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GREEN INNOVATION

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WORLD IP DAY

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BICENTENARY OF LOUIS BRAILLE

WIPO Conference on Intellectual Property and Public Policy Issues (title changed)

International Conference Centre Geneva (CICG), Switzerland
July 13-14, 2009

Deadline for registration: June 30, 2009

The Conference will address issues relating to the interface of intellectual property with other areas of public policy, notably health, the environment, climate change and food security, and will serve as a global forum to discuss issues and solutions to some of the major challenges in relation to intellectual property that the world faces today. This event is open to the general public.

(For more information see *www.wipo.int/meetings/en/2009/ip_gc_ge/*)

Climate Change on the United Nations Agenda:

World Environment Day

June 5

The United Nations established World Environment Day in 1972, the same year the UN Environment Programme was created. The theme for 2009 is Climate Change and the broader consequences of environmental change, and what society can do in response. (For more information see *www.unep.org)*

World Climate Change Conference – 3

Geneva, August 31 to September 4

"Climate prediction and information for decision-making" is the theme of the World Meteorological Organization's World Climate Change Conference. It will discuss the application of climate prediction and information to societal problems enabling adaptation to climate variability and change in various sectors. (For more information see *www.wmo.int/wcc3/index_en.html.*)

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Editor: Sylvie Castonguay
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Tesla Motors - The Model S electric sedan prototype will go into production in 2011.

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Ignacio Decastro, WIPO, Arbitration and Mediation Center, p. 20

WIPO Contributors
Cathy Jewell (Media Relations Section), p. 8 and 15 (box)
Geidy Lung (Copyright Law Division), p. 16
Sarah Theurich (Arbitration and Mediation Center), p. 20
Marcus Höpperger (Law and International Classifications Division), p. 23
Brigitte Vezina (Global IP Issues Division), p. 25

PHOTOVOLTAIC TECHNOLOGY
SUNNY SIDE UP

The solar photovoltaic (PV) market – the green energy source par excellence *– is booming. Production has doubled every two years since 2002, making it the fastest-growing energy sector. Buoyed by government incentives, the industry is thriving and research is opening new avenues and bringing costs down. The number of solar energy-related patent applications filed under the Patent Cooperation Treaty (PCT) tripled from 2004 to 2008, rising from 460 to 1,411.*

The photovoltaic effect – a phenomenon allowing light-to-electricity conversion – was first described by the French physicist Edmond Becquerel in 1839. Albert Einstein was awarded a Nobel Prize for his theoretical work on the subject, published in 1904. Intensive research, spurred by the race to space from 1950 to 1969, led a number of companies to develop and bring solar cells, or PV cells, to the marketplace as of 1955. *Vanguard I*, the first solar-powered satellite, launched in 1958 and ran for eight years. Others followed. Solar power continues to be used as an auxiliary energy source on spacecrafts and to power orbiting satellites.

Photo: NASA

Vanguard I

When it came to earthbound applications, the technology was slower to take off. The return on investment in the PV market did not justify the expense: grid electricity from virtually any other source – coal, hydro or nuclear – was, and still is, much less expensive. But over the last decade climate change issues have modified our perspective. The environmental problems associated with carbon dioxide (CO_2) buildup have sounded an alarm: there is now a pressing need for new, non-polluting technologies as well as revived interest in older technologies that were passed over when cost and mass production were the primary considerations. And so, photovoltaic technology has risen from the dust of patent information stored and all but forgotten years ago.

PV market

The "Global Photovoltaic Market Analysis and Forecasts to 2020" highlights that worldwide PV capacity grew from 1.3 gigawatts (GW) in 2001 to 15.2GW in 2008. If investments and efficiency gains continue to grow at their current rate, a joint EPIA* and Greenpeace study forecasts that by 2030, PV systems will provide 2,600 terawatt hours (TWh) of electricity or some 14 percent of the electricity needs of the world's population.

Germany, Japan and the U.S. seem to be leading the market in PV installations, but the figures differ from one report to the next. Spain, having completed the installation of several large PV power plants, with a total generating capacity of 226.3 megawatts (MW) in 2008, laid claim to the number one position in January. But with individual installations and PV power plants mushrooming, the PV landscape is evolving at such a pace that the position of leader is a constantly shifting one. Most of the increase is due to financial incentives, which often come in the form of investment subsidies that refund part of the installation costs or in the form of feed-in tariffs where local electric utility companies buy PV electricity from producers.

The PV market is not out of the grasp of the developing world. Research is bringing prices down and developing countries are benefiting. Solar power offers an excellent solution in remote areas too expensive or impossible to connect to the grid (see *Barefoot College, Teaching Grandmothers to be Solar Engineers*, page 5). In these areas, an important market has developed for solar power-charged batteries.

* European Photovoltaic Industry Association

From the Sun

- In *one hour*, the sun provides more than enough energy to supply the earth's energy needs for one year.
- In *one day*, it provides more energy than the world's population could consume in 27 years.

Source: BIPV Technology

Photovoltaics – the drawbacks

One big disadvantage of photovoltaics is the land area required for a solar power plant. California's planned 550MW solar installation will cover a surface area of some 25 km². Not many countries have such quantities of barren, unused land to set aside for power plants.

Installation can also be relatively expensive, so it might take some time – up to 20 years – to recoup its cost.

It may seem obvious, but solar panels do not produce electricity on overcast days or at night, so user must either stay hooked-up to the regular grid electricity or install a storage system.

Scarcity threatens the market

Standard PV modules are made from mono and polycrystalline silicon. Some 50 percent of the price of a module is due to the cost of processed silicon wafers. The solar panel industry benefited from a major breakthrough when Emanuel Sachs invented string ribbon crystal growth in 1980 (U.S. patent 4661200). The process enabled the production of continuous thin strips of multi-crystalline wafers, eliminating the waste and heavy expense previously incurred sawing through blocks of silicon. The reduction in manufacturing cost made wider adoption of the solar technology more feasible.

But crystalline silicon has major drawbacks: its production is energy-intensive and leaves the PV industry dependent on silicon – an expensive and scarce material for which PV manufacturers must compete with the micro-electronic industry. There are only 12 factories producing PV-grade polycrystalline silicon in the world and when both the micro-processor and PV markets boom, silicon prices skyrocket. In 2004, for example, the cost of silicon significantly increased because demand was high in the electronics industry. So while silicon research continues, the threat that shortages might pose to the PV industry has stimulated a search for alternative materials.

Photo: Anna Regelsberger

A photovoltaic tree in Gleisdorf, Germany.

Solid-state physics has demonstrated that silicon is not the ideal material for light-to-electricity conversion. In applications for outer space, where technology is most advanced and the very purest, high performance silicon is available, efficiency hovers around 30 percent. But most PV modules on the market average between 12 to 18 percent. Improvements in efficiency are a high priority for the industry.

Efficiency gains on the horizon

Previous advances in conversion efficiency relied on concentrating sun rays, in the same way that a magnifying glass concentrates sunlight to ignite a fire. The results were heavy, unwieldy devices with lenses up to 30 centimeters thick. Using innovative thin-film technology, researchers are breaking efficiency records while building ever less cumbersome solar cells. Their goal is to define the ideal architecture for the solar cell – keeping in mind the objectives of lowering costs, minimizing size and facilitating mass production.

In 2007, 21 months into a project aimed at developing the technology basis for a new highly efficient crystalline silicon solar cell, a research consortium led by the University of Delaware achieved a record 42.8 percent conversion efficiency. Their unique solar cell architecture integrates the optical design with that of the solar cell, resulting in a small, portable device that can easily fit on a laptop computer (for more information see PCT WO2008/091290). The consortium aims to break the 50 percentile marker by 2010.

Promising new materials technologies

In addition to new developments in the use of silicon for manufacturing solar cells, design breakthroughs have been achieved involving non-

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silicon materials including alternative semiconductors and organic chemical compounds. Using materials other than silicon can lead to cost reductions because the production process is simpler and less expensive, and does not compete for the use of silicon. However, further research into the use of these advanced materials is needed to obtain and surpass the efficiencies of silicon-based solar cells. That research is evolving quickly as shown by the examples below.

