WORLD
INTELLECTUAL
PROPERTY
ORGANIZATION

WIPO MAGAZINE

GENEVA - FEBRUARY 2009 - No.1

Calendar of Meetings

FEBRUARY 24 ■ GENEVA

■ ***Informal Consultative Meeting to Discuss the Relevance of the London Act (1934) of the Hague Agreement Concerning the International Registration of Industrial Designs***

The meeting will address the issue of the obsolescence of the 1934 Act of the Hague Agreement, with a view to exploring possible options to reduce the complexity of the Hague system, in particular, a possible termination of the 1934 Act.

Invitations: The 15 Contracting States to the 1934 Act of the Hague Agreement Concerning the International Registration of Industrial Designs.

MARCH 10 ■ GENEVA

■ ***WIPO Information Meeting on Intellectual Property (IP) Financing***

The purpose of the Information Meeting is to raise awareness among Member States' copyright and industrial property offices, and the wider IP community, of the opportunities and challenges of IP financing (the use of IP assets to gain access to finance) by drawing attention to current practices in different countries and different industries in the copyright, patent and trademark fields, and to current international policy developments on the subject.

Invitations: All States members of WIPO and/or the Paris Union; as observers, other States; and as Permanent Observer and *ad hoc* observer organizations, certain organizations. The Forum is also open to the general public.

MARCH 16 TO 20 ■ GENEVA

■ ***IPC Union - Committee of Experts, Forty-First Session***

The Committee will, in particular, discuss the report of the special Task Force on projects CE 404 (Procedures of revision and publication of the IPC) and CE 405 (IPC revision policy and consistency of application), and continue its ordinary work, i.e. the adoption of results of the IPC Revision Working Group and the IPC Advanced Level Subcommittee.

Invitations: As members, the States members of the IPC Union and member organizations of the Committee; as observers, the States members of the Paris Union; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

MARCH 17 TO 20 ■ GENEVA

■ ***Working Group on the Development of the Lisbon System (Appellations of Origin)***

As requested by the Assembly of the Lisbon Union at its twenty third (6th extraordinary) session, the Working Group will meet to explore possible improvements to the procedures under the Lisbon Agreement.

Invitations: As members, the States members of the Lisbon Union. As observers, other States party to the Paris Union and/or WIPO; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

MARCH 23 TO 27 ■ GENEVA

■ ***Standing Committee on the Law of Patents, Thirteenth Session***

The Committee will continue its work on various issues relating to patent law and the international patent system, as agreed at the Twelfth Session of the Committee, held in June 2008.

Invitations: As members, the States members of WIPO and/or of the Paris Union; as observers, other States; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

APRIL 27 TO MAY 1 ■ GENEVA

■ ***Committee on Development and Intellectual Property (CDIP), Third Session***

This session, as decided by the Member States, is to approve the report of the second session as well as to further develop a work program for implementation of the adopted recommendations; monitor, assess, discuss and report on the implementation of all recommendations adopted; and to discuss intellectual property and development related issues as agreed by the Committee, as well as those decided by the General Assembly.

Invitations: As members, the States members of WIPO; as observers, other States; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

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TALKING TO THE DIRECTOR GENERAL

FRANCIS GURRY took office as Director General of the World Intellectual Property Organization on October 1, 2008, following his election by WIPO's Member States. The Director General took time out of a packed schedule to talk to *WIPO Magazine* about his first few months at the helm.

What was your first priority during your first three months in office?

The most pressing priority was to agree with our Member States on a new strategic framework and a substantially revised Program and Budget for 2009. This was a very intensive process. It involved re-defining the strategic goals of the Organization in the light of the changing technological, cultural and geo-economic environment, and then starting to realign all our programs and resources in accordance with those goals.

We now have nine new strategic goals. As well as covering our work to promote a balanced evolution of the international normative framework for IP, to provide premier IP services, and to facilitate the use of IP for development, they include a new focus on building respect for IP; on responsive communication; on developing international IP infrastructures; on establishing WIPO as a world reference source for IP information; and on addressing IP in relation to global policy challenges, such as climate change, public health and food security.

The next task is to bring the structure of the Organization into line with the new strategic framework. This is part of a systematic Strategic Realignment process, which I started in October and which will continue throughout the year. The restructuring involves a lot of movement of staff between different programs. It is moving ahead quickly thanks to the impressive flexibility and forward-looking spirit of staff throughout the Organization.

You also highlighted improved communication as an immediate priority?

Yes. I believe that responsive communication with our stakeholders is paramount. As well as introducing greater transparency in the consultations with our Member States, we have also reorganized our Communications Division and launched a major new customer service initiative. The aim is to enable WIPO to respond more effectively to the numerous daily requests that we receive for information and services.

You mentioned climate change just now. What can WIPO do about this?

First, it is clear that tackling the threats associated with global warming requires significant investment in innovation to develop climate-friendly technologies. Equally, these new technologies need to be diffused rapidly across the economy. One practical contribution that WIPO might make, therefore, is to provide an open innovation platform, where companies could disclose their green technologies with a view to research collaboration on a commercial basis, or to licensing them on fair, reasonable and non-discriminatory terms. Open innovation has useful potential application in the field of climate-friendly technology, because of the complexity of the technologies involved (often multiple technologies go into producing a single product), and because of the opportunities for greater collaboration which the networked economy provides. So we are beginning to explore with Member States and industry the possibility of a role for WIPO in this area.

What do you hope to have achieved by the end of 2009?

On the internal side, I hope to have completed the first major phases of the strategic realignment. And to have successfully managed the impact on WIPO of the economic crisis.

On the external program, I want us to be able to show real progress in implementing the WIPO Development Agenda. The 45 recommendations of the Development Agenda contain a set of aspirations and principles. We are now working to translate those aspirations into distinct projects with clearly defined deliverables and timelines.

Then there is the patent area. We cannot hope, by the end of 2009, to have solved the problems facing the international patent system, which is choking under the weight of demand. But I am convinced that the Patent Cooperation Treaty (PCT), as the only global patent application system, will be part of an eventual solution. In 2009, therefore, my aim is to agree a road map for the future evolution of the PCT system.

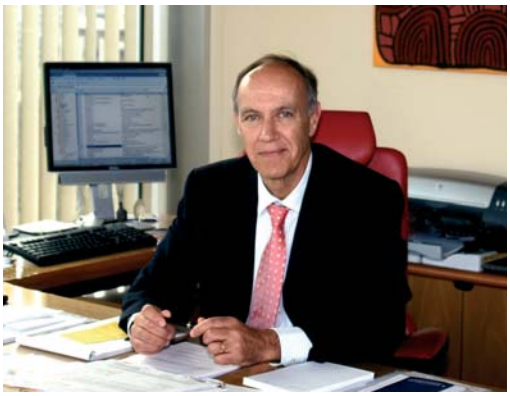

Photo: WIPO/Samar Shamoon

WIPO Director General Francis Gurry in Geneva.

Another distinct area in which I believe that the global IP community can deliver a very positive result is in improving access to published works for visually impaired persons. We will be working with the World Blind Union, the International Publishers Association and with Member States in order to achieve a consensus on a successful process for making this happen.

More broadly, we need to start the process of conducting a health check on the state of the copyright system in relation to the multiple threats it is facing.

What kind of impact do you think the economic crisis will have on intellectual property?

We are monitoring this carefully, not least as WIPO is funded almost entirely by the revenue from our IP registration and filing services. We have seen some slowing in patent and trademark applications in 2008, although growth has so far remained positive.

Historically, patent filings have tended to dip during periods of economic difficulty simply because fewer resources are available for investment in the innovation cycle. Once the economic cycle improves, patenting activity tends also to recover. That said, economic crises have, in the past, also been a catalyst for innovation, because of the need to improve standards of efficiency, to do more with less, and to develop smarter business solutions. As President Obama said in his inaugural speech: "our minds are no less inventive, our goods and services no less needed than they were last week or last month or last year." So an economic crisis can also mean an opportunity to capitalize on intellectual property.

Could you describe a typical day in your life as Director General?

No two days have been the same since I took office. But they have all been equally full.

On a typical day, if I am not flying back into Geneva from an official visit, I will make an early start on clearing e-mails. I am not at my best over breakfast, so I tend to avoid working breakfasts if I can. When I arrive at the office I consult with my secretary on the day's schedule and sort through the most urgent telephone messages. The morning's meetings might include discussions with Ambassadors, or with visiting delegations, about, for example, capacity-building activities which WIPO is conducting in their countries; or with an NGO group on areas of potential cooperation. Next might come a strategic planning meeting with my senior managers, in order to review the direction, activities and structure of their respective areas as part of the strategic realignment process.

If I don't have a speaking engagement at lunch time, I will try to shut myself away for an hour to deal with the daily mountain of files containing all the requests, reports and proposals which are sent to me. In the afternoon I might have a quick discussion with members of my Cabinet to run through priorities for the week and check on progress. They may also brief me on, for example, concerns which staff or Member State representatives have raised with them. Various other internal and external meetings might follow, covering finance, or human resources issues, or preparations for the next Standing Committee. In between, I might squeeze in a telephone interview with a journalist; then maybe a call on one of my fellow heads of UN agencies in Geneva to discuss common areas of interest.

And your evenings?

On the evenings where I don't have an official engagement, or am not heading back to the airport, it is home for dinner with the family – before a final assault on the e-mails.

NON-TRADITIONAL MARKS SINGAPORE TREATY ENTERS INTO FORCE

In today's consumer society, the technical features of products and services are becoming increasingly similar and, thus, easily substitutable. A brand that adds emotion to the product or service on offer will often influence purchasing decisions. Getting potential customers acquainted with the idea that a specific color, shape, sound, moving image, taste or smell, stands for a given brand requires heavy investment in marketing and communication. Trademark registration of these "new" or "non-traditional" marks – securing exclusive rights over these brands – enables businesses to make strategic decisions concerning the use of such signs and the development of brands.

The overwhelming majority of trademarks for which registration is sought are made up of either one or several words – so-called word marks – or a drawing, picture or image – so-called figurative marks. But modern trademark law is open to other subject matter being used and protected as trademarks, provided that certain conditions are met. This development simply takes account of the fact that signs, which can be used in commerce to distinguish goods and services, are not necessarily limited to words or images. Three-dimensional (3D) designs, such as the shape of goods or their packaging, colors *per se*, moving images, or specific sounds or smells, are being increasingly used in marketing to individualize goods or services. And WIPO has been responsive to these developments.

Singapore Treaty

In March 2006, a diplomatic conference in Singapore, which brought together 147 WIPO Member States, adopted the Singapore Treaty on the Law of Trademarks. Without necessarily creating an international obligation for the registration and protection of those non-traditional marks, the Treaty sets out a multilateral framework for the definition of criteria concerning the reproduction of hologram, motion, color and position marks and of marks consisting of non-visible signs on trademark applications and in trademark registers. The Singapore Treaty will enter into force on March 16, 2009, and the Assembly of Contracting Parties may work out the standards which it wishes to adopt in respect of non-traditional marks.

