

EDITORIALS

Development agenda in the World Intellectual Property Organization

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A major development on Intellectual Property Rights in October 2005 went virtually unnoticed. The General Assembly of the World Intellectual Property Organization (WIPO) reached an agreement to continue work on a development agenda for WIPO that was being pushed for by most developing countries. WIPO's recognition of a development agenda has been described by Joseph Stiglitz as: "as important as the World Trade Organization's decision that the current round of trade negotiations be devoted to development", and further that it "acknowledge(s) that the current rules of the international economic game reflect the interests of the advanced industrial countries - especially of their big corporations - more than the interests of the developing world".(1)

Developed countries shift emphasis to WIPO

While substantial attention has been focused on the Trade Related Aspects of Intellectual Property (TRIPS) agreement under the WTO, little attention is paid to the functioning of WIPO, though it precedes the World Trade Organization and TRIPS as a forum on intellectual property rights. Since 1995, activity on intellectual property issues shifted to the TRIPS agreement. This is because WIPO is a UN agency with limited implementing powers; TRIPS is a part of WTO and has a number of mechanisms to implement agreements.

Recently, however, WIPO has become a centre of activity. Developed countries now wish to utilise WIPO to further their own interests in IPRs. Developed countries also believe that they have been able to extract as much as was possible from the TRIPS agreement. For further efforts to impose strong IPR regimes and patent protection across the world, they believe that the WIPO can play an important role. Thus the United States, the European Union and Japan have been pressing for negotiations in WIPO on the Substantive Patent Law Treaty (SPLT).

The SPLT is a proposed international patent law treaty aimed at harmonising substantive points of patent law. The Patent Law Treaty (PLT), signed in 2000 and now in force, only relates to formalities, such as the requirements to obtain a filing date for a patent application, the form and content of a patent application, and representation. The SPLT aims to harmonise substantive requirements such as novelty, inventive step and non-obviousness, industrial applicability and utility, as well as sufficient disclosure, unity of invention, or claim drafting and interpretation. In other words, the SPLT proposes to go much beyond the TRIPS agreement and impose uniform laws providing for patent protection across the world. If agreed upon by member countries in WIPO, the agreement would impose even more onerous conditions than the TRIPS agreement and take away even the limited flexibilities to safeguard national interests that the TRIPS agreement allows. Developed countries also see an advantage in now using WIPO to push for higher standards of patent protection as, unlike TRIPS, there is very little attention focused on happenings within the WIPO.

There is a general notion that WIPO is a technical body and does not impinge upon policy. This suits the interests of countries wishing to ratchet up patent protection without the scrutiny of the global community that has been increasingly critical of the negative effects of stronger patent protection.

Proposal for a development agenda in WIPO

It is in this background that a counter proposal was placed on the table by developing countries at the 2004 WIPO General Assembly. At this meeting, 14 developing countries – Argentina, Bolivia, Brazil, Cuba, the Dominican Republic, Ecuador, Egypt, Iran, Kenya, Peru, Sierra Leone, South Africa, Tanzania and Venezuela (also called the Group of Friends of Development) – presented a proposal for the establishment of a development agenda for WIPO.

The proposal suggested measures to ensure that development is at the heart of all WIPO programmes and activities and that WIPO contributes to the fulfilment of the Millennium Development Goals. They include: the adoption of a high-level declaration on intellectual property and development; amending the WIPO Convention; the inclusion of provisions on technology transfer, competition, etc, in treaties under negotiation; establishing technical assistance programmes based on particular principles and objectives; and establishing a working group on the development agenda.

All these measures are designed to address the needs of developing countries with a view not to impose higher standards of intellectual property protection but to promote ways in which WIPO can help safeguard sovereign interests and promote indigenous science and technology-based development.

During the debate on the proposal at the General Assembly, the proposal faced outright opposition from developed countries led by the US.

The US has consistently argued that a call for a development focus in the activities of the WIPO is co terminus with a call for technical assistance. The premise is that developing countries need technical assistance to strengthen their laws related to IPRs, and IPRs as such have no bearing on issues related to a country's economic and technological advance. On the contrary, strong IP protection retards domestic industries in developing countries, compromises access to vital products such as life-saving drugs, and prevents developing countries from realising their potential in scientific and technological innovation.

The tussle between the two contending agendas - the development agenda and the SPLT - came to a head in February 2005, when the SPLT was discussed at an informal consultation called by the WIPO in Casablanca. The meeting came out with a statement that the treaty should be put on fast track and that the WIPO's standing committee on patents should only focus on four issues – prior art, grace period, novelty and inventive step – being pushed by developed countries in the SPLT negotiations. The two other issues – sufficiency of disclosure and genetic resources – which are of interest to developing countries, should be dealt with separately. The statement was roundly criticised by the Group on Friends of Development and other developing countries. India was placed in a rather embarrassing situation after this meeting, as the meeting was chaired by Dr Mashelkar of the Centre for Scientific and Industrial Research. However India later stated that Dr Mashelkar did not represent India's official position and that India fully endorsed the position taken by other developing countries.

Two contending positions in the General Assembly

The two contending positions were at the heart of the discussions that took place in the WIPO General Assembly in early October 2005. The Assembly finally agreed to establish a provisional committee to take forward the work on the development agenda and report back to the 2006 General Assembly. On the future work plan of the Draft SPLT, the Assembly agreed to hold an informal open forum in Geneva in the first quarter of 2006 on issues raised in the draft of the SPLT or that member states wish to include in the draft SPLT.

While many developing-country delegates were not happy with the final outcome relating to the development agenda, they felt that the decision enabled the development agenda initiative to move forward, at least for another year.

In the negotiations developed countries had pushed for a package deal linking the development agenda to the SPLT so that they could assess what they got out of the SPLT and link the results to what they would give on the development agenda. But developing countries led by Argentina, Brazil, Iran and South Africa indicated that they were not willing to proceed with the discussions on the SPLT, as the development agenda was not resolved. The eventual compromise was to put both the issues on parallel tracks.

Clearly, the WIPO is going to become the terrain for future struggles on intellectual property rights. The unity of developing countries on the development agenda is a positive development. They have managed to conduct a holding operation during this past October's General Assembly. However it is still to be seen how this agenda can in the future blunt the edge of the SPLT that is being negotiated in parallel. If this does not happen, and the SPLT is pushed through by developed countries, TRIPS may well pale into insignificance in comparison to the new regime that the WIPO might impose.

India's role in the WIPO may well be crucial in determining the final trajectory. It is in India's interest to align with developing countries: to ensure that WIPO does not become a forum for accomplishing the unfinished tasks of the TRIPS agreement as far as the US and EU are concerned, and to push WIPO's future agenda in a direction where it plays the role of an UN body in assisting countries based on their developmental needs.

Reference

1. Stiglitz Joseph. Intellectual property rights and wrongs, *Daily Times*, Pakistan, 2005 Aug 16 [cited 2005 Dec 25]. Available from http://www.dailytimes.com.pk/default.asp?page=story_16-8-2005_pg5_12