The ThinPV research consortium, in which the Swiss Federal Institute of Technology in Lausanne (*Ecole polytechnique fédérale de Lausanne* (EPFL)) participates, aims to increase the efficiency of non-silicon thin-film solar cells, specifically copper indium gallium selenide (CIGS), organic and so-called dye-sensitized solar cells. At the launch of the project in 2006, conversion efficiency rates of around 11 percent were reached for CIGS thin-film solar cells. Using CIGS and the EPFL's patented dye-sensitized PV technology, ThinPV has already achieved 15 percent efficiency in laboratory tests. But the consortium believes it can achieve much better results.

Similar to silicon-based thin-film solar cells, CIGS solar cells use nano-thin layers of semiconductor material that can be applied to a low-cost backing, such as glass, flexible metallic sheets or foils, or high-temperature polymers. Contrary to conventional PV technologies, dye-sensitized solar cells separate the task of light absorption from that of charge carrier transport. In dye-sensitized solar cells, photogenerated electrons from the light-absorbing dye are passed on to thin layers of semiconductor materials that transport the electrical charge. The possible applications for this technology include dye-sensitized solar cell paints that could be applied directly onto steel sheets, which are being developed by a U.K. research team. It hopes to bring them to market by 2011.

The U.S. Department of Energy's National Renewable Energy Laboratory (NREL) surpassed the ThinPV record in March 2008, reaching 19.9 percent efficiency with CIGS thin-film. This puts thin-film technology at par with crystalline silicon. The NREL claims that it is the quality of the materials applied during the manufacturing process that boosted the power output. The Laboratory sees a bright future for CIGS cells; they can be used both in space applications and the portable electronics market because of their light weight. They are also suitable for special architectural uses, such as photovoltaic roof shingles and windows.

Photo: www.treehugger.com

Thin-film solar technology

Though still in the early phases of research, non-silicon thin-film technology has already made the transition from the laboratory to the market. Expectations are high in the PV industry. Thin-film materials are easy and cheap to manufacture, have low environmental impact, and are compatible with flexible materials, making their application possible in packaging and clothing and for recharging cell phones and laptops.

Evolution of the PV market

Several new solar technologies now co-exist on the market with mono and polycrystalline solar cells, including thin-film which has already captured 7 to 10 percent of the PV market. The Prometheus Institute for Sustainable Development forecast that non-silicon thin-film applications will take over 40 percent of the market by 2012.

At present, U.S. manufacturing is more concentrated on various thin-film technologies and Europe and Asia more on mono and polycrystalline silicon solar cells. As research progresses, efficiencies will further increase and a growing number of promising non-silicon alternatives should start being brought to market. As shown in a forthcoming WIPO study on alternative energy technologies, the number of patent applications filed for solar power inventions at major industrial property offices has nearly tripled during the past 20 years.

The financial crisis is slowing down the PV market, but there will be no stopping it. The increasing number of PCT patents registered in the solar energy-related field – for technical improvements as well as new breakthrough inventions – attests to the advances being made in the industry. Here we have only glimpsed at the potential.

BAREFOOT COLLEGE TEACHING GRANDMOTHERS TO BE SOLAR ENGINEERS

The first and the hardest hit by climate change are the rural poor around the world. Millions of dollars have been spent on awareness raising, training in alternative technologies and preparing vulnerable rural communities to face the challenge. One of the striking success stories is that of India's Barefoot College. Its approach has already made a difference for many.

It may seem an incredible idea, but Barefoot College has trained hundreds of semi-literate and illiterate women – many of them grandmothers – from developing and least developed countries to be solar engineers. And they have gone back home to install solar panels and batteries, maintain and repair them and change life in their remote villages forever. More than that, they have trained others in neighboring villages to do the same. How did it all start?

There are myriads of remote villages in India that can only be reached after days travelling on hard dirt roads in rugged vehicles followed by long treks on foot. Photovoltaic (PV) systems offer the only source of electricity to populations in these remote areas. Access to electricity through simple effective solutions such as the Barefoot approach can dramatically improve the lives of villagers and contributes to development. It lowers lighting costs, enables income-generation and supports educational activities as well as reducing the fire hazards and indoor pollution generated by traditional kerosene lighting.

Barefoot College in Tilonia, India, is the brainchild of Bunker Roy. He founded the College in 1972 with the conviction that the solutions to the problems of the rural poor lie within the community, in their traditional heritage and in new technologies that simply require some adapting to their situation. The 7,430 square meters (80,000 square feet) college complex stands as a testimony to this potential – it was designed and built with locally-sourced materials by villagers using traditional knowledge passed down from one generation to the next, but its energy needs are taken care of by modern technology: solar panels.

Barefoot College started training young people and semi-literate and illiterate rural women to be solar engineers in the 1990s. The trainees came from all over India but language was not a barrier; trainees learned to identify parts by shape and color, to develop the skills required by following mimed instructions, and to execute technical tasks by example. But the College soon realized the best candidates were middle-aged women, most of

"By giving the rural poor access to practical technology, Barefoot College demystifies technology and puts it in the hands of the villagers themselves."

Mr. Bunker Roy, founder of Barefoot College

India's Barefoot Solar Engineers

The solar engineering program at Barefoot College started in India in the 1990s. As of December 2007, Indian Barefoot solar engineers had installed – with absolutely no aid from urban professionals – 8,700 solar units, generating 500 kilowatts (kW) per day, and manufactured 4,100 solar lanterns. As a result, 574 villages and hamlets (nearly 100,000 people) as well as 870 schools now have solar electricity (several villages have more than one school; average attendance is 25 to 30 children).

In the remote Himalayas, 270 Barefoot solar engineers (57 of them semi-literate rural women) have installed 16 solar power plants of 2.5kW each. The women also built 40 parabolic solar cookers and 71 solar water heaters as well as trained others in their communities so they could assist in the establishing of 23 rural electronic workshops.

All photos: Barefoot College

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whom were grandmothers. Speaking at the 3rd International Conference on Appropriate Technologies (see box) held in November in Rwanda, Mr. Roy explained, "Illiterate grandmothers are humble and easy to teach. Grandmothers have a vested interest in the village and have no desire to leave. Give a youth a piece of paper and he is off to the city to find a better job."

Empowering villages and women

Barefoot College believes that the village community has to be sensitized to manage, control and own the technology. Poor village communities can run solar units on their own if they are trained to make the solar equipment at the village level as well as repair and maintain it. Illiterate rural women have demonstrated that this is possible.

Transport of solar panels in the village of Tindjambane, in the region of Timbuktu, Mali

The College has many villages from which to choose, but for solar projects to work and last, the villagers themselves must also make a commitment. The community must make the choice in a transparent and collective manner so they have a sense of ownership of the project – controlling, managing and making all the decisions from the beginning.

When the College's Village Energy and Environment Committee (VEEC) visits, everyone gathers together to learn the advantages of electricity and the possibility for the village to be solar powered. The villagers are informed that the service will not be free: they must decide how much they can contribute monetarily each month for maintenance and repair – an amount that is usually based on what they currently spend on kerosene. They must also choose two villagers to send to Tilonia for six months of training. The VEEC gives the villagers some time to think it over. According to Mr. Roy, the villagers often think the VEEC representatives are a bunch of crazy people from the city who will disappear after the decision is made, never to be seen or heard of again. Obtaining electricity, they surmise, just cannot be so easy and affordable.

Once the villagers have signed on to the project, deciding how much they are prepared to pay per month, the VEEC guides them to selecting the women for solar engineer training in Tilonia: two women in their mid to late 40s. The reaction of the villagers and selected women is generally one of stunned surprise, but the Committee insists and, after much persuasive argument, gets its way.

During their six months of training, the women are taught by other semi-literate and illiterate women:

- to handle sophisticated charge controllers and inverters,
- to install solar panels and link them to batteries,
- to build solar lanterns and
- to establish a local electronic workshop where they can carry out all major and minor repairs to the solar power system themselves.

The solar projects empower the villages but especially the women. As one Barefoot engineer whose husband and in-laws did not want her to go for training explained, "My husband will never say it, but I know he's proud of me. Now he asks me to maintain his accounts for him." Another said, "I now look back at my childhood when I always dreamed of doing something big for my society. My mother used to laugh at me. Today my family, my neighbors, and even the village elders respect me and value my contribution. It feels wonderful."

Exporting Barefoot College

In view of the success of the Barefoot approach in India, especially in the remote Himalayas, the College decided to go global and replicate the program in developing and least developed countries. Ethiopia and Afghanistan were the first to benefit.

In 2004, Ethiopia's first solar installation was completed by a woman in the village of Tukul. The United Nations Development Programme (UNDP) and the Government of Ethiopia then joined the project. By 2006, a total of 36 semi-literate and illiterate villagers had been trained and had completed solar installations in 19 Ethiopian villages, building 250 solar lanterns in 11 rural electronic workshops that they set up themselves. The UNDP and the Skoll Foundation funded the six-month training period in Tilonia for 34 of them.

The first 10 Barefoot engineers from Afghanistan made solar installations in five villages (150 houses) in 2005. With further funding from Norway, at the end of 2008, 21 more Afghan women had been trained and100 villages solar powered.

With support from *Fondation Ensemble* (Together Foundation) and the Dutch organization *Het Groene*

What is Appropriate Technology?

Appropriate technology (AT) is difficult to define and its development and implementation a source of great debate, however there is general agreement on some of the governing characteristics:

- AT should require only small amounts of capital.
- AT must emphasize, wherever possible, the use of local materials.
- Implementation of ATs should focus on labor intensive technology solutions that individuals in communities can participate in.
- The technological solution being developed should be understandable, controllable and maintainable without high levels of education and training and adaptable to include local communities in innovation and implementation.
- Adverse impacts on the environment should be avoided and the technological solution should be sustainable.

The rational of AT resides in empowerment of people at the grass roots community level. Local needs are more effectively met when the community works to address the problem, lowering economic, social and political dependency. Examples from the 3rd International Conference on Appropriate Technologies held in Rwanda include sun cookers that individuals can build themselves using a simple box and aluminum foil, which are readily available and cheap in even the poorest of countries, and the Barefoot College solar technology initiative.

Source: The Relevance of Appropriate Technology, John Tharakan, Department of Chemical Engineering, Howard University, Washington, DC, U.S.

Woud (The Green Forest), the Barefoot College successfully trained women from remote villages in Benin, Bolivia (Plurinational State of), Bhutan, Cameroon, Gambia, Malawi, Mali, Mauritania, Rwanda, Sierra Leone and the United Republic of Tanzania. All have returned home to install PV systems in their villages and maintain them.

Training has also just started for women from Senegal, Djibouti and Sudan.

Not just solar engineers

Barefoot College is a non-governmental organization. The training and initial purchase of the solar panels, tools and equipment for the villages are funded by diverse organizations. For example, the airfare and six-month training fees for all the rural women coming from nearly 15 African countries in 2007 and 2008 was covered by the Indian Technical and Economic Cooperation Division (ITEC), part of India's Ministry of External Affairs.

Barefoot College runs 549 night schools in India, offering classes to children who cannot attend daytime school because they assist their parents at home. The College's adult education includes training in rainwater harvesting (*www.globalrainwaterharvesting.org*) and building piped water systems. There are handicrafts courses to assist women who stay at home in making an income. Barefoot College also provides health services – charging a nominal amount for medicines – and builds awareness on issues of hygiene.

Installation of solar panels in the village of Dejegalia, Timbuktu, Mali

"The College follows the life and work style of Gandhi, which is based on very simple living, eating and working. People come for the challenge rather than the money. No one in the college can earn more than US$100 a month," says Mr. Roy. "It's the only college where paper degrees, diplomas and doctorates are a disqualification because the worth of the person is judged by his or her honesty, integrity, compassion, practical skills, creativity and their ability to work with people without discrimination." In 2006, Barefoot College was awarded the US$1 million Alcan Prize for Sustainability.

"Amongst the poorest of the poor, one-third of total household income may go towards light."

The International Energy Agency

REINVENTING THE AUTOMOBILE
WHAT IT TAKES TO MAKE A CLEAN MACHINE

Our continuing love affair with sleek, buffed high-performance cars and our dependence on motorized transport are presenting society with a huge dilemma. The earth's ecological systems are rapidly degrading and motor transport has played a part in this. The wheeze of gas-guzzling vehicles and the choke of urban smog are powerful reminders that if we are to continue to enjoy the convenience, comfort and advantages of personal mobility, clean energy vehicles are a "must."

The U.S. Environmental Protection Agency estimates that fossil-fuel automobiles emit 1.5 billion tons of greenhouse gases into the atmosphere each year.

Transport, and the mobility it affords, drives development, opening doors to education, employment, healthcare and many other life-enhancing activities. That said, transport is currently responsible for 23 percent of global, energy-related greenhouse gas emissions of which 74 percent is attributable to road transport. Although only 13 percent of the world's population own vehicles, the global fleet already numbers an estimated 900 million and is set to triple by 2050 with the strongest growth in developing countries. With the rise in vehicle ownership, meager progress has been made in reducing overall vehicle emissions in spite of gains in improving fuel efficiency and lowering tailpipe emissions.

These factors, in addition to dwindling energy reserves, highly volatile energy markets, rising environmental consciousness and growing demand for eco-friendly cars are fuelling the "green" imperative within the auto industry, causing it to shift into a new gear. The race is on to develop the ultimate eco-friendly vehicle that is affordable and cost-effective to run. The relentless stream of new models launched by automakers across the globe, from Tata Motor's Nano – billed as the world's cheapest car – to BYD Auto's (China) plug-in hybrid (PHEV) sedan unveiled in late 2008, said to be the world's first mass-produced PHEV, attests to the dynamism with which the industry is taking up this challenge.

The search for alternative fuel-efficient, low-emitting and energy-diverse "powertrain" systems has already given rise to hybrids and is fostering innovations in battery production, electronics and materials engineering, paving the way for the next generation of green vehicles.

Innovate or die

The business of making vehicles is capital intensive, requiring massive up-front investment to develop products that have a limited lifespan. It is an industry characterized by rapid technological advances driven by ever-evolving consumer tastes and an increasingly stringent regulatory environment. Innovation is a constant within this industry, shaping every aspect of the business from the know-how required to craft and improve efficiencies in vehicle manufacture to the creative expertise needed in applying and marketing auto technologies for commercial success. The intellectual property system plays an extremely important role, in protecting core technologies, designs and knowledge assets, and in underpinning the strategic alliances that characterize the industry as well as automakers' ability to promote, develop and capitalize on the strength of their brands.

Automakers are jostling for pole position to produce and commercialize an affordable, high-performance zero-emission car. The fact that the industry accounts for around 17 percent of global research and development (R&D) expenditure, reflects the importance of innovation to auto companies that are seeking to beat off the competition, respond to evolving consumer tastes, gain distinction and secure market share.

Hybrid vehicles

Hybrids combine two power sources, generally an internal combustion engine and an electric motor. They offer increased fuel efficiency and lower emissions along with performance levels comparable to petrol-fuelled vehicles. According to Toyota Motor Corp, the Prius hybrid produces 55 percent less carbon dioxide (CO_2) and nearly half the nitrogen oxide (NO) and hydrocarbons of equivalent petrol-fuelled models.

Industry forecasts suggest that by 2011, 11 percent of all cars will be hybrid. This versatile technology can be used with a range of combustion engines and in various combinations, from "micro" hybrids (limited to recovering braking energy) to "plug-in hybrid electric vehicles" (PHEV) – when the battery is low, an internal combustion engine takes over.

Photo: Toyota Motor Corp.

Hybrids – a transition technology

The drive to identify and use alternative and cleaner energy influences the conceptualization, design and engineering of vehicles, with greater emphasis on electronics than mechanics. The availability of hybrids that run on a combination of fuel sources – typically gas and electricity – signals a transition, bringing us one step closer to containing the environmental impact of motor transport and to the mass production of clean energy vehicles.

The move toward electric propulsion is a paradigm shift in the auto industry. Performance, range and price have been the main challenges in developing electric cars but advances in battery chemistry – batteries are a critical enabling technology for electric and fuel-cell cars – mean we are inching towards solutions that offer improved energy storage, reliability and safety.

Energy can be carried on-board vehicles as liquid fuels, electricity or hydrogen or a combination of these. Each variation poses enormous design, engineering and technological challenges.

While all major automakers are now embracing hybrids, Toyota pioneered the technology, launching its first hybrid, the aptly named Prius (meaning "to go before" in Latin), back in 1997. In the current second-generation Prius, the drivetrain alone is covered by 370 patents – an indication of the technological hurdles the company had to jump in developing the car. The third-generation model, said to be one of the world's most aerodynamically efficient cars (equipped with solar panels, pointing perhaps to another trend in using renewable energy sources for vehicles) resulted in the filing of over 1,000 patents worldwide.

How eco-friendly is electricity?

Dollars per mile, electric cars are cheaper and more eco-friendly. But while electric cars have zero tailpipe emissions, their ecological impact depends on how the electricity that fuels them is produced. For example, a vehicle consuming 15 kilowatt hour (kWh) per 100km in a country where the electricity production generates 800 grams (g) of CO_2 per kWh has a well-to-wheels CO_2 balance of 120g/km (the European target for all new cars by 2015). In countries where electricity production is cleaner this balance falls, for example, in Germany to 75g/km, in France to 15g/km and in Sweden to under 10g/km.[1] These balances compare favorably with the longer-term European target of 95g/km for the new car fleet by 2020.

There are, however, many pathways to generating electricity, and electric drive technologies will enable motorists to tap into a diversity of energy sources. We must, however, be wary of trading one problem for another when identifying and developing alternatives.

Batteries: Re-charging the future

Experts generally agree that the lighter weight, power dense, rechargeable, lithium-ion cells will power future generations of cars. These energy storage devices have lower toxicity levels than the lead acid and nickel metal hydride batteries used respectively in conventional and hybrid vehicles.

Photo: Tesla Motors

The Model S electric sedan, recently launched by California-based Tesla Motors and due to go into production in 2011, can travel up to 300 miles (482.7km) on one charge. With a top speed of 130mph (210km/h), the car goes from 0 to 60mph (96km/h) in around 6 seconds and at US$49,000 is billed as "the first mass-market highway-ready electric vehicle" by company Chief Executive Officer, Elon Musk.

1 Pierre Varenne, Director, Michelin Research Center, Fribourg, Switzerland, cited in the Motor Show Magazine 2009

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Parked end to end, one million cars would circle the planet 125 times!

The global market for lithium-ion batteries is forecast to be worth US$2 billion by 2013. This prospect is spurring the formation of innovation alliances across the industry and beyond. Examples include:

- the "Lithium Ion Battery ION 2015" initiative where BASF, Bosch, Evonik and Volkswagen have joined forces, pumping €360 million into lithium-ion battery R&D;
- the U.S. Council for Automotive Research (USCAR), a partnership between the U.S. Department of Energy, Chrysler, Ford and General Motors (GM) which researches advanced energy systems offering electric cars increased range and performance; and
- Panasonic EV Energy Co., Ltd., a joint venture between Toyota and electronics specialist Panasonic Corporation to develop and manufacture batteries for hybrids.

German auto giant Daimler AG alone currently holds 25 patents in lithium-ion battery technologies. According to Bob Lutz, Vice-chair of Global Product Development at GM, "Breakthrough battery technology will drive future automotive propulsion, and the company that aligns with the best strategic partners will win."

Alternative fuels

The growing availability of biofuels is also helping to reduce emissions and dependence on petroleum. Mixes such as E85 – 85 percent ethanol and 15 percent petrol – are enabling the industry to improve environmental performance while continuing to leverage investment in gasoline engine technology. According to GM, there is enough feedstock for the production of ethanol in the U.S. to offset nearly 40 percent of the energy requirements for automobiles up to 2030. The cellulosic ethanol used in E85 fuels is derived from agricultural (the cornstalk itself), forestry and municipal waste.

Hydrogen, the most abundant element in the universe, offers a promising fuel alternative and hydrogen fuel cells, which have powered space flight for decades, are on the brink of becoming the next core power generator. These fuel cells are environmentally benign, converting hydrogen into electricity via an electrochemical reaction, the by-products of which are water and heat. The prohibitive cost of producing and manufacturing fuel cells, however, has thus far prevented more widespread adoption and use of the technology. But major technological breakthroughs in power density, cold-start capability, system efficiency, durability and production costs mean the industry is coming ever closer to a commercially viable solution.

Cars may also be fuelled by liquid or compressed hydrogen using conventional engines but issues of storage, containment, delivery and safety all need to be addressed before hydrogen fuel stations become commonplace in the consumer market.

The clean machine: an enduring promise

Many automakers are now injecting eco-principles into the lifecycle of car production from conception to disposal. The expressed goal of Nissan Motor Co., Ltd., for example, is to have a 100 percent recovery rate for each car produced. The new Renault Laguna comprises 35kg of recycled plastic that make up over 100 eco-designed components. Over its lifecycle, the Laguna eco²™ generates 3 tonnes less CO_2 than its predecessor.

Innovation has been a hallmark of the auto industry since the first car was built. In the 130 years since Karl Benz, pioneering founder of Mercedes-Benz, received the patent for his first engine in 1879 (German Patent DRP No. 37435), countless innovations have progressively improved the efficiency, comfort, safety and performance of motorized transport.

The need of the hour is revolutionary innovation in energy technology, both within the auto industry and beyond. The specter of rising urban congestion and the need to stem emissions leave no doubt that thevehicles of the future will be, by necessity, green. The environmental imperative is transforming the DNA of motor vehicles, fuelling a trend that promises to make clean motorized transport a realistic option in the very near future.

THE ECO-PATENT COMMONS
CARING THROUGH SHARING

It seems counterintuitive, but big businesses are seeking to prove their green credentials by sharing environmentally-friendly innovations with their competitors. Journalist JO BOWMAN takes a closer look at the Eco-Patent Commons, mentioned in the article "Sharing Technology to Meet a Common Challenge" by Antony Taubman, published in the *WIPO Magazine* Special Issue 2/2009.

Century-old sewing machines would seem an unlikely source of inspiration for the greening of modern manufacturing. But a patent-sharing scheme similar to that used to liberate the sewing machine industry in the 1850s is now being employed to make business cleaner.

The Eco-Patent Commons, founded by some of the world's biggest companies – IBM, Nokia, Sony and Pitney Bowes – provides a means of sharing knowledge for mutual and wider social benefit. The idea is that patents that may have environmental benefits for other manufacturers are contributed to a pool, from which other contributors – and businesses and individuals outside the pool – can draw, free of charge. The technology, which may deal, for instance, with energy conservation, pollution prevention, recycling or water conservation, can then be applied more broadly.

The commons, run by the Geneva-based World Business Council for Sustainable Development (WBCSD), was born of an idea coming from IBM, the company with the largest number of patents in the world.

Not business as usual

Wayne Balta, IBM's Vice President, Corporate Environmental Affairs and Product Safety, explains that a year-long, in-house project examining energy and innovation led to the realization that many companies possess intellectual property that they perhaps did not even realize they had, and certainly nobody outside the company knew they had. Much of that technology could not only be used by other companies but used as a tool for further innovation. IBM approached the WBCSD with the idea, along with other companies they identified as having an environmental agenda and an open mind on intellectual property, and the commons came to fruition – initially with 31 patents pledged – in January 2008.

Mr. Balta says that, while it seems at odds with their competitive spirit for companies to effectively give away technology they have invested in developing, giving to the commons is not just an act of charity. "It's one of those things where, at the beginning, when you create something that's this different, you do not know definitively that it will deliver a specific, quantifiable business benefit."

"We could just continue to possess these patents and it would be business as usual. Or, we could look at our patent portfolio and identify some that we're not going to get the greatest value from through the traditional enforcement of patents," Mr. Balta says. "If we tell the world about their existence, other people might come up with ideas nobody's thought about so far. Some of the patents, for example, involve the accelerated clean-up of contaminants in the environment; there are other companies that could use that."

"We know that if we don't do this, it will be business as usual, and that stuff isn't happening under business as usual."

Ease of access

Contributors to the Eco-Patent Commons include the chemical company DuPont, Ricoh, engineering construction company Tasei Corporation, Xerox and Bosch. The patents pledged now number almost 100, some examples of which are technology for removing liquid contaminants from ground water, and a method for recycling optical disks.

Nokia has pledged a patented system for recycling old mobile phone handsets. Donal O'Connell, Nokia's representative to the commons, says there

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are "softer benefits" to being part of the scheme, in addition to what might be gained technologically from being able to draw on others' technology. Discussions between like-minded people and companies have come about, he says, creating a valuable network of expertise that is collectively raising the visibility and priority of environmental initiatives. Nokia's phone engineers, for instance, have been studying Bosch's automotive patents looking for environmental benefits that might have broader application.

Mr. O'Connell says that ensuring ease of access to the patents pledged was a key issue when creating the commons. Accordingly, individuals and companies do not need to register when they take or use patents. "We wanted something that was easy to administer, and easy for potential users to see what was available," he says. "It was more important that we make it easy for others to use."

Pool parties

The sharing of patented technology and, similarly, joint licensing schemes, are not in themselves new phenomena. One of the earliest instances was in the early 1850s, when various manufacturers of sewing machines spent years trying to sue each other over alleged infringements of their slightly varied designs. To overcome this, in 1856, four major producers, among them Singer, jointly formed the Sewing Machine Combination and pooled their patents. Manufacturers outside the pool had to get a licence to use patents in the pool and pay a fee for every sewing machine they built using the same patented technology.

In the early part of the 20th century, almost all U.S. aircraft manufacturers formed a patent pool because the ownership of vital patents for building planes had been held by just two companies, effectively blocking production at a time when, with war approaching, new aircraft were badly needed. Cooperation between technology companies has been common; in the 1920s, radio manufacturers standardized radio parts, airway frequency locations and television transmission standards. And, under a royalty-share agreement, electronics companies share compression technology to ensure a standardized system for compact discs and DVDs.

Shall we dance?

Maria Mendiluce, Energy Manager with the WBCSD, says the Eco-Patent Commons is the only initiative of its type in the world – one that unites businesses across a diverse range of sectors, with a purely environmental aim. The commons provides a forum for businesses to connect with and gain from the experience and innovation of those that have already succeeding in meeting certain environmental challenges.

While the commons has quickly flourished – from the original 31 patents at the time of launch to the 95 that had been pledged at the time this article was published – she cautions observers to expect long-term results from the program rather than a sudden manufacturing revolution. "We shouldn't expect that because of the initiative, technology is going to dramatically change in the world, but there's a lot of space to share information and knowledge in areas that will help climate change," she says.

"The issue is very sensitive right now for a lot of companies, but we don't think intellectual property rights are a barrier to innovation but in fact can help support it. The issue of climate change is important enough for us to concentrate on this issue."

Mr. Balta says it's probably no coincidence that most of the early contributors to the commons are technology companies. "One thing we learned is that it hasn't necessarily been a common practice for companies to seek patents for their innovations," he says. "I think the technology industry has been much more astute or even aggressive about IP patents than other industries. So, we're finding like-minded, innovation-oriented companies, and we're dancing with new dates."

World Business Council for Sustainable Development (WBCSD)

- Patents are listed in a searchable website hosted by the WBCSD at *www.wbcsd.org*
- The commons is open to businesses working in any industry, which can use pledged patents free of charge and without having to register or notify anyone of their use.
- Businesses can pledge any patent that has either a direct environmental benefit or aids the environment in a less direct way, such as reducing energy consumption during production.

GREEN INNOVATION
WORLD IP DAY
April 26

"The power of human ingenuity is our best hope for restoring the delicate balance between ourselves and our environment. It is our greatest asset in finding solutions to this global challenge, enabling us to move forward from the carbon-based, grey technologies of the past to the carbon-neutral, green innovation of the future." **WIPO Director General Francis Gurry, message for World Intellectual Property Day**

"Green Innovation," the theme of this year's World Intellectual Property (IP) Day hit a mark with IP stakeholders and engaged a broader public. The message from WIPO Director General Francis Gurry, "human ingenuity is our best hope" struck a positive note in audiences downhearted by gloomy economic forecasts and worried about environmental problems.

Following the announcement of the "Green Innovation" theme for IP Day, Mr. Gurry also announced, in February, the establishment of the WIPO Carbon Neutrality Project (see box). April marked the beginning of concrete work on the project.

The WIPO Magazine Green Innovation Special Issue reinforced the IP Day message with articles that highlighted the links between innovation and with the IP system. The Special Issue proved very popular, going into reprint weeks after its first release, and bringing in more letters and feedback than any other issue. The idea of making the IP Day materials available for download, in the spirit of the Day's green theme, was also well-received.

Never has there been such an outflow of creativity in the posters from Member States and observers for the World IP Day web gallery. WIPO had received activity reports from some 60 countries and organizations when this issue went to print. This year several countries held multiple events, organized jointly or separately by ministries, industrial property offices, universities, private sector enterprises and other stakeholders. In addition, 12 WIPO awards were presented to inventors, creators and enterprises in **Kazakhstan**, **Kyrgyzstan**, **Lithuania**, **Mongolia**, the **Russian Federation** and the **Slovak Republic**.

Activity reports

AFRICA

Both the **Algerian** and **Moroccan** copyright offices organized national seminars. The Algerian seminar dealt with the IP protection of computer programs and the theme of Morocco's event was "Copyright and related rights: practices, measures and procedures of protection."

The *Institut de la Francophonie pour l'Entrepreneuriat* (Francophone Entrepreneurship Institute), based in Mauritius, organized an IP information and green innovation campaign in **Benin**. The Rand Institute for Policy and Education aligned IP Day celebrations in **Kenya** with the World Book and Copyright Day to hold a National Innovation Week.

Zambia's Patents and Companies Registration Office and the Ministry of Information and Broadcasting Services organized a march through Lusaka's city center with IP stakeholders, accompanied by a live band, to the venue of the World IP Day celebrations where local artists performed.

ASIA

Asia had the broadest participation with activities in **China**, **Iran** (Islamic Republic of), **India**, **Kazakhstan**, **Kyrgyzstan**, the **Maldives**, **Myanmar**, the **Philippines**, **Saudi Arabia**, **Singapore**, **Thailand**, **Turkey**, the **United Arab Emirates**, **Vietnam** and **Yemen**.

The King Abdulaziz and His Companions Foundation for Giftedness and Creativity (MAWHIBA) and the King Abdulaziz City for Science and Technology (KACST) in Saudi Arabia organized a number of activities, including IP seminars, the

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design of a webpage, posters and charts to display in schools and shopping malls, a mass dispatch of e-mails and SMSs to promote the event and the publication of various newspaper articles.

Thailand organized the preview of the short film "Challenges in Film Making," the screening of the animation movie "Kan-Klauy" and a forum on IP and the creative industries.

Turkey focused on the current trends in green innovation, and the competitive advantage and economic benefits it brings to companies. Representatives from prominent universities, businesses and NGOs shared views and experiences in a seminar on green innovation and IP. Yemen's Trust Intellectual Property Company, under the auspices of the Ministry of Industry and Trade, invited international and national experts and practitioners to an IP Forum.

on collective management and another on patents; held press conferences; launched an IP competition for young people; held a sustainable development exhibition – the list goes on.

The **U.K.** Intellectual Property Office also included young people in its activities. The Cracking Ideas Competition winners, Eveswell Primary School, were given a VIP trip to the Wallace and Gromit's World of Cracking Ideas exhibition at the Science Museum in London.

The **European Patent Office** (EPO), the **United Nations Environment Programme** (UNEP) and the **International Centre for Trade and Sustainable Development** (ICTSD) marked the event by announcing their agreement to undertake a joint project to examine the role of patents in the development and transfer of environmentally sound technologies, in particular in the field of energy generation.

Universidad de Guadalajara, Mexico

MAWHIBA, Saudi Arabia

U.K. Intellectual Property Office

Asociación Argentina de Intérpretes

State Patent Office, Uzbekistan

EUROPE

The event was also very popular in Europe where not only IP offices but private enterprises joined in organizing World IP Day outreach events for staff as well as for their stakeholders. For example, *Electricité de* ***France*** (EDF), a major electrical utility in Europe that uses green technologies to produce clean energy, sensitized its engineers to the need for IP protection and had them participate in a quiz on the theme of IP and renewable energies, such as wind, marine, photovoltaic, geothermal and biomass.

Machiavelli Music International, **Italy**, a firm involved in the licensing and clearances of musical works, dispatched an electronic musical newsletter containing a selection of works by young creators represented by the firm. (Listen in at: *www.machiavellimusic.com/web/promo/042009/042009.html*)

The National Center of Intellectual Property of **Belarus** organized meetings for authors, a seminar

LATIN AMERICA

Support for World IP Day was strong in Latin America, with reports coming in from **Argentina**, **Brazil**, **Colombia**, **Dominican Republic**, **El Salvador**, **Guatemala**, **Mexico**, **Nicaragua** and **Uruguay**. Brazil organized an anti-piracy campaign. El Salvador was very active with a full month of activities, throughout April. Radio, press and web announcements were made, promotional materials were widely displayed, seminars organized and an award ceremony held. The Nicaraguan IP Office held an exhibition on its premises, displaying university projects and local products and culture.

Mexico's *UNIVER Zacatecas* (University of Vera-Cruz) held a workshop to promote culture and awareness of IP themes amongst young people and the entrepreneurial and scientific communities. A lecture on the "IP Challenges arising from Climate Change" was given at a conference held for small businesses. Guatamala's Intellectual Property Registry linked up with various partners, including

Towards a Greener WIPO

WIPO's engagement in environmental issues took a further step forward when Director General Francis Gurry announced, in February, the establishment of the WIPO Carbon Neutrality Project, with the aim of reducing the Organization's carbon footprint. Mr. Gurry expressed his personal commitment to the initiative, which has also been positively received by WIPO staff. "As part of the United Nations family, we have a duty to do everything we can to minimize the impact of the Organization's activities on the environment," he said.

Ms. Isabelle Boutillon, who oversees the project, said that the principle aim is to coordinate and catalyze initiatives that would lead to and generate environmental benefits within the context of an initial five-year strategic plan. She noted, "Climate change and environmental degradation are not someone else's problem, they are our common problem. We are counting on the active engagement of everyone at WIPO to help us really make a difference in improving the Organization's environmental credentials." She added, "This is a long-term undertaking that will require patience and determination, but I am confident that with the goodwill and support of our colleagues we can make a meaningful difference."

The initiative also offers an opportunity to optimize WIPO's operations. Encouraging judicious and environmentally-aware use of resources promises to generate a number of savings. Simply switching off lights and computers at the end of the day, for example, can lead to lower energy and utility bills, while reducing the number of photocopies and using recycling bins can lower the Organization's consumption of paper and other office supplies.

The facts point to an unavoidable need for action. According to the UN Environmental Programme's publication "Kick the Habit," while 100 square meters of forest are needed to sequester 3,500 kilograms (kg) of carbon dioxide each year, the average world citizen emits a whopping 4,080kg of carbon dioxide annually. The same publication explains that we generate millions of tons of carbon dioxide each year by putting our electrical appliances on standby.

UN Secretary General Ban Ki-moon recently said "we will lead by example by moving towards carbon neutrality throughout the UN System," confirming the commitment of every UN agency, fund and program to this objective. The top UN official said "climate change is as much an opportunity as it is a threat. It is our chance to usher in a new age of green economics and truly sustainable development."

Universidad del Valle, on projects to inform students, researchers and professors on the IP issues that concern them.

Universidad Ricardo Palma, Peru

Adjusting themes

The World IP Day circular suggested that the theme could be adjusted where necessary, and **Jamaica** did just so. The theme of its week-long celebrations was "Creativity: Protect! Collect! Respect!" While **Ethiopia** celebrated with the theme "IP Asset Development and Exploitation," holding a two-day workshop on the "Extension of the Ethiopian Fine Coffees Initiative."

Finland, where World IP Day was declared Finnish Inventors' Day, chose "Recovery through Innovation," a topical theme for the current economic situation. **Uzbekistan** focused on trademarks, with a conference on "Trademarks and their Importance for a Developing Economy" and a competition for organizations to develop their own trademarks.

Get the picture

WIPO Magazine encourages its readers to get a more complete picture by visiting the World IP Day activities page at *www.wipo.int/ip-outreach/en/ipday/2009/activities.html*. Despite the economic downturn, WIPO Member States and observers have shown great creativity and initiative in the events they organized to reach out to a vast and diverse audience. WIPO welcomes their participation and appreciates their efforts. We look forward to a further broadening of celebrations next year.

BICENTENARY OF LOUIS BRAILLE

The world at our fingertips

This year marks the bicentenary of the birth of Louis Braille – the man who created a raised-dot system of reading and writing that changed the lives of millions of blind and visually-impaired people.

Louis Braille was born in Coupvray, near Paris, on January 4, 1809. An injury to his left eye at his father's harness-making workshop left him blind in that eye at the age of three. The injury caused an infection that spread to his right eye, leaving him completely blind two years later.

Photo: Blista-Brailletec

A portable braille printer

He received a scholarship to study science and music at the Royal Institute for Blind Youth in Paris and became a talented cellist and organist. But his was an exceptional case as, at the time, blind students were usually taught basic craft and trade skills, such as wicker-work or shoemaking, so they could earn a living after completing school.

Inventing braille

At that time, the Royal Institute, founded by Valentin Haüy, used a reading system based on the Haüy method, an arrangement of copper wires pressed into the large print text of books. The books were extremely heavy and difficult to carry and had two other major disadvantages: they did not help blind students learn to write and were very expensive.

In 1821, Charles Barbier – an artillery officer who had invented an adapted night writing procedure, a basic point method that allowed soldiers to communicate without speaking – visited the Royal Institute to demonstrate his method. He used 12-dot arrangements in a rectangle to represent sounds. The method caught the interest of the young Louis Braille.

Over the next three years, Louis Braille started teaching at the Royal Institute and devoted his spare time to improving Barbier's system. He changed the number of dots to six with each arrangement corresponding to a letter. Using his father's stitching awl, the very instrument that had blinded him, he completed his raised-dot system at the age of 15, in 1824. Braille characters consist of six tactile dots arranged in two columns and three rows that can form 64 combinations, mapping letters, numbers and symbols.

In 1829, Louis Braille invented a six-dot musical notation system and published his first book in braille, *Method of Writing Words, Music, and Plain Songs by Means of Dots, for Use by the Blind and Arranged for Them*. He continued to further refine and improve the system over the years, finalizing it in 1837. Louis Braille and his friend Pierre Foucault, who had gone blind at the age of 6 and had a brilliant mechanical mind, developed a machine to accelerate raised-dot printing.

Louis Braille died of tuberculosis in 1852 at the age of 43. In 1952, the centenary of his death, his remains were transferred to the Panthéon in Paris.

The braille system

The braille system was adopted in France two years after Louis Braille's death and gradually introduced in other countries and regions of the world. It became a universally-recognized standard, adapted to different scripts from Roman, Greek and Russian to Chinese, Swedish and Esperanto. Braille's invention sparked a genuine revolution among the blind and visually-impaired, giving them better access to education, culture and information and offering a greater degree of autonomy.

Tiflolibros

Tiflolibros, the first digital library for the Spanish-speaking visually-impaired, got off to a modest start in 1999 but now comprises over 20,000 volumes and over 3,000 subscribers in 40 countries. The project began in Buenos Aires, in the apartment of a blind couple who have a passion for literature.

Using *Tiflolector*, a software program created by André Duré, a blind programmer and co-founder of the project, Pueblo Lecuona and Mara Lis Vilar started to create the library by scanning books and then listening as a voice synthesizer read the scanned material so they could correct mistakes – a very time-consuming process. As their library grew, they exchanged their digitized books with other visually-impaired people. Soon their apartment was too small for both *Tiflolibros* and their growing family. They moved out and *Tiflolibros* took over the entire space. There are now 80 volunteers in several countries scanning and correcting new talking books for the library.

Tiflolibros accepts subscribers with severe or total visual impairment. Applicants must provide a certificate attesting to their disability. Representatives of institutions for the blind may also use the library. Members can listen to the books on the library computer or receive their books on CD by mail for less than a dollar a book. They can then listen to them on CD and MP3 players or their computers.

Tiflolibros functions under an exception for visually impaired persons that is currently part of Argentina's copyright law. The books are translated in cooperation with publishers, many of whom already had a long standing practice of providing free copies to organizations for translation into braille.

Braille remains an essential tool today. It enables the blind and visually-impaired to read books and maps and even co-pilot airplanes. Braille labeling is found on articles such as food products, lift buttons, subway maps and voting ballots. In many countries, it is mandatory to label pharmaceutical products in braille.

Braille and new technologies

Braille has kept pace with the technological and communication developments of the 21st century. There is now a whole range of methods for producing braille both on paper and in digital format, including simple tools such as the "frame and stylus" that push dots into paper and the "jot-a-dot" braille notetaker which is similar to a typewriter. There are also more sophisticated devices such as embossers or braille printers that connect to a computer in the same way as text printers do. Electronic notetakers and *braillers* give speech feedback and produce braille by raising and lowering pins on a display in response to an electronic signal.

Whether or not the visually-impaired use braille usually depends on their degree of disability and the age at which they are no longer able to read commercially available publications comfortably. Digital technologies offer new possibilities for facilitating access to content for the visually-impaired in formats other than braille, including large print publications, audio recordings, photographic enlargements and digital copies compatible with screen-reading software that can read aloud the text appearing on a computer screen or with software that magnifies the size of text displayed on a screen. Digital talking books that simultaneously generate output in braille are also available.

Braille and copyright

Any conversion – reproduction – of material into an alternative format usually requires authorization by the right owner of the work, unless a specific exception exists. A recent study commissioned by WIPO shows that the conversion of content into braille format appears to be one of the most common exceptions to the rule; often, national copyright laws provide specific limitations and exceptions for the benefit of the visually-impaired.

It is widely acknowledged that progress is still to be made in broadening the range of copyright-protected material available – both analog and digital – in accessible formats as well as facilitating dissemination across multiple jurisdictions in a timely way to enhance opportunities for literacy, independence and productivity. WIPO closely monitors options for appropriate possible steps in this regard.

For more information on national copyright laws see *www.wipo.int/meetings/en/doc_details.jsp?doc_id=75696*

LEGAL PIONEERING AT THE ONLINE AUCTION FRONTIER

Online auction sites are being challenged by trademark owners on diverse grounds in courts around the world. The cases raise many questions and court decisions have gone both ways, for and against the trademark holders. Here, French and European trademark and design attorney, partner at Cabinet Lavoix, Paris, CATHERINE LEVALET analyzes the 2008 decisions of the French Court in the LVMH vs eBay cases.

On June 30, 2008, the American company eBay Inc – owner of the world's largest and best-known online auction site – and its subsidiary eBay International AG were jointly ordered by the Commercial Court of Paris to pay companies of the luxury group Moët Hennessy-Louis Vuitton SA (LVMH Group) almost €40 million for failing to prevent the sale of counterfeit goods and for violating a selective distribution channel on their website. The cases raise questions concerning jurisdiction and Internet hosting, and involve a new way of calculating damages, making for an interesting case study.

The Commercial Court of Paris gave three decisions in favor of LVMH in three separate cases. The first two cases were brought, respectively, by Louis Vuitton Malletier, the handbag and luggage section of the LVMH Group, and Christian Dior Couture, one of the Group's *haute couture* fashion houses. They alleged negligence on the part of eBay for not having taken steps to stop the sale of illegal copies of their trademarked goods on its website. The third case concerned the LVMH Group's perfume brands – namely Dior,™ Guerlain,™ Kenzo™ and Givenchy™ – and alleged negligence by eBay in not having taken steps to prevent the sale of perfumes outside of the Group's selective distribution channel. Due to the similarity of the legal issues raised, this article analyzes the cases together.

French jurisdiction

EBay Inc., which is headquartered in the U.S., and eBay International AG, which is located in Switzerland, challenged the French court's jurisdiction, as the offending announcements were displayed on the U.S. website – eBay.com – and the French public was not the target of the advertisements. Additionally, it was argued that the servers which host the company's business are located in the U.S., limiting jurisdiction to that country.

The Court rejected the arguments put forward by eBay. It noted that under the Lugano Convention of 1988 it had jurisdiction over eBay International AG, the Swiss-based subsidiary of eBay Inc. The finding was based on Article 5-3, which provides that "A person domiciled in a Contracting State may, in another Contracting State, be sued: in matters relating to tort… in the courts for the place where the harmful event occurred."[1] The Court, looking at European Union jurisprudence, indicated that "place" takes in both where the harm occurred as well as where a causal event could be established.[2] It further noted that as Internet sites are accessible to the French public (even where not directed to that public), under the jurisprudence of the *Cour de Cassation* (French Court of Last Resort), French courts have jurisdiction to hear claims for damages caused in France. All together, the Court here found it had jurisdiction over eBay International AG.

In the matter of eBay Inc., the Court noted that the offences were the same as those alleged for eBay International AG. Although it was noted that there was no agreement between France and the U.S. regarding jurisdictional conflicts, it took into account the extension of domestic jurisdiction to international matters by the *Cour de Cassation* as well as article 46 of the French Civil Procedure Code, which provides that a plaintiff may bring an action in tort before the Court of a country where contentious acts took place or damage was suffered.[3]

Status of eBay

Internet hosts benefit from an exemption from liability provided for by the E-Commerce European Directive of June 8, 2000, and the French Law for Confidence in the Digital Economy. Article 6-1 of the French Law defines an Internet host as an en-

1 Convention on jurisdiction and the enforcement of judgments in civil and commercial matters of 16 September 1988 (extending the Brussels Convention of 1968)

2 Commercial Court of Paris, General docket No: 200607799 (English Translation), p. 6

3 *Id.* p. 7

tity that ensures "storage of signals, written data, images, sounds or messages of any nature, provided by the service's addressees." The European Directive states that Internet hosts are not liable for the information stored at their users' request, provided they have no actual knowledge of illegal activity and, as regards claims for damages, are not aware of facts or circumstances surrounding any illegal activity or that, upon becoming or being made aware of such facts, they immediately remove or disable access to that information.

EBay claimed Internet host status in order to benefit from exemption from liability. However, the Court ruled that eBay not only ensures storage but also acts as a broker, promoting transactions and collecting commissions on each sale. Given that eBay's storage and brokerage activities are indissociable and that the eBay platform provides storage services for announcements solely in connection with its brokerage activity, the Court held that eBay companies are brokers and may not invoke special Internet host status.

The nature of the offenses

In each of the three cases, the Court found against eBay on grounds of common tort as provided for under articles 1382 and 1383 of the French Civil Code. In the cases of Louis Vuitton Malletier and Christian Dior Couture, the Court suggested that activities undertaken by various sites fostered and amplified the marketing of illicit goods and, by allowing this, eBay had defaulted on its obligation to trademark owners. Ebay was therefore held to be negligent for failing to take steps to remove or prevent illegal goods being sold through their brokerage activities. It was clearly demonstrated in both cases that eBay had allowed the sale of fake goods, which were easily identifiable as such either because of their low price or the mention "fake or counterfeit."

The third case involved the selling of genuine perfumes in violation of the selective distribution channel; here the Court reproached eBay for not having verified that the sellers using their Internet platform were duly registered with the French company and authorized to sell their products. Many of the perfumes carried labels stating that "this article must only be sold by an authorized retailer." Ebay was ordered to stop selling or allowing the sales of the claimants brands.

The Court further noted that eBay had refused to enforce effective measures to combat counterfeiting, such as requiring the seller to produce a certificate of authenticity or an invoice for the relevant goods. The Court found that, under French Law of Civil Liability, eBay had committed acts of negligence, abstention – in that they took no action to prevent infringement – and parasitism as they unduly profited from the fame of these well-known marks.

Assessment of damages

In the three decisions, the judges accepted the plaintiffs' allegations of illegal trademark exploitation, tarnishing of their image and moral damage. However, although the decisions were based on the law of tort, the judges did not assess damages according to losses suffered or loss of expected income. Instead, the Court used a new method of assessment, introduced by the Law Relating to the Fight Against Counterfeiting of October 29, 2007, that consists of determining a lump sum.

Considering the counterfeiter as a licensee, the judges set the damages at an amount corresponding to the royalties that would have been owed had the infringer requested permission to use the mark. The use of this method in what were not infringement cases *per se* was a surprising departure from previous practice. It appears likely that, in the future, French judges may extend the use of the lump sum method to cases whose scope goes beyond counterfeiting matters.

Conclusion

The Court's decisions are in line with a later (December 19, 2008) decision issued by the Paris Court of Appeal in the case of L'Oréal vs eBay and its ruling on the French courts' jurisdiction. The decisions also support eBay's being described as a "broker" in the earlier (June 4, 2008) decision of the Troyes Court of First Instance in the case of Hermes vs eBay.

The Court's stance on the nature of eBay's offenses is innovative and awaits the final decision of the French Court of Appeal to which eBay has appealed all three decisions. The decisions stand in stark contrast to that taken two weeks later by a Federal Court in New York in the case of Tiffany vs. eBay. The Court there dismissed the charges against eBay, considering that it had taken sufficient measures to prevent infringement and noting that the obligation is on rights holders to police their mark. Tiffany has appealed that decision.

EFFICIENT ALTERNATIVE **DISPUTE RESOLUTION** IN INTELLECTUAL PROPERTY

Growth in international transactions has multiplied the potential for cross-border intellectual property (IP) disputes. Global challenges – such as the digital environment, climate change issues, access to health care, the protection of traditional knowledge and traditional cultural expressions and the preservation of biodiversity – may create new types of IP disputes. Meanwhile, the economic downturn is providing an incentive for stakeholders to seek more efficient and affordable means of resolving such disputes than through court litigation – making alternative dispute resolution (ADR) an increasingly attractive option.

Photos.com

ADR refers to neutral mechanisms allowing parties to solve their disputes outside of court in a private forum, with the assistance of a qualified neutral intermediary of their choice. ADR can only be applied if all parties agree to submit their dispute to the procedure or if it is mandated by a competent court. The benefits include time and cost efficiency, flexibility, party control, neutrality, a single procedure, confidentiality and expertise.

The WIPO Arbitration and Mediation Center

The WIPO Arbitration and Mediation Center (WIPO Center) was established in 1994 on a not-for-profit basis to facilitate the time and cost-effective resolution of IP and related disputes through ADR. It is recognized as an international and neutral forum especially appropriate for cross-border and cross-cultural disputes and conducts procedures under the WIPO Mediation, Expedited Arbitration, Arbitration and Expert Determination Rules (WIPO Rules).

The WIPO Rules contain specific provisions that are particularly suitable for IP and related disputes, such as those concerning confidentiality and technical evidence. However, their scope is not limited to such disputes and they can be, and have been, successfully applied in other areas. The WIPO Center makes available, in different languages, model clauses and agreements that parties may use as a basis for submitting their disputes to WIPO.

As experience has shown, the effectiveness of ADR depends largely on the quality of the mediator, arbitrator or expert. The WIPO Center maintains a database of over 1,500 qualified neutrals from 70 countries with further candidates added according to case needs, and it assists in the appointment of neutrals in each case.

The WIPO Center works also as a resource center to raise awareness of the valuable role ADR can play in different sectors. It provides ADR advice to interested private and public entities as well as training in IP-related ADR through workshops and conferences. The WIPO Center recently collaborated with the WIPO Academy in introducing an online course on Arbitration and Mediation under the WIPO Rules.

Tailored ADR services

The WIPO Center recognizes that certain sectors experience specific recurring types of disputes with particular features and needs that can best be addressed by specially tailored ADR services. It works with IP owners and users as well as their representative organizations to facilitate or establish specially adapted ADR schemes.

One such scheme is the WIPO-initiated Uniform Domain Name Dispute Resolution Policy (UDRP), under which the WIPO Center has been providing services since 1999. More recently, in 2008, the WIPO Center responded to a request by the Association of International Collective Management of Audiovisual Works (AGICOA) by developing the "WIPO Expedited Arbitration Rules for AGICOA," tailored to the specific needs of AGICOA right holders. One provision includes the direct implementation of the award by AGICOA, which updates the rights and releases the royalties accordingly. For AGICOA disputes, the WIPO Center has

Services of the WIPO Arbitration and Mediation Center

Mediation: a procedure in which one or more independent mediators assist the parties in reaching a settlement of the dispute through facilitating dialogue and helping the parties to identify their interests. The mediator does not render a decision.

Arbitration: a procedure in which a dispute is submitted to one or more independent arbitrators who make a binding decision on the dispute. The decision of the arbitrator is internationally enforceable under the 1958 New York Convention for the Recognition and Enforcement of Foreign Arbitral Awards.

Expedited Arbitration: an arbitration procedure with shortened timelines and reduced costs, normally providing for a sole arbitrator. The award is enforceable under the New York Convention.

Expert Determination: a procedure in which a specific question is submitted to one or more independent experts who make a determination on the referred matter. The determination is binding, unless the parties agree otherwise.

identified a special panel of copyright and entertainment law arbitrators from various jurisdictions (for more information see *www.wipo.int/amc/en/arbitration/agicoa/*).

The WIPO Center also collaborates with stakeholders in emerging IP-related areas, including biodiversity, traditional knowledge, traditional cultural expressions and access to health care, in order to develop adapted dispute resolution systems. It has, for instance, been involved in informal explorations of ADR's potential in the context of the Convention on Biological Diversity and the International Treaty on Plant Genetic Resources for Food and Agriculture.

Trends in WIPO mediation and arbitration

The WIPO Center – having administered over 80 mediations and 110 arbitrations, the majority of which were filed in the last four years – has observed various trends and developments in IP dispute resolution:

- 41 percent of the administered procedures were mediation cases, 49 percent standard arbitration, and 10 percent expedited arbitration.
- The WIPO clauses and procedures are often found in a combined model. For example, a frequently used WIPO clause is that providing for "mediation, followed in the absence of a settlement by (expedited) arbitration." It has the advantage of giving parties the opportunity to settle their case in a more informal forum before moving to arbitration.
- WIPO standard arbitration tends to be used in more complex cases such as patent disputes, which generally last from 12 to 18 months. WIPO expedited arbitration is primarily used in disputes where a lower amount is at stake, less voluminous and technical evidence is involved and where a quick result is needed, which tends to be the case for trademark and software-related disputes. In general, the expedited arbitration procedure takes up to six months.

WIPO mediation and arbitration have been used in disputes covering a variety of fields, including patent infringement and licenses, information technology transactions, telecommunications, distribution agreements for pharmaceutical products, copyright issues, research and development agreements, knowledge transfer, trademark coexistence agreements, art marketing agreements, joint venture agreements, engineering disputes, life sciences, sports, entertainment, domain name disputes and cases arising out of agreements in settlement of prior multi-jurisdictional IP litigation. Parties have also used the Center's services in non-IP-related disputes, such as general contractual matters, insurance, construction and employment (at an IP law firm).

Settlement trends

The PriceWaterhouseCoopers (PWC) study on "International arbitration: Corporate attitudes and practices" observed a general trend according to which parties explore settlement at different stages of the dispute resolution process.[1] Twenty-five percent of the study's participants indicated achieving a settlement before the arbitral award, while 7 percent reported settlements that were implemented in a consent award, suggesting an approximate settlement rate of 32 percent in international arbitration within the perimeters of the survey.

The WIPO Center observes an even higher settlement trend in relation to IP-related disputes.[2] The flexibility of WIPO ADR procedures allows parties to combine the different procedures and to consider amicable settlement throughout the process.

1 *www.pwc.co.uk/eng/publications/international_arbitration_2008.html*

2 See also: *Update on the WIPO Arbitration and Mediation Center's Experience in the Resolution of Intellectual Property Disputes*, WIPO Center, *Les Nouvelles*, Journal of the Licensing Executives Society International, March 2009, p. 49

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A WIPO Expedited Arbitration Relating to a Banking Software Dispute

Another area in which WIPO ADR has recently been used is banking. Banks can be involved in a variety of IP-related disputes, for example, in connection with the use of a bank's trademark or the development of software systems, as this case demonstrates.

A U.S. company providing data processing software and services and an Asian bank concluded an agreement regarding the provision of account processing services. The parties agreed the U.S. company was to be the exclusive service provider for certain of the bank's affiliates in North America and Europe. Any dispute arising out of or in connection with the agreement would be resolved under the WIPO Expedited Arbitration Rules.

Four years later, the U.S. company alleged the bank had violated the agreement by using the processing services of third parties in the countries covered by the agreement. When the parties failed to settle the dispute, the U.S. service provider commenced WIPO expedited arbitration proceedings, claiming infringement of the agreement and substantial consequential damages.

The parties agreed upon a sole arbitrator who held a two-day hearing in New York. The parties and the arbitrator agreed to use the WIPO Center's electronic case communication facility, WIPO ECAF. After three months, the arbitrator rendered a final award for partial infringement of the agreement granting damages to the U.S. service provider.

For more information on this or other WIPO cases, see www.wipo.int/amc/en/center/caseload.html.

In WIPO mediation, 71 percent of cases settled, 23 percent did not and 6 percent are pending. Most settlements occur during the mediation phase, consistent with the parties' intent in using this mechanism and with the role of mediator. The mediator assists the parties to explore workable, interest-based solutions that