Preparatory work has already been carried out by the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT). In its last two sessions, the SCT – made up of representatives of WIPO Member States and observer organizations – has defined a number of areas of convergence concerning the representation and description of non-traditional marks, such as 3D marks, hologram marks, position marks, multimedia marks or sound marks. Those areas of convergence reflect a common approach by all WIPO Members to the representation and description of non-traditional marks and provide the first international reference in that area.

For the time being, the number of registered non-traditional marks remains very low – with 3D marks being the most common. Non-visible signs – especially taste and smell marks are still far from being commonly accepted. But keeping in mind the rapid evolution of creative marketing techniques, it is only a question of time before we see an increase in the registrations of those signs. Through the work of the SCT and with the coming into force of the Singapore Treaty, the trademark community – brand owners as well as registration authorities – will be better prepared to address the legal and administrative issues surrounding those types of marks.

SMELL, SOUND AND TASTE

Getting a Sense of Non-Traditional Marks

If you heard a familiar, comforting sound associated with a particular kind of tea, would you be more likely to choose it? How about the smell of freshly cut grass emanating from tennis balls – would they make you a winner? Or mint-flavored tennis balls for your dog – would fresher breath not be welcome? Marketing specialists would like us to think so, and these are only some of the subtle ways manufacturers get us to recognize their products. But just how far can trademark registration be stretched to protect these innovative ideas?

Smell is said to be one of the most potent types of human memory, and businesses show increasing interest in pairing pleasant scents with their products. To obtain registration of a smell mark applicants must be able to visually represent the product's scent and must show it is distinctive from the product itself. A bottled sample of the smell for example would decay over time and could therefore not be kept on a trademark register. But how does one represent a smell in a visual way? Writing down the chemical formula for a smell is problematic as it is deemed to represent the substance rather than the smell of that substance. Any written description of a smell must be so precise that that particular smell would not be confused with any other.

An additional obstacle to smell mark registration is that the smell must not result from the nature of the good itself. For example, an application by *Chanel* to register its well-known No. 5 fragrance as a smell mark in the United Kingdom was unsuccessful on that count – the scent of the perfume being the very essence of the product. However, some smell mark descriptions have met the distinctiveness test and been successfully registered, such as: a Dutch company's tennis balls with the scent of newly mown grass; and UK registrations for tires with "a floral fragrance/smell reminiscent of roses" and darts with "the strong smell of bitter beer." The Office for Harmonization in the Internal Market (OHIM), however, does not agree with the granting of the two UK registrations.

Representation of sound marks

In the case of sound marks, alternative methods have emerged for their visual representation: depictions by oscillogram, spectrum, spectrogram and sonogram are now being accepted. Such representations must be handled carefully in order to meet the requirements of individual trademark offices.

In 2003, the Court of Justice of the European Communities ruled in case No. C-283/01 that a trademark may only consist of a graphically represented sound – such as by images, lines or characters – and that its representation must be clear, precise, self-contained, easily accessible, intelligible, durable and objective. The Court specifically excluded written descriptions that say: the sign consists of the notes making up a musical work; or that it is the cry of an animal; an onomatopoeia; or simply a sequence of musical notes. This created some confusion as to possible alternative means of representation.

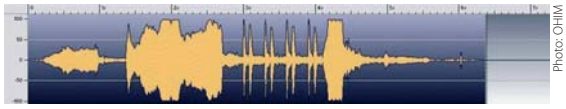

Photo: OHIM

This INLEX IP Expertise registered sound mark (CTM 004901658) may not look like much on paper but it is worthwhile logging on to the OHIM database to check out the actual sound.

In recently defined areas of convergence concerning the representation and description of non-traditional marks, the WIPO Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications (SCT) agreed that "Offices may require that the representation of sound marks consist of a musical notation on a stave, a description of the sound constituting the mark, or an analog or digital recording of that sound – or of any combination thereof. Where electronic filing is available, an electronic file may be attached to the application. However, for some jurisdictions, only a musical notation on a stave may be considered to adequately represent the mark."

OHIM decided in 2005 (No. EX-05-3) that applicants could attach a sound file to electronic or online trademark application forms – this still applies. The attachment must be in MP3 format,

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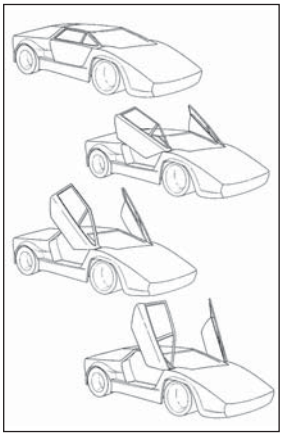
Moving images, holograms and gestures

Multimedia production has opened the way for even more non-traditional trademarks: holograms, gestures and motion or moving image marks. Their registration usually requires the use of a sequence of pictures or drawings to depict how the trademark functions.

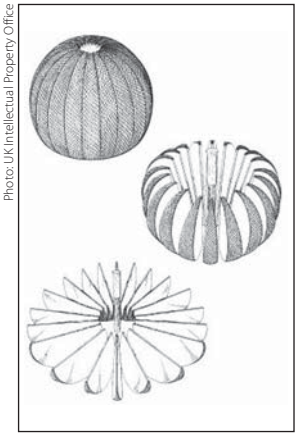
Motion marks are probably the most common of the multimedia marks. Movie fans are familiar with the 20th Century Fox Film Corporation logo with floodlights trailing back and forth across the sky, but few know it is a registered trademark (USPTO 1.928.424). The Australian tennis player Lleyton Hewitt applied for trademark registration of his "C'mon" gesture, but it seems it was in no way unique. Records of its use by another athlete date back to the 1980s.

Photo: WIPO



The EU registered (CTM 1400092) the Lamborghini moving image trademark for car doors opening and turning upward.

Photo: UK Intellectual Property Office



Kraft Foods UK Ltd. registered this moving image trademark (UK 228003) for chocolate and chocolate confectionery.

Photo: OHIM

The VF – Video Future hologram trademark (CTM 2117034) registered by GDS Video.

must not exceed one megabyte and must not allow loops or streaming. Its purpose is to further clarify and support the application. INLEX IP Expertise was the first applicant to successfully obtain a registered Community sound mark using this option. Deutsche Telekom has also registered its jingle as a sound mark under the Madrid Protocol.

Taste marks

Taste marks may be easier to represent graphically – the SCT reports that "the graphic representation requirement was satisfied by using a written description of the taste and an indication that it concerns a taste mark" – but the hurdle of distinctiveness is even harder to overcome as are assertions concerning functionality.

OHIM rejected the pharmaceutical company Eli Lilly's attempt to register the taste of artificial strawberries noting in its decision in case R 120/2001-2, "Any manufacturer… is entitled to add the flavor of artificial strawberries to those products for the purpose of disguising any unpleasant taste that they might otherwise have or simply for the purpose of making them pleasant to taste… Moreover, the taste is unlikely to be perceived by consumers as a trademark; they are far more likely to assume that it is intended to disguise the unpleasant taste of the product…" A similar attempt by N.V. Organon to register an orange flavor for pharmaceuticals was rejected by the USPTO.[1] As the Trademark Trials and Appeals Court pointed out, it is difficult to define how taste can act as a trademark when consumers only taste goods after purchase.

As work on non-traditional marks progresses and the business world continues to create and market new types of products, we may see a fascinating transformation of the world of trademarks.

1 USPTO, June 14, 2006, In re N.V. Organon

3D TRADEMARKS UNDER FRENCH AND COMMUNITY PRACTICE

The following article, by European trademark attorneys FRANCK SOUTOUL and JEAN-PHILIPPE BRESSON,[1] compares the interpretation of the requirements of distinctiveness and technical function when registering 3D trademarks at the national level in France with that of the European Community mark.

Compared to more traditional trademarks, three-dimensional (3D) trademarks are under-used by business, and very few applications for such trademarks are made. With the rapid increase in the number of Madrid system member states in recent years – the system now has 84 members – it is an opportune moment to look at differences in requirements for the registration of 3D trademarks.

Both product shape and packaging are eligible for trademark registration. French and European Community trademark provisions number them among the figurative signs that may constitute trademarks; however, such 3D trademarks must not only fulfill the same conditions as traditional trademarks but must also meet additional legal requirements. Distinctiveness and technical function requirements remain the most frequent grounds of refusal of 3D trademarks. This article outlines how these two aspects are handled in practice and assesses the strength of monopoly of registered 3D trademarks.

The distinctiveness test

Lack of distinctiveness is the first ground for refusal of 3D trademarks, especially when it comes to "naked" – containing no words or graphics – shapes or packaging. Community examiners at the Office for Harmonization in the Internal Market (OHIM) are much stricter about this requirement than in French practice.

As far as OHIM is concerned, the average consumer does not identify products or manufacturers simply by shape or packaging. The more closely the shape for which registration is sought resembles the typical or natural shape used for such products, the more devoid of any distinctive character OHIM will consider it to be. This makes it much more difficult to establish distinctiveness in relation to 3D trademarks.

Only a very limited number of 3D applications have become Community marks; most being barred for lack of distinctiveness, a hurdle few applicants have overcome. Those who have succeeded registered marks with a particularly high degree of distinctiveness and/or clearly demonstrated long-term extensive use, thereby acquiring enhanced distinctiveness in the market. For example, the European Court of First Instance in case No. T-305/02 considered the transparent bottle used by Contrex® for its mineral water distinctive due to a combination of factors. Its overall aesthetic look was deemed appealing and consumers easily distinguished its shape from other similar goods – thus making it truly specific.

Photo: Bang & Olufsen/ Mikkel Hagstrøm

The Bang & Olufsen loudspeaker model BEOLAB 8000, an OHIM registered 3D trademark, has a strikingly "dissimilar" shape that is easily remembered by consumers.

A Bang & Olufsen loudspeaker BEOLAB 8000 also won the battle in case No. T-460/05, because of its unusual shape, its striking design quality and the ease with which consumers could recognize its shape which is significantly different from the norm. The Court ruled that "the shape of the mark is truly specific and cannot be considered to be altogether common. Thus, the body of the loudspeaker is formed of a cone which looks like a pencil or an organ pipe the pointed end of which joins to a square base. In addition, a long rectangular panel is fixed to one side of that cone and heightens the impression that the weight of the whole rests only on the point which barely touches the square base. In that way, the whole creates a striking design which is remembered easily."

OHIM's strict approach concerning naked 3D signs can be eased by adding graphic or word elements to the 3D shape or package. However,

1 Both authors with INLEX IP EXPERTISE (*www.inlex.com*), supervisors of the LEXVALUE and PHARMINLEX Departments, and reporters for IP TALK (*www.ip-talk.eu*), France

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some countries have even more stringent rules than OHIM. Japan allowed the protection of 3D marks in 1997, but the Coca-Cola Company only recently obtained 3D registration of the Coca-Cola bottle after a long, drawn-out legal battle with the Japan Patent Office.

The technical function test

French law and Community Regulations both preclude from registration 3D signs whose essential characteristics perform a technical function. The reason is simple: trademark monopoly on such signs would illegitimately restrict competitors trading in identical or similar goods that incorporate such functions. Both French and Community case law consider that technical function must be determined by focusing solely on the mark concerned without analyzing whether the same result could be achieved through one or several different shapes, yet their decisions on the matter widely differ. The treatment applied to shapes of pills is particularly illustrative.

Photo: OHIM

Nestle has registered the 3D Contrex bottle as a Community mark No. 000922179.

In 2004, the French High Court ruled against registration of the LEXOMIL pill shape because the tablet-breaking feature could be obtained with other shapes. However, the Versailles Court of Appeal reversed the decision in 2005, ruling that the breakable function and the overall shape of the LEXOMIL pill did not fulfill a technical function, thus opening the way for other pill shapes to be registered as French trademarks. OHIM, on the other hand, has repeatedly ruled[2] that grooves on a pill simply fulfill a useful role in ingestion and do not grant the pill a specific commercial identity, thus barring them from registration.

The French Trademarks Office and courts, as well as OHIM, use a wide-lens approach in performing the technical function test. This led the European Court of Justice in case No. T-270/06, for example, to confirm an earlier OHIM decision concerning the partial cancellation of the 3D Lego brick trademark: the addition of non-essential characteristics with no technical function was pointless as long as the overall shape still served a technical purpose, i.e. the overall shape of a 3D Lego brick serves the technical purpose of building no matter how much you vary the height or diameter of the studs or increase the projections on the bricks.

Nevertheless, even though it could be argued that the parameters in question are not the only ones to achieve the desired result, it is clear that the design of the brick has been developed to ease interlocking.

The trademark monopoly

Right holders who have successfully registered 3D trademarks often benefit from "special" treatment when it comes to the enforcement of their rights against third parties. A look at case law could lead one to assume that such marks have a narrow scope of protection serving only to prevent identical or almost identical reproduction of the sign. However, the scope actually depends on the balance among several factors: the Office from which the registration originates; the Office or court before which the proceeding is brought; and the level of variation, elaboration and/or aesthetic result achieved compared to that of other similar products.

A French 3D trademark that is significantly different from the natural shape of the product concerned has a greater chance of success against opposition or a cancellation action in a French court than would a similar case before OHIM against a Community Trademark.

The strict approach applied by OHIM in the examination stage explains subsequent rulings at the Community level when assessing the likelihood of confusion between 3D trademarks. In one case, the Board of Appeal denied there being a likelihood of confusion between two trademarks for bottle shapes, considering that there were sufficient differences between the two shapes to place the applicant's mark outside the scope of protection of the opponent's earlier right.[3]

In a similar case, where the Board held that two competing bottle shapes were not confusingly similar, it visually studied the two bottles looking at the average distinctiveness of each bottle shape and whether there were significant differences between the marks.[4] The earlier mark had a longish, light filigree look, while the challenger with its thick, corpulent silhouette gave a more bulky impression. The lower part of the earlier mark had a regular form, while the lower part of challenger's mark was irregular and had a specific curvy form with a thinner middle part. The challenged mark contained the word "snipp" whereas there were no word elements in the earlier mark.

On the other hand, some French courts refuse to grant a trademark in order to avoid the protection

2 OHIM, Fourth Board of Appeal, November 19, 2008, Case No. R 804/2008-4.

3 OHIM, Second Board of Appeal, May 14, 2007, R 1145/2006-2

4 OHIM, Fourth Board of Appeal, November 15, 2007, R 1096/2006-4

Protection of shapes in India

This article is an abridged version of the article "Protection of Shapes Under Indian Law" by Mr. ABHISHEK MALHOTRA, DSK Legal, India, first published in the INTA Bulletin Vol. 63 No. 13, July 15, 2008.

The Indian Trade Marks Act includes the shape of goods in the definition of trademarks, but the scope of protection is unclear, as statutory protection for the shapes of goods was only introduced in 2003. A more interesting question is whether the shape of goods may be protected under the principles of design law or trademark law, especially in India where the definition of "design" under the Designs Act, 2000, excludes trademarks.

A decision by the Delhi High Court – though pronounced before the Act came into force – provides some assistance on the seemingly overlapping protection. In *Corning Inc. & Ors. v. Raj Kumar Garg & Ors.*, 2004 (28) PTC 257, the judge of the Delhi High Court clarified the fundamental distinction between a trademark and a design:

[A] "trademark" signals to the mind, the source or identity of the producer/manufacturer of the article, whereas a "design" appeals to the eye and attracts the consumer/purchaser. A "trademark" may also be attractive and appealing to the eye but it should be directly relatable to the producer/manufacturer of the goods whereas the "design" may be merely appealing or attractive to the eye and need not give any indication to the consumer/purchaser about the identity of the manufacturer or producer of the article."

The court also held that a design protects only the *features* of shape and configuration. This distinction is significant in view of the inclusion of shapes in the definition of trademarks under the Act, because it may be concluded that whereas trademark law protects the shape of goods, design law merely protects the features of such shapes.

With regard to the issue of distinctiveness, there is no case law in India relating specifically to shape marks. However, pronouncements on product packaging or trade dress may provide guidance on the path that the courts are likely to take when faced with such an issue. It has been consistently held that trade dress cannot be inherently distinctive, and while a claim of passing off is available, even in respect of an unregistered design, the plaintiff claiming passing off has to prove that the trade dress has acquired secondary meaning or reputation in the market in relation to the trade dress. Such reputation need not be based on use in India alone but may also be in the form of trans-border reputation of a trademark that has traveled into India. Such cases have also indicated that the amount of evidence required to establish reputation in relation to a shape mark is likely to be more than that required for a word mark.

of a genre. While regarding as distinctive the 3D trademark for the shape of a cylindrical *foie gras* lollipop, the Paris Court of Appeal on June 25, 2008 denied claims of trademark counterfeiting by a product consisting of *foie gras* half scoops on a stick. For the Court, applying the trademark right would have involved protecting a genre, whereas the specific shapes and look of the products involved had sufficient overall differences to prevent any possible confusion.

A strategic choice

The Community and French approaches to 3D trademarks dictate the trademark strategy of right holders. Depending on the elements and features of a particular sign, the choice between a national or Community trademark, designated directly or through the Madrid system, impacts on both the possibility of obtaining registration and on the scope of protection that can be granted when bringing a proceeding. In that context, unfair competition constitutes a useful, complementary basis of action.

KEEPING AIRPLANES UP AND CARBON OUTPUT DOWN

It seems far-fetched, almost inconceivable that a simple shrub, *jatropha curcas*, and plain algae, could offer a viable alternative to oil – that black gold on which we have become so reliant. But within the next few years this could become a reality for the air transport sector. Faced with volatile energy markets and the urgent need to cut greenhouse gas emissions, the airline industry is fully engaged in the search for viable fuel alternatives which, it is widely believed, will come on stream within 3 to 5 years for jatropha-based fuels and within 10 years for algal-based fuels.

Photo: Terasol Energy

Jatropha plant

Air transport offers an interesting example of an industry that is embracing technological and design innovation to secure an economically sustainable and carbon-free future.

A united approach

Air travel is central to the global trading system, responsible for transporting 35 percent of goods (by value) of international trade, and over 40 percent of international tourism traffic. A global employer, it directly generates 5.5 million jobs and contributes some US$408 billion to global GDP. Aviation currently accounts for approximately 13 percent of global transport emissions, equivalent to 2 percent of global carbon dioxide (CO_2) emissions.

Giovanni Bisignani, Director General of the International Air Transport Association (IATA), believes that "no other industry is as united in its approach" to reducing emissions. The industry has a "firm and strong" commitment to environmental responsibility and the IATA vision is to achieve carbon-neutral growth on the way to a carbon-free future by 2050. Aviation is the first global transportation sector to try to understand the environmental impact of its operations, commissioning in 1999 a special Intergovernmental Panel on Climate Change (IPCC) report on Aviation and Global Atmosphere.

Steps taken by the industry to mitigate its environmental impact have generated significant emissions reductions and translated into sizeable cost savings. Since 2004, the industry as a whole has saved some 59 million metric tonnes of CO_2 – equivalent to US$12.2 billion in fuel costs. In 2008 alone, 15 million tonnes of CO_2 were saved.

Progress in fuel efficiencies

- Today's aircraft are 70 percent more fuel-efficient than in the 1970s.
- Since the late 1990s aircraft operations (landing, routing, etc.) have become 20 percent more fuel-efficient and fuel efficiency is set to improve annually by 1.3 percent.
- Hydrocarbon emissions have been cut by 90 percent and oxides of nitrogen have gone down by 50 percent.

Biofuel test flights

Access to fuel that is affordable, clean and efficient is an important element in reducing greenhouse gas emissions. The industry is actively steering efforts to identify and develop viable alternatives that are equivalent to, or better than standard jet fuel, that are renewable, and that have minimal impact on biodiversity. IATA, which is committed to using 10 percent alternative fuels by 2017, believes that biofuels offer the most promise in reducing aviation's carbon emissions.
In December 2008, Air New Zealand made aviation history when it tested a passenger jet powered by a blend of standard jet fuel that derived from the plum-sized jatropha fruit. In January 2009, Continental Airlines and Japan AirLines also undertook test flights using jatropha plant-based biofuels. These test flights are part of a collaborative, industry-led effort – under the aegis of the Sustainable Aviation Fuel Users Group – to accelerate the development, and demonstrate the viability of, sustainable biofuels.

The technology process used to convert plant-based oils into fuel was developed by Universal Oil Products (UOP) – a subsidiary of Honeywell. UOP has been developing technology for fuel production for 95 years and holds over 2,600 patents; it uses the Patent Cooperation Treaty (PCT) to protect its technology internationally. The biofuel conversion technology is based on traditional hydroprocessing technology used in refineries around the world for more than 40 years. This means that integration into existing refineries will be quick, simple and cost effective. UOP plans to start licensing its technology to fuel producers in the first half of 2009, bringing commercial production one step closer to reality.

Advantages of jatropha biofuel

The higher energy content of this biofuel mix means that less fuel is needed per flight and its lower specific gravity offers advantages over many standard jet fuels. It is an excellent "drop in" replacement for standard jet fuel, avoiding the need to make expensive modifications to the existing fleet.

These second-generation, plant-based biofuels do not compete with food production or fresh water resources nor do they contribute to deforestation. Unlike biofuel crops such as soybeans and corn, jatropha needs little water or fertilizer, can be grown in harsh, non-fertile environments, and is drought and pest resistant. Each seed produces 30 to 40 percent of its mass in oil and therefore has a higher yield per acre than many other plant oils (one hectare (2.47 acres) of jatropha produces approximately 600 gallons of oil). These plant-based fuels are considered to be carbon neutral as any CO_2 emitted during production and use is offset by the plants' absorption during growth.

Test results show that a 50/50 blend of standard jet fuel and fuel from jatropha, and other plant-based oils, meets, and in some instances exceeds, industry technical specifications. According to UOP, "the fuel that our technology produces is virtually indistinguishable from kerosene-based jet fuel. Both are hydrocarbons. The only difference is source." UOP's goal is to produce fuels that perform as well as or better than their petroleum-based alternatives and that leverage the existing fuel infrastructure and fleet technology to lower capital costs and simplify adoption. UOP expects production levels to reach the hundreds of millions of gallons per year by 2012.

Improving the plant variety

The jatropha oil for the Continental test flight was sourced by the New York-based Terasol Energy whose President, Sanjay Pingle, reckons that the research is in its early stages: "Lots more work needs to be done on improving yields, disease resistance, synchronization of flowering and fruiting." He is also aware of the "need to be careful that fuel crops are sustainably grown. We cannot allow them to be grown in areas that are used for food or to be a cause for deforestation."

Photo: Carbon Capture Corporation

Carbon Capture Corporation (CCC) algae production ponds. The company believes that technological breakthroughs in effective pond design and processing techniques will bring production costs down.

Terasol Energy works with plant breeding companies to get varieties of seeds that it can adapt and develop for its purposes. According to Mr. Pingle, "over time, if trials are successful, we will register new varieties of jatropha that we can develop as Terasol materials." At present some 1,000 hectares of jatropha are under cultivation in Brazil on land that would not otherwise be used for agricultural production.

Intellectual property is an important component of Terasol Energy's business strategy: "We need to be able to ensure that we are licensing-in the best possible plants. This would be hard to do if the developers/breeders did not have strong intellectual property protection. Subsequently, it's important that we are able to maintain competitive advantage through the intellectual property generated as we adapt and develop these plants for cultivation." The main focus of Terasol Energy's IP development is on "the varieties and hybrids of the plants that are used and the processes developed for their sustainable but efficient cultivation."

Mr. Pingle believes that jatropha oil has the potential to radically change the energy landscape and that it is a win-win solution with the potential to help counter climate change, lessen dependence on fossil fuels and generate economic and social benefits. "We are facing an increasingly difficult battle to combat climate change. While there are no silver bullets, all the efforts we can make to reduce our emissions of greenhouse gases help us stabilize the quality of the environment. Developing sustainably grown fuel sources from crops will not only have an impact on fossil fuel consumption but also on the economies of

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developing countries by providing additional employment opportunities in rural areas and in reducing dependence on imports."

Algae as green fuel

Algae represent another promising alternative fuel source. Bernard Raemy, Executive Vice President, Carbon Capture Corporation (CCC), is convinced that within a decade algal-derived biofuels could become a key component of transportation fuels, including for aviation.

Algae promise enormous potential as a biofuel source. There are an estimated 100,000 known species around the world with hundreds of new species identified each year. They produce 50 percent of the world's oxygen and are considered the most efficient organisms on earth, because of their rapid growth rate (some species of algae can double their biomass in a day) and their high oil content, which in some species accounts for over 50 percent of their mass. "Algae can produce more biomass and more biofuel molecules much more efficiently in time and space than any terrestrial plant," says Greg Mitchell of the Scripps Institute of Oceanography, University of California, San Diego (UCSD). He continues, "For example, algae can produce 100 times more vegetable oil per acre per year than soy beans and 10 times more than oil palm."

Photo: Carbon Capture Corporation

Algae can produce 100 times more vegetable oil per acre per year than soy beans and 10 times more than oil palm.

According to a study[1] commissioned by CCC, which grows algae in ponds for biofuel research in California's Imperial Valley desert, "microalgal biomass production offers many advantages over conventional biomass production technologies including higher yields, use of otherwise non-productive land, reuse and recovery of waste nutrients, use of saline or brackish waters, and reuse of CO_2… and offers potential for greenhouse gas avoidance."

Mr. Raemy acknowledges that a string of challenges "with algae harvesting, dewatering, drying, lipid extraction and conversion" lies ahead and that "coordinated research efforts… are required to bring research from the lab to the field." He is confident that technological breakthroughs in effective pond design and processing techniques will bring production costs down. IP protection is expected to become increasingly important to his company's business strategy: "So far, we have chosen to be very open with our efforts and have only secured limited patent protection. In the future, we plan on focusing more on the creation of intellectual property as a way to create value." It is CCC's key to generating the investments required for continued research into biofuels.

Facing the challenge

Although global biofuel production tripled between 2000 and 2007, rising from 4.8 billion gallons to some 16.0 billion in 2007, it still only accounts for less than 3 percent of the global transportation fuel supply. While much remains to be done before green crude becomes a mainstream fuel option, the groundswell of interest in identifying, developing and testing these alternatives demonstrates a growing commitment to mitigating the causes of climate change.

Significant levels of investment are required to fund the research needed to enable the technological breakthroughs that will make plant-based biofuels a commercial reality. A balanced IP system is a proven and practical tool. It has an important contribution to make in generating the breakthrough technologies and the necessary investments in biofuel research and development as well as in facilitating the widespread diffusion of these technologies.

Climate change and its impact on human society represent perhaps the biggest challenge of the 21st century and technology, innovation and creativity will play a key role in determining our ability to manage it effectively. The response of the aviation sector, its commitment to innovation and its drive to cut harmful emissions and to achieve carbon neutrality is an encouraging example of what is being done and what promises for the future.

1 Authors: Professors D.E. Brune (Clemson University), T.J. Lundquist (CalPoly), J.R. Benemann (Benemann and associates)

CREATOR, ARTIST, SCULPTOR

Photos: WIPO/S. Castonguay

Biodata – Nicolas Lavarenne

Born: October 2, 1953, Chamelières, France
Education: Technical Baccalaureate in mechanical design
Exhibitions: Dozens across Europe, the Middle East and North America
Recognition: 1998 – Public Prize, Antibes; 1993 – First Prize Sculpture, Tende; 1993 – First Prize Sculpture, Beaulieu sur Mer; 1990 – Public Prize, Nice; 1987 – First Prize Sculpture, Brignoles; 1984 – Public Prize, Nice

One late summer day, the WIPO Magazine and WIPO Multimedia team loaded up cameras and equipment and headed out to interview the sculptor Nicolas Lavarenne in Seyssel, France, a remote mountain village which once marked the border between France and Italy. We almost missed his workshop: a run-down building, hidden behind a grocer's parking lot.

But on crossing the threshold, we entered Ali Baba's cave. Mr. Lavarenne's art – wood, plaster, wax and bronze sculptures in various stages of progress – was everywhere: on the floor, worktables and shelves, and hanging from the ceiling, walls and staircases. There were even sculptures hanging from sculptures. A motorcycle, hand-drawn doodles, posters from exhibitions and other objects littered the room. We did not know where to turn, what to look at first. We wandered from one object to another fascinated and eager to find out how such a slight, self-effacing man could have created such works. Our cameras turning, he told us his story.

"Sculpture fell on me"

To hear Mr. Lavarenne tell it, he was walking around, minding his own business, when "Sculpture 'fell' on me." He cannot otherwise explain it. His father was an oil painter, but Mr. Lavarenne did not have that calling. He studied mechanical design and worked for a few years in the motorcycle industry before getting bored. "I asked myself 'What am I good at? What do I like doing?' Looking back, I realized I could draw, I could do whatever I wanted with my hands."

"I chose to do manual work. For ten years I sculpted decorations for furniture. Then one day I was doodling as usual when I made a little drawing and decided to sculpt it in wood. When I finished I looked at it and thought 'What is this? What use is it?'" Until then, Mr. Lavarenne had always sculpted on order for pay, precisely following the instructions he was given. He had never even thought to create his own designs, much less sculpt them. Creation was a strange notion to him. "That day, I started to ask myself questions about art. It completely threw me. It changed my life and reconciled me with life. So I started to sculpt when I was 23, but I did not become a sculptor until I was 33."

That was the day that "sculpture fell" on Mr. Lavarenne – and proved a hard master. Self-taught, he had no precise idea where he was going; progress was by trial and error. "There were moments of despair and loneliness." He continued to sculpt wood but was unhappy with the results. Wood necessitated joints, was dense and had to remain thick in places where he wanted long, lean lines. To make ends meet, he sculpted mannequins for high-street stores, discovering plaster and wax. He perfected his technique, found new mediums. When he made his first works in bronze, he had found his element.

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"I try to be a sculptor, and at times reproach myself that it is all I am."

Photos: WIPO/S. Castonguay

"Sculpture is a presence"

Mr. Lavarenne had no difficulty defining sculpture. "For me a sculpture is an object that tries to inhabit a space, not just occupy emptiness. When one arrives in a place that has a sculpture, it must have presence. It is that presence that is important. Sculpture is a presence – a presence, if possible, with an expression."

"I often identify with my sculptures. They express my sensitivity. I am part of them, they tell me my story. But art is a mirror and each viewer will find in an artistic expression what he or she brings to it. He identifies himself with the work in one way or another. If he does not, the work does not correspond to his sensitivity."

When people tell Mr. Lavarenne the emotions or stories they feel reflected in his works, it rarely corresponds to his experience during the creative process. However, when he meets "someone who tells me exactly the same story that the sculpture I created told me, then I tell myself our sensitivity is identical. It feels like I am meeting my alter ego and it sends shivers down my spine."

"Inspiration is a form of absence"

Asked about his inspiration, Mr. Lavarenne gestures towards a tiny corner room with windows looking into the workshop. There we find all kinds of small drawings, hundreds of them. Mr. Lavarenne says he can sit there for hours, days, weeks drawing and never coming up with anything. Then, one day the phone will ring and while he is talking, his hands will keep moving. He is unconscious of what they are doing; they just keep going while his mind is occupied elsewhere. When he hangs up, he stares at the result. It might be just a scribble, but becomes a two-meter bronze sculpture, soaring into the sky. For Mr. Lavarenne, "inspiration is a form of absence."

In an open air shed at the bottom of Mr. Lavarenne's garden, white plaster dust billowing in our faces, we watched as he worked on the torso of a sculpture. "When I sculpt it is laborious. I am looking for something that doesn't exist. I am seeking to build in space a volume that exists only in my mind and on a little bit of paper. That volume must be visible from all angles, one must be able to go around a sculpture and it must be interesting to look at from all angles. I can be working on a face and see something coming out of it that I find interesting. I turn it a bit and oh… the profile is a disaster. I rework the profile and give it a three-quarters turn and ugh!… I rework that angle then look at the face again… oh, no! "

"By the time it is done I am sick of it. I have done so much work on it and I can only see its faults. It takes me a month or two to digest and accept that it is not perfect. I like to see them go so that I can create others, make another dream into reality. The only sculpture that interests me is the one I have not yet created."

"I cannot distance myself from my sculptures, but when I look at my work I see quite a realistic, anatomically correct, human body and this body is launched into the air, or sent flying, by poles which look similar to the lines of force used in comic strips. The poles lift the sculpture from the ground, symbolically lifting it from anything solid

"I sculpt first of all for myself then I hope that it will touch others, bring me into communication with them. My greatest pleasure comes when others feel touched by my sculptures."

and material, making it lighter, almost virtual, unable to be touched. It is the paradox of the sculptor: bronze is very heavy and yet it flies."

"You're the one who made these?"

When Mr. Lavarenne started exhibiting his work, fans were surprised when they met him. "People would exclaim, 'You're the one who made this!?'" He most definitely is. He marks each piece to make sure his authorship is recognized and numbers them so that copying can be detected. Though Mr. Lavarenne is not too preoccupied with the copyright process, it does worry him when he catches a glimpse of his work on camera, in books and magazines and he does not even receive an acknowledgment. "I think that at the very least the name of the author should be cited."

A copyright collective management society regularly sends him checks, but he is not too sure what for. He is happy that the process works and thinks he should probably be more involved, but sculpture leaves little time for other activities. His energy is focused on creation. He highlights for us the obvious difficulties of copying his work: the size, weight and bulkiness and the price of the raw material. Bronze is quite expensive. He also outlines the strict French legislation that regulates his work (see box).

He does decry the lack of education in the school system on copyright and on how to use it to make one's living. Sometimes students come and stare through his workshop windows. He says he wants them to come in and see and know that they too could do something like this. "Why did someone not tell me when I was in school that I could create and live from my works?"

Photo: Pierre Bondler / Courtesy: Nicolas Lavarenne

"Nobody asked me to do it"

"I am an artist, I am lucky to be able to live from my work. I love the creative side, but there is a heavy administrative side. If I don't go out and tell people what I am doing – nobody asked me to do it – no one would know that I shut myself in that workshop."

As our cameras followed Mr. Lavarenne around his workshop, he stopped face to face with a Nubian figure. He studied her perfect features, then reached up with both hands and pulled off her head. We gasped… then remembered she was not real, only a wax trial, one of his creations. So our interview ended. Locking up behind us, Mr. Lavarenne jumped on a battered old scooter, waved goodbye, calling out that he was heading out for a dip in the lake before sundown.*

*** See Nicolas Lavarenne on video at *www.wipo.int/multimedia/en/public_outreach/webcast/***

Is it an original?

Sculptors in bronze, like Nicolas Lavarenne, are authorized under French law to make only 12 originals of each sculpture. Each must be numbered: eight in Arabic numbers and four – the so-called "épreuves d'artiste" – in Roman numbers. Any foundry that does not follow this strict directive is not considered to produce originals but reproductions, whether they make 13 copies or 300.

Mr. Lavarenne numbers his pieces, 1/8 – for the first of eight – and so on. He works with a reputable foundry and molds are destroyed once the originals are produced. Mr. Lavarenne has had various offers to make reproductions which he has categorically refused.

COPYRIGHT IN THE CLASSROOM

Mine, Yours, Theirs

Do elementary school students have any interest in copyright? What would be the right age to address them on the issues? Is there a playful and educational way of broaching the topic with them? To get the answers, the WIPO Communications Division visited the International School of Geneva to lead classroom sessions underlining the importance of copyright. The first Copyright in the Classroom lesson, held in 2007, was presented to 8 and 9 year-old students, the second, in December 2008, to 11 and 12 year-olds.

Copyright in the Classroom, prepared in consultation with the school's teachers and librarian, is a lesson plan based on the WIPO publication "Learn from the Past, Create the Future: The Arts and Copyright." The main lesson covers the basic concepts of works and authors, moral and economic rights and the different symbols and notifications that signal to third parties that a work is copyrighted or otherwise protected by intellectual property. In response to questions posed by students, piracy issues were also covered. The use of modern classroom technology (an interactive Smartboard) allowed the presentation to be animated and interactive.

In the classroom

The day before the lesson, the teachers talked to the students about works of art and their importance, and asked them to bring their favorite works (books, DVDs or CDs) to school the next day. At the start of the lesson, the different types of artistic expression and their supports were reviewed and students were asked to identify the different types of artistic expression contained in the works they had brought and name their authors. Thus, students recognized that several artistic works can be contained in a single support, for example, a book contains the written work but also cover illustrations and photographs, all of which are often produced by different authors. Books, DVDs and even a painting went back and forth across the room as students excitedly identified the different works and their authors.

Through a series of leading questions, the students themselves listed all the different rights that authors have in relation to their works. The students were introduced to the official vocabulary of these moral and economic rights and engaged in an interactive exercise to ensure their understanding of them. Using the Smartboard, students were asked to match pictures of book covers, DVDs, video games, etc., related to a single, well-known work to the corresponding economic right of the original author of the work (translation, adaptation, interpretation, etc.).

The students – who were just learning to write research papers with bibliographies – made the link between authors' rights and the recognition they give to authors in their citations.

Having identified the rights of the authors of their favorite works, the students learned to recognize their own roles as authors who produce creative works over which they – like all other authors – hold copyright. They were shown how to sign and date their works and to use the copyright symbol.

During the lessons, the students raised many questions:

- Is it OK to modify music?
- Are we allowed to sell secondhand books?
- How do you get permission if the author is dead?
- Who gets the money when the author is dead?
- What happens once copyright runs out?

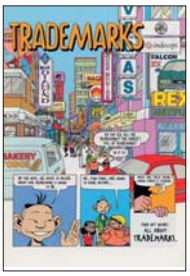
Providing even such a brief introduction to copyright in a one-hour class was a tight fit. What would they retain?

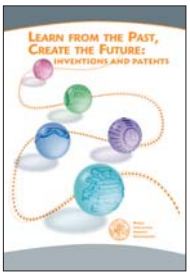
Lessons learned

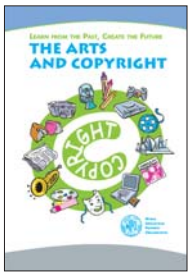
The feedback from students and teachers made it clear that young students are interested in copyright issues. It also indicated that the best time to teach basic copyright concepts – authors, their rights, the reason for copyright – is when students are around 8 to 9 years' old. By the time they are 11 to 12 years' old, students are ready to learn about, and are interested in, more complex issues such as downloading, piracy and the public domain.

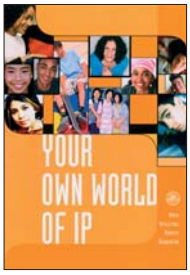
WIPO materials for teaching IP in the classroom

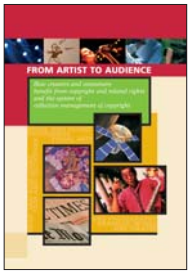
Teachers have remarked that the WIPO comics are "fun and useful" in explaining IP concepts in their classes and that their own IP knowledge was based on what they had learned in the comics. As well as the comics, other WIPO materials that could be used in the classroom include:

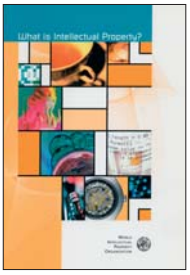












The teachers' feedback showed that the students thought the information was important and useful – especially the part about copying music and films from the Internet. The students found the arguments against illegal downloading from the Internet convincing. Some of them had gone home and discussed what they had learned with their parents and siblings. The teachers thought it important that the students had made the connection between what they had learned and writing bibliographies and footnotes – one of their goals being to instill in students a sense of academic integrity.

The students also had comments about the lessons: they had enjoyed the interaction and wished there had been more, and they thought the student packs were an excellent idea. However, some of the 10 and 12 year-old students thought the lesson – its language and content – was pitched for younger students.

Building a network

Keeping in mind the comments of the sculptor Nicolas Lavarenne (see page 13), it would seem there is room for improvement in copyright education in the classroom. Children need to be shown why they should respect the rights of others and to realize that they also are concerned as they might one day be the ones making a living and providing for their families thanks to copyright.

The International School of Geneva plans to distribute and promote the Copyright in the Classroom comprehensive curriculum among educators worldwide through the website and international conferences of the *International Baccalaureate* (*www.ibo.org/*) Primary Years Programme (PYP), a trans-disciplinary program of international education.

Through outreach efforts such as Copyright in the Classroom, improved and refined with each new experience, WIPO hopes to build a network of educators who can develop, share and adapt the lesson plans in their classrooms. This experience shows that the materials must be tailored to each age group to most efficiently reach students of different ages and backgrounds.

SALTY SECRETS
NEW DRUGS FROM THE SEA

Scientists the world over are searching for the next wonder drug that may cure cancer or treat tuberculosis. DOLORES GARCÍA GRÁVALOS, the author of this article, is cited as co-inventor on the US patent for Kahalalide F,[1] a compound derived from a sea algae, currently in phase II clinical trials for the detection of prostate cancer.

Photo: PharmaMar, SA

Colonies of *Ecteinascidia turbinata*, the species from which Yondelis® is derived.

The discovery of penicillin in 1928 triggered a systematic search for other terrestrial micro-organisms that could be used in new antibiotics, leading to the discovery of drugs such as streptomycin, neomycin, chlorophenocol and chlorotetracyclin. For many years, research focused on terrestrial plants and micro-organisms, mainly because specimens are easy to obtain. But a growing proportion of today's promising pharmaceutical research focuses on the sea, where marine organisms have evolved biologically unique molecules.

Life began in the sea, and three-quarters of the Earth's surface is covered by water. Innumerable organisms, displaying rich biodiversity, populate the ocean depths. There are extremely diverse species of invertebrates – fixed or sessile – many in plant form and others capable of slow, primitive movement. These invertebrates possess no physical defenses such as protective shells or spines; instead, they have developed biologically active molecules – secondary metabolic substances – that they use to attack prey or defend their habitat. The fascinating variety of marine organisms hints at a myriad of new possibilities for drug discovery.

Exploration of the sea and its organisms is still at a relatively early stage. Although the oceans contain much greater biodiversity than is found on land, efforts to exploit this biodiversity by identifying new chemical compounds have hardly begun: at present, there are some 11,000 marine-derived natural products compared with more than 155,000 natural, terrestrial products.

Sponges became the focus of many studies after the discovery, in 1959, that some produced active antimicrobial substances. Research soon revealed that other invertebrates, such as tunicates, ascidians, echinoderms, bryozoans, corals and molluscs, produced similar substances. Biologists and chemists worldwide began searching for natural products of marine origin, leading to a boom in marine bio-prospecting – the search for aquatic organisms for the research and development of new therapeutic products. The discovery in the 1980s of various marine-derived compounds with the ability to inhibit cell culture growth stimulated the interest of the pharmaceutical industry.

There are several phases in marine product research: specimen collection; establishing taxonomy; extracting possible active molecules; using screening techniques to evaluate therapeutic activity; identifying and isolating the structure responsible for the activity; and using organic synthesis to ensure a supply. Patent applications are immediately filed for promising molecules. These molecules are then tested and, if the results are positive, studies are carried out on human subjects in clinical trials. Once this last phase has been completed, the product is registered as a new drug and brought to market.

Treatment for soft tissue sarcoma

Yondelis®, the first treatment for soft tissue sarcoma to be released on the market in 30 years, offers an excellent example of the kind of drugs that can be developed through marine organism research. PharmaMar, a Spanish biopharmaceutical subsidiary of the Zeltia Group, was established in 1986 with the primary goal of investigating marine resources for new active ingredients that could have an application in the treatment of cancer. The company's pioneering research in

1 US patent 6011010

this area was rewarded in 2007, when both the European Medicines Agency (EMEA) and the European Commission authorized the marketing of Yondelis (trabectedine). The agent is the first marine-derived anti-tumoral drug developed by a Spanish company. Its approval confirms the sea's potential as a source of new drugs.

The drug was derived via extraction from the ascidian *Ecteinascidia turbinata* (popularly referred to as sea squirt). The need to collect large quantities of ascidian from the sea to isolate active ingredients led to the development of mariculture techniques and organic synthesis of the product. The drug can now be obtained via hemi-synthesis from cyanosafracine, a metabolic substance of the bacteria *Pseudomonas fluorescens*.

Ascidians (*Ascidiacea*) are benthic invertebrates that live at the bottom of the sea in solitary or colonial forms. They belong to the class of tunicates, so named because their body wall secretes a covering, or tunic, composed of a cellulosic substance called tunicin. The ascidian *Ecteinascidia turbinata* is found in the tropical and sub-tropical Atlantic, from the Mediterranean coast to northern Brazil and the Caribbean. The species is present in all coastal ecosystems from inter-tidal beds to outer reefs.

Other marine-derived products

Other pharmaceutical companies – such as Novartis, Aventis, Eli Lilly, Inflazyme Abbott, Wyeth and Taiho Pharmaceuticals Co. – have marine-derived therapeutic products in the pipeline. The examples that follow concern products currently in the clinical research phase.

Didemnin, the first marine compound subjected to phase II human clinical trials for the treatment of certain cancers, was isolated by the Rinehart Group at the University of Illinois from the tunicate *Tridemnum solidum*. It proved so toxic that it was rejected as a therapeutic drug source. Nevertheless, its development laid the foundation for large-scale cultivation and extraction of marine organisms, which proved essential for the development of other drugs from the sea. Didemnin has now been replaced by aplidin, manufactured by PharmaMar. Aplidin is obtained from the tunicate *Aplidium albicans* and is structurally quite similar to didemnin but less toxic. Aplidin, currently in phase II of clinical development, was granted orphan drug status* by the US Food and Drug Administration (FDA) in 2004 for the treatment of multiple myeloma and acute lymphoblastic leukaemia.

Bryostatin was discovered at Arizona State University, where researchers isolated it from the bryozoan *Bugula neritina*. The first clinical trial was conducted by the US National Cancer Institute (NCI). It was necessary to collect 13 metric tonnes of the organism to derive 18 grams of the compound. Bryostatin is being developed by GPC Biotech in Germany and is in phase II of clinical testing as a treatment for esophageal cancer for which it was granted FDA orphan drug status in 2001. It has further served as a model for the preparation of many synthetic analogues.

Photo: PharmaMar, SA

Ecteinascidia turbinata

Numerous bioactive peptides have been derived from the sea hare *Dolabella auricularia*, including the anti-tumoral dolastatin 10, discovered at Arizona State University. Even though this compound, which is currently undergoing phase II clinical trials, has shown insufficient activity against various tumors, it has served as a model in the preparation of several synthetic analogues under development by different companies and research centers, some of which have entered the clinical research phase.

Kahalalide F, a cyclic depsipeptide, is produced by algae of the *Bryopsis genus*, albeit in minute quantities (5 mg derived from 3 kg of algae). A more adequate source can be found in the sea mollusc *Elysia rufescens*, which feeds off algae, concentrating the compound (2.1 g derived from 216 g of mollusc). This compound, which has already been patented, is currently in phase II clinical trials for the detection of prostate cancer.

Despite the potential of marine organisms as a source of bioactive compounds, several challenges remain. The regulatory framework for access to and use of marine genetic resources from the high seas is unclear. And, as the examples of Yondelis and Bryostatin show, the difficulty in dealing with these organisms is the enormous amounts of raw material needed to yield usable quantities of compounds. This problem, in turn, has led to advances in mariculture techniques and organic synthesis.

*** The orphan drug designation allows a pharmaceutical company exclusive marketing rights for the drug for the indicated treatment in the US for seven years following marketing approval by the FDA. The designation also enables the company to apply for research funding, tax credits on certain research expenses and a waiver from the FDA's application user fee.**

THE MUSEUM OF COUNTERFEITING, PARIS

A Walk on the Wild Side

© Musée de la contrefaçon

Original Giacometti bronze sculpture (left), lengthened by counterfeiters (at the stomach, paws and tail) to compensate for the reduction in volume during the casting of counterfeit copies (right).

Seen the Eiffel Tower? Floated down the Seine? Visited the Louvre? And now searching for a more esoteric Parisian destination? Then look no further than the compact and beautifully housed Museum of Counterfeiting. Occupying the ground floor of an elegant, 19th century building – used as a setting for many films and TV shows (including *La Grande Vadrouille*, one of the most famous French films of all time) – it features products for every taste. From perfume, toys, and cleaning products to USB keys, car parts, sporting goods and pharmaceuticals – even including bottled water, tomato ketchup and liquid gas – the Museum offers a wide-ranging, intriguing and rather disturbing display of the enormous extent of counterfeiting.

Given its subject matter, it seems particularly appropriate that the Museum is situated on the rue de la Faisanderie, "faisan" being the French word for a crook. And visitors quickly learn that crooks, and counterfeiting, have been around for a long time. The oldest counterfeit products on display, dating from around 200 BC, are stoppers used to seal amphorae filled with wine being transported from Italy to Gaul. A genuine stopper, with the wine merchant's mark, is shown next to its counterfeit used by an ancient Roman free-rider hoping to cash in on someone else's market success. Over 2,000 years later, the problem is still with us. It is estimated[1] that 7 to 10 percent of global trade derives from counterfeits, costing the world economy around US$ 492 billion a year.

Throughout the Museum, authentic goods are displayed with their corresponding imitations – obtained following customs seizures or court judgments or settlements – to highlight the differences between genuine products and their illegal and sub-standard doppelgangers.

The Museum's message underscores the negative, widespread and potentially dangerous impact of counterfeiting on producers, consumers and the economy: not only discouraging innovation, depriving rightholders of income and supporting organized crime, but also threatening health and safety.

It notes that badly made counterfeit toys are, at best, soon damaged ("False Barbies" one captions warns, "quickly go bald"); at worst, they incorporate inflammable materials or toxic substances, such as lead paint, or have small breakable parts that present a choking hazard. The dangers are many and varied, counterfeit products by their nature elude any health or safety controls. The Museum runs the gamut, from fake sunglasses that do not adequately protect the eyes to counterfeit car and airplane parts that risk failing with disastrous consequences, and sub-standard electrical appliances that present myriad domestic dangers. Fake medicines are a particularly pernicious and perennial problem, often containing no, or insufficient, active ingredients or even incorporating toxic elements. It is estimated[2] that they make up from 10 to over 30 percent of the market in developing countries.

The Museum recently opened a new wing, dedicated to copyright crime. Its exhibits range from fake statuettes of Rodin, Dali and Giacometti – often showing counterfeiting techniques, such as the application of acid followed by tinted wax to give bronze a quick patina – to pirated DVDs and CDs. It also highlights the dramatic escalation in IP crime fuelled by the Internet, and its profound effect on the creative industries.

One of the Museum displays notes that an estimated 40 million counterfeit Swiss watches are produced each year – twice the number of genuine watches "made in Switzerland" annually. In an apt commentary, the artist Maât used thousands of counterfeit watches seized by the French customs authority and crushed in a hydraulic press to create *L'Art dans le Collimateur des Faussaires*. The watch debris was set in four blocks of translucent resin, mounted on a base in which a glass niche sheltered two genuine watches. The sculpture – which seeks to contrast true with false, rarity with abundance, quality with shoddiness – was, fittingly, first exhibited at the Museum, which now displays an artist's model of the work.

1 According to estimates from the World Customs Organisation and the Organisation for Economic Co-operation and Development (OECD).

2 From the International Medical Products Anti-counterfeiting Taskforce (IMPACT), launched by the World Health Organization (WHO) in 2006.

THE FATHER OF KARAOKE

He once claimed that he went to school in order to sleep, and that laziness was the major factor in thinking up karaoke. Daisuke Inoue never learned to read music, so he taught himself new music just by listening and repetition. He also claimed, in an interview with *Time* magazine, that while at school in Osaka, Japan, he chose to take up the drums because "all you have to do is hit them."

By the early 1970s, he was part of a band which played in bars and clubs in nearby Kobe. The Japanese custom of providing musical entertainment for evening outings meant that it came quite naturally for the audience to sing along with the band. Mr. Inoue hit on the idea of pre-recording his own backing tracks and encouraging customers to sing, however unmusical or inhibited they might be, by following instead of leading, and he used technical tricks to drown or attenuate the more jarring singing styles that emerged.

Photos: AFP

It started in earnest in 1971, when the President of a steel company invited him to join a week-end company trip to a resort to provide the entertainment. Unable to accept, Mr. Inoue created a substitute for the real thing by using music recorded on tape. It worked like a charm. Although this could have made him a millionaire had he only thought of patenting it, he has no regrets. As he told an interviewer from *The Independent*, "I'm not an inventor. I simply put things that already exist together, which is completely different. I took a car stereo, a coin box and a small amp to make the karaoke. Who would even consider patenting something like that?"

Others have and did, of course developing more sophisticated models. But initially, Mr. Inoue rented out his karaoke machines with tape-recorded music at relatively little profit – 100 yen per song – the price of a few drinks in 1971. Competitors sprang up, threatening his business, more especially with the emergence of laser disc-based machines in the 1980s: he reacted by successfully offering a major rival, the Daiichikosho Company, his services in handling their machines.

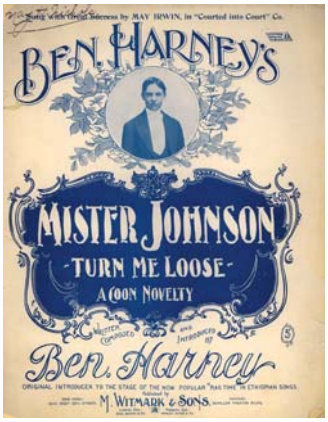
Today, the word *karaoke* needs no translation. Its meaning in Japanese is "empty or missing orchestra." Roberto del Rosario, a Filipino national, was granted patents in 1983 and 1986 for a device generally known as the "karaoke machine."

The most basic karaoke machine today has a microphone, means to alter the pitch of recorded music and an audio output. Increasingly sophisticated models can be found in entertainment hotspots; for example, karaoke boxes – small or medium-sized rooms or enclosed spaces rented by the hour or half-hour in hotels, bars, clubs, lounges and restaurants. Daisuke Inoue, however, is particularly delighted with what he has heard about its healing powers in old people's homes, hospitals, therapy or, generally, in the private lives of the depressed and lonely. It is a way to let go, to feel better. Or to have a chance to realize that secret desire to perform, no matter how well you sing.

More recently, he has invented and sold a device which releases chemicals to kill the cockroaches that enter karaoke machines, building nests and chewing wires. His latest invention is an environment-friendly pot that electrolyzes water for washing laundry, dishes and even mouths, without detergents or chemicals: this time round he is using the national and international patent system.

WELCOME TO THE PUBLIC DOMAIN

Jurisdictions with a 70-year period of post-mortem copyright protection will be welcoming into the public domain this year a wealth of works from authors, artists and musicians who died in 1938*. This selection was compiled once again (see *WIPO Magazine* 1/2008) by MIRIAM PHILLIPS, a student of music at Cambridge University, UK, for the IPKat weblog.



Ben Harney (1872-1938). A musician, songwriter and pioneer of ragtime music, born in Tennessee, Benjamin Robertson "Ben" Harney's early songs were great hits and the sheet music of "Cake Walk in the Sky" is the first written example of vocal ragging. In 1897, *Ben Harney's Rag Time Instructor* was published, giving the first description of how to improvise ragtime music by syncopating popular tunes. In 1924, the New York Times wrote that Ben Harney "probably did more to popularize ragtime than any other person."

C.J. Dennis (1876-1938). Australia's Clarence James Dennis published his first poem at the age of 19. His most famous work, *The Sentimental Bloke*, sold 65,000 copies in its first year of publication (1916). *The Songs of a Sentimental Bloke*, one of numerous spin-off publications, describes the day-to-day adventures of a man, his girl Doreen and friend Ginger Mick. *The Sentimental Bloke* was adapted as a stage play, silent movie, sound movie and musical; the title character even featured on a series of Australian stamps in the 1980s.

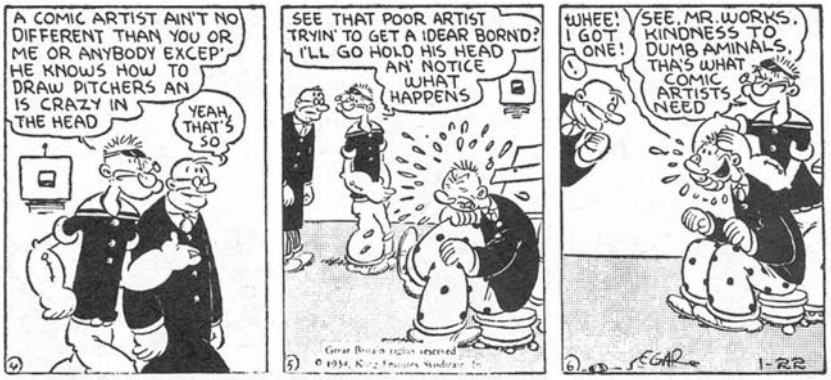
Sir Muhammed Iqbal (1877-1938). Born in what is now Pakistan into a deeply religious family, Muhammed Iqbal travelled and studied widely, obtaining qualifications in philosophy, English literature, Arabic and law from various institutions in Europe. Widely referred to as Allama (the scholar) Iqbal, his Urdu and Persian poetry is regarded among the greatest of the modern era, and the anniversary of his birth is marked as a national holiday in Pakistan to this day.

Sir Henry Newbolt (1862-1938). The Englishman Henry Newbolt graduated from Oxford and practised law until 1899. He published his first novels in the early 1890s, but his literary reputation was not established until the publication of *Admirals All*, a set of ballads produced in 1897. The best known of these is "Vitaï Lampada," a ballad about a future soldier who learns stoicism from playing cricket. The poem was highly regarded during the First World War, but became heavily satirized by soldiers returning from the Western Front. The poet was knighted in 1915, and awarded the 'Companion of Honour' seven years later.

Grey Owl (1888-1938). Born in England and brought up in Hastings by his grandmother and aunts, Archibald Belaney left school at 16 and moved to Canada. Once there, he changed his identity to that of "Grey Owl," telling people he was the son of an Apache woman and had emigrated from the US to join the Ojibwa. After several years working as a wilderness guide and forest ranger, Grey Owl started to publish his writings about wilderness life, which promoted environmentalism and nature conservation. Grey Owl even toured England in Ojibwa costume to publicize his works and lecture on conservationism. His aunts recognized him but chose to remain silent. It was only after his death in 1938 that doubts arose over his native-American identity. Discovery of his deceit led to the withdrawal of some of his books from publication and disillusionment with his conservationist causes.

E.C. Segar (1894-1938). American cartoonist Elzie Crisler Segar, creator of "Popeye the Sailor," was determined to make his way as a cartoonist. At the age of 18 he invested US$20 in a correspondence course in cartooning and, after a day's work as a film projectionist, he would "light the oil lamps" and immerse himself in his course until the early hours of the morning. His first comic, "Charlie Chaplin's Comedy Capers," was published in 1916. He moved east to work for the

New York Journal, drawing "Thimble Theatre." The strip featured Olive Oyl, Castor Oyl and Ham Gravy. It was not for another 10 years, in 1929, that the enormously popular Popeye joined their ranks. After Segar's early death at the age of 43, his assistant Bud Sagendorf continued to produce the comic.



Kasym Tynystanov (1901-1938). At the time of Kasym Tynystanov's birth, the level of literacy among Kyrgyz nomads was approximately two percent and the Kyrgyz people had no written language, but he learned to read and write Arabic from his father. Following the Soviet Revolution, he sought further education in Almaty. While still studying in Tashkent, he started to develop the first Kyrgyz alphabet. His poetry and prose began to appear in Kazakh newspapers, printed in his new Kyrgyz script, and his songs became very popular with Kyrgyz youth. In 1924, after the approval of the new alphabet, he created the first Kyrgyz readers for primary schools. Some 90 percent of the terminology created by Kasym is still in use today. He became the first Kyrgyz Minister for Education and established the country's education system.

César Vallejo (1892-1938). César Vallejo published only three books of poetry, but he is considered one of the influential poets of the 20th century. One of 11 children, he was born in a village in the Peruvian Andes. The exploitation of agrarian workers that Vallejo witnessed while working on a sugar plantation, greatly impacted his political views. In 1916, he moved to Lima where he worked as a schoolteacher and met the artistic and political vanguard. He first poetry collection was published in 1919. But the years that followed were disastrous: he had an affair, lost his job, his mother died and he served a short prison term. When he emerged in 1922, he produced *Trilce*, which remains one of the most radically *avant-garde* collections in Spanish literature. Influenced by the Spanish Civil War, his last burst of poetic activity came in the late 1930s.

Wang Zhen (1867-1938). Wang Zhen, a modern Chinese artist of the Shanghai school, was a close disciple of the painter Wu Changshuo, who became his mentor. Some even claim that certain paintings attributed to Wu Changshuo are actually by Wang Zhen. Wang Zhen spent most of his life in Shanghai. He was an expert calligrapher as well as a painter. He specialized in portraying flowers, birds and Buddhist subjects. Wang Zhen's paintings were particularly popular in Japan, where he had greater success than among his compatriots.

Zitkala-Sa (d.1938). Zitkala-Sa, which translates as *Red Bird*, was a Native American writer, editor, musician, teacher and political activist. She was raised in South Dakota on the Yankton Sioux Reservation until the age of eight when she was removed from the Reservation to attend a boarding school in Indiana. After studying at the Boston Conservatory of Music, Zitkala-Sa composed the first American-Indian grand opera, *The Sun Dance*, in 1913. While working as a teacher in Boston, she began to publish short stories and autobiographical anecdotes that were serialized and later published in a collection called *American Indian Stories*. In her later years, Zitkala-Sa's works were more political. She published monthly articles and a number of books depicting the hardships of being forced to leave home for boarding school, and the alienation she felt in both worlds.

*** Note. The term of copyright protection can be affected by other rules in various countries. In some countries, for example, the term has been temporarily prolonged because works could not be exploited during wartime. The term will also be longer for works co-authored with another person whose term of protection has not yet expired. It is advisable always to check carefully the status of a work in light of the applicable national legislation before using it without authorization.**

LES ENJEUX DE LA PROTECTION DES DESSINS ET MODÈLES INDUSTRIELS DANS LE DÉVELOPPEMENT EN AFRIQUE

By Stéphanie Ngo Mbem

Reviewed by Francois Curchod*

The publication of a book on industrial designs occurs less frequently than on any other area of intellectual property. The publication of a book on African law is even less frequent, so a publication that discusses both subjects, such as this one by Stéphanie Ngo Mbem, is to be welcomed.

Publisher:
L'Harmattan
ISBN:
978-2-296-06284-9
Price: 34 Euros

Despite the fascinating complexities of industrial design law, arising from its position on the border between industrial property and copyright, its status as the most neglected area of intellectual property is well known. The overriding significance that this area of law presents for the development of African countries – which generate a substantial number of aesthetic creations, but few patentable inventions – is, however, less well known. Despite beliefs, sometimes discussed *ad nauseam*, concerning the effect patents have on development in these countries in terms of technology transfer, it is too often forgotten that the patent system barely helps to stimulate local innovative activity in Africa, at least as things stand at present. Drawing these facts to our attention is not the least of this book's merits. Indeed, although this timely work concentrates on the 16 sub-Saharan African countries that are members of the African Intellectual Property Organization (OAPI), many of the points it elaborates are valid for the entire African continent, if not the developing world in general.

Anyone looking for general information on the OAPI system will find the first part of this book very useful. It also presents very interesting legal analyses of the development of design protection in this regional intellectual property system, as well as of its practical application. The author analyzes, in particular, possible reasons for the low level of usage of the OAPI registration system, such as lack of knowledge about the existence of design protection and lack of funds for paying filing fees.

Having proposed a diagnosis of OAPI design law and its application, the author goes on to suggest both long and short term remedies in the second part of the book. The final parts of the work focus on the role of both international law and OAPI member states. At the international level, the author suggests that, in addition to the need for greater harmonization of design legislation, special and differential treatment should be given to developing and, in particular, African countries, especially in the areas of technical assistance and access to markets for products that incorporate industrial designs. OAPI member states should be directly involved through awareness-raising activities and promotion of designers' achievements as well as through initiatives offering assistance to sectors interested in exploiting designs; finally, member states should make their legal systems more reliable and reinforce their methods of fighting counterfeiting.

The book's general conclusion asks whether the OAPI design system facilitates development in OAPI member states. The response is balanced, insofar as the evolution of legislative texts shows that concerns about development are increasingly present but that much remains to be done in this area. Stéphanie Ngo Mbem's many proposals will be valuable for the next revision of OAPI legislative texts. Hopefully, they will be fully considered as part of this revision, which would mean that this book would not remain theoretical but could have a real impact on the evolution of design law within OAPI and could help to strengthen the contribution that this area of law can and should make to the economic and social development of the countries in question.

*** Mr. Curchod is a former Deputy Director General of WIPO and a former associate professor at the Robert Schuman University, which integrated the University of Strasbourg on January 1, 2009.**

LETTERS AND COMMENT

De-Klientel's Initiative

Photo: NCC

Following publication of the article "STRAP and CLAMP – Nigeria Copyright Commission in Action" in *WIPO Magazine* 5/2008, I am writing to inform you of the De-Klientel Music Initiative. De-Klientel Music, an Abuja-based music label, has designed a radio program that will run on the popular Lagos-based Wazobia 95.5 FM. The program is intended to be a platform through which to support NCC and STRAP in the eradication of piracy.

The one-hour radio program will be called 9ja (Naija) Top 10 and will promote Nigerian music and artists through features, a countdown and a segment with a star artist and an audience-voted legend. The key segment will be a 20-minute slot dedicated to live interviews with NCC and STRAP officials as well as record label owners, entertainment lawyers, marketing experts, distributors and other stakeholders.

The program will boost consciousness of the fight against piracy and infringement of intellectual property, enlighten and educate the general public, while informing that ignorance of piracy is not an excuse in the course of prosecution. It will also consolidate awareness of the efforts of NCC and STRAP, expose pirates and their tactics, improve market standards, protect the interests of the stakeholders and ensure the growth of the entertainment industry.

This initiative – organized in collaboration with NCC, STRAP and entertainment stakeholders – will help sustain wealth creation and opportunities throughout the entertainment industry.

From Adans Osilama, De-Klientel Music, Nigeria

Patent numbers and inventor's information

First of all, I would like to congratulate you on the quality and clarity of the articles published in the *WIPO Magazine*. The themes you develop are often discussed in our weekly meetings. However, you often refer to different inventions from various countries without providing any precision on the patent numbers or the name of the inventor. It would add more value to the invention and open up further avenues for its commercial exploitation if you provided this information.

From Anibal R. Cabrera, Argentine Association of Inventors, Argentina

Ammonia Synthesis

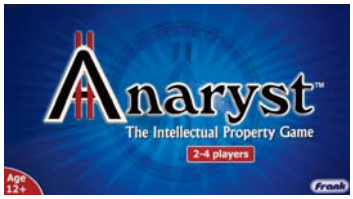
Photos.com

I thoroughly enjoyed the article "Ammonia Synthesis – The double-edged sword" and look forward to future publications concerning such issues. The conclusion was interesting – ammonia synthesis being a "double-edged sword" saving lives through increased food production but also accelerating production of TNT which brought death to many. I cannot fathom where we would be today without such a process even bearing in mind the environmental concerns.

From Shiva R. Maharaj, Intellectual Property Office, Ministry of Legal Affairs, Trinidad & Tobago

IN THE NEWS

IP Board Game



Move over *Monopoly*, *Scrabble* and *Checkers*, there is a new board game in town: Anaryst™ – The Intellectual Property Game. Created by Mr. Pravin Anand, of the Anand and Anand law firm in New Delhi, India, the game is aimed at those 12 years' old and above. It can be played by 2 to 4 players, who receive equal amounts of Ana (the board game currency) at the start of the game. Four industry areas – automobiles, beverages, computer systems and pharmaceuticals – are represented on the board. Each player chooses his industry at the start of the game and is given a card which shows the industry's IP portfolio, which he will have to acquire as he goes around the board. Trespassing fines must be paid by players who fall on an industry square that is not their own. Players can buy the IP of an industry that is not their own, but should beware as they then become patent trolls! ■

King of Thailand Receives WIPO Award

The King of Thailand, His Majesty King Bhumibol Adulyadej, received on January 14 the WIPO Global Leader Award in recognition of his extraordinary commitment to promoting intellectual property and his important contribution to society as a prolific inventor. The award was presented by WIPO Director General, Mr. Francis Gurry, at a ceremony at the Klai Kangwon Palace in Hua Hin, Thailand.

Photo: Ministry of Foreign Affairs of Thailand

His Majesty King Bhumibol Adulyadej of Thailand is presented with the WIPO Global Leader Award by WIPO Director General Francis Gurry.

The King of Thailand is an acclaimed artist with a portfolio of over 1,000 works, including paintings, photos and musical and literary works. He is also an accomplished inventor, holding over 20 patents and 19 trademarks. Many of His Majesty's inventions, which include a water aerator and artificial rainmaking technology, have generated concrete and practical benefits for rural communities in Thailand. ■

Global Economic Slowdown Impacts the PCT

International patent filings under the Patent Cooperation Treaty (PCT) grew by 2.4 percent in 2008, to nearly 164,000 (provisional estimate) applications. While the rate of growth was modest, compared to the average 9.3 percent rate of growth in the previous three years, the total number of applications for 2008 represents the highest number of applications received under the PCT in a single year.

Nanotechnology – Science fiction becomes reality

Monash University in Clayton, Australia, has developed a nano-robot 250 nanometers in diameter - the thickness of 2 or 3 strands of hair. Proteus, so-named after the miniature submarine in the science fiction movie "Fantastic Voyage," can, potentially, be injected into the body and maneuvered by remote control to perform brain surgery or unblock blood vessels. The difficulty is in motorizing the robot so that it can withstand currents in the bloodstream and perform the expected tasks – making incisions or chiseling. Researchers believe that they will be able to use waves with a power of 2 to 3 watts to operate Proteus. ■

Happy 50th Barbie™

Barbie will celebrate her 50th birthday on March 9, which marks the opening day of the American International Toy Fair in New York where she made her debut in 1959. The doll was inspired by the German doll Bild Lilli, itself inspired by a character in a German newspaper comic strip. Ruth Handler, wife of Elliot, a co-founder of Mattel Inc., purchased three Bild Lilli dolls while vacationing in Europe in 1956. When she got home, she gave one to her daughter Barbara and the other two went to Mattel where the design was reworked – thus Barbie, named after Ruth's daughter, was born.

Like Bild Lilli, Barbie was tall and slim with long legs and a tiny waist. No other doll in the American market looked like her. She was an instant success; Mattel sold some 350,000 dolls in the first year of production. Over the years, over a billion Barbie dolls have been sold in 150 countries – Mattel claims that three are sold every second.

Mattel acquired rights to Bild Lilli in 1964 and stopped its production. But Barbie has remained a subject of controversies – many of which now center on the unrealistic body image she presents to young women – and lawsuits. The most recent of these was launched by Mattel against MGA Entertainment Inc., makers of Bratz dolls. Mattel won a court order banning MGA from selling the infringing Bratz doll on December 3, 2008, a decision that MGA announced it would appeal.

Photos: Mattel

1959 **2009**

Barbie sales are still going strong – she remains the most popular doll for girls. But she may need freshening up for her 50th birthday; last year's fourth quarter sales worldwide fell 21 percent. ■

IP Rights to Ka Mate

The government of New Zealand and Ngati Toa, a tribal community (or, "iwi"), signed an agreement on February 12 to settle their historical Treaty of Waitangi claims. This agreement contains a special provision for the *Ka Mate* haka, a traditional Maori dance form and cultural expression. Ngati Toa's ancestor, Te Rauparaha, composed the dance. The iwi's concern is with the inappropriate use and commercial exploitation of the haka which was used in a 2006 Fiat commercial and a recent Hollywood movie about rugby, *Forever Strong*. The settlement, which still needs to be transposed into legislation, records "the significance of the haka."

The agreement will not affect the popular performance of the haka by the *All Blacks*, New Zealand's rugby team, or its use by fellow New Zealanders. "It's when it is appropriated for quite explicit commercial exploitation that we would want to have some sort of say," said an iwi spokesperson.

WIPO's Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (the IGC) is examining the international dimension of issues such as those canvassed in this agreement. In 1998, WIPO conducted a fact-finding mission to New Zealand and met with several Treaty of Waitangi claimants to hear their concerns and aspirations.

Source *www.nzherald.co.nz*

NEW PARTIES TO WIPO-ADMINISTERED TREATIES IN 2008

During 2008, 51 instruments of accession or ratification of treaties administered by WIPO were deposited with the Director General of WIPO. The treaties and new adherents are as follows:

In the field of industrial property

Paris Convention *for the Protection of Industrial Property* (1883): Thailand (1); bringing the total number of States to 173.

Patent Cooperation Treaty (PCT) (1970): Sao Tome and Principe (1); bringing the total number of States to 139.

The ***Madrid system*** *for the International Registration of Marks (****Madrid Agreement*** (1891) and ***Madrid Protocol*** (1989)): Bosnia and Herzegovina, Ghana, Madagascar and Sao Tome and Principe (4) adhered to the Madrid Protocol; bringing the total number of States/IGOs to 78.

Trademark Law Treaty (TLT) (1994): Honduras, Costa Rica and El Salvador (3); bringing the total number of States to 42.

Singapore Treaty on the Law of Trademarks (2006): Australia, Bulgaria, Denmark, Kyrgyzstan, Latvia, Republic of Moldova, Romania and United States of America (8); bringing the total number of States to 10. *The Singapore Treaty will enter into force on March 16, 2009.*

Strasbourg Agreement *Concerning the International Patent Classification* (1971): Bosnia and Herzegovina (1); bringing the total number of States to 59.

Nice Agreement *Concerning the International Classification of Goods and Services for the Purposes of the Registration of Marks* (1957): Jordan (1); bringing the total number of States to 83.

Vienna Agreement *Establishing an International Classification of the Figurative Elements of Marks* (1973): Jordan (1); bringing the total number of States to 25.

Budapest Treaty *on the International Recognition of the Deposit of Microorganisms for the Purposes of Patent Procedure* (1977): Bosnia and Herzegovina, Costa Rica, Peru and Jordan (4); bringing the total number of States to 72.

Hague Agreement *Concerning the International Deposit of Industrial Designs* (1925): Bosnia and Herzegovina, Bulgaria, Denmark, Ghana, Lithuania, Oman, Sao Tome and Principe, Syrian Arab Republic and the African Intellectual Property Organization (OAPI), (9) adhered to the 1999 Geneva Act of the Hague Agreement; bringing the total number of States/IGOs to 34.

Patent Law Treaty (PLT) (2000): Australia and Switzerland (2); bringing the total number of States to 19.

In the field of copyright and related rights

Berne Convention *for the Protection of Literary and Artistic Works* (1886): Yemen (1); bringing the total number of States to164.

Rome Convention *for the Protection of Performers, Producers of Phonograms and Broadcasting Organizations* (1961): Tajikistan (1); bringing the total number of States to 87.

WIPO Copyright Treaty (WCT) (1996): the Russian Federation, Switzerland, Trinidad and Tobago and Turkey (4); bringing the total number of States to 68.

WIPO Performances and Phonograms Treaty (WPPT) (1996): Republic of Korea, Russian Federation, Trinidad and Tobago, Turkey, Uruguay and Switzerland (6); bringing the total number of States to 68.

Brussels Convention *Relating to the Distribution of Programme-Carrying Signals Transmitted by Satellite* (1974): Honduras, Republic of Moldova and Oman (3); bringing the total number of States to 33.

Nairobi Treaty *on the Protection of the Olympic Symbol* (1981): Hungary (1); bringing the total number of States to 47.

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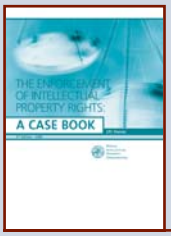

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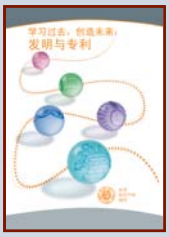

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