on IP in the other government agencies. Since IP is a specialized field, the Philippine Government defers to and relies on the IPO to advise it on international IP matters and in trade negotiations. The IPO, for example, is the one in charge of the IP component of the proposed Japan Philippines Economic Partnership Agreement (JPEPA). If its perspective remains to be focused solely on efficient IP administration and greater standards of protection, it will not be able to anticipate and communicate to policymakers the adverse impact of such policies on other sectors such as health.

V. Recommendations

It is essential that the IPO be part of the process of integrating IP within a larger developmental framework. While the statutory mandate of the IPO is to administer the IP system, Republic Act No. 8293 otherwise known as the Intellectual Property Code, also declares that the IPO should administer the system in line with the State policy that recognizes that "the use of property bears a social function" and that "the State shall promote the diffusion of knowledge and information for the promotion of national development and progress and the common good."³¹ The challenge is to empower the IPO to view IP from this larger perspective that is likewise mandated by law.

The IPO must be exposed to a broader perspective that can be provided by non-traditional donors and providers. Non-traditional donors and providers must focus on the IPO as their primary audience for dissemination of a broader perspective. A working relationship should be developed with the IPO in the same manner that traditional donors have established a relationship with the IPO. Only a partnership with the IPO can a more balanced IP policy be developed at the soonest possible time. The IPO, unlike the other agencies, also has the added advantage of fiscal resources since it is authorized to retain a portion of its income. As a result of its IP specialization and its available resources, the IPO is in the best position to be the fulcrum in reorienting IP policy. Other government agencies that are familiar with the impact of IP on other sectors such as the DOST, the Department of Health, and the Department of Trade and Industry, should also coordinate with the IPO for a more balanced IP policy. Other sectors, especially civil society, should also be encouraged to be involved in IP issues so that the IPO can be exposed to the broader implications of IP policy.

³¹ Section 5 in relation to Section 2 of RA 8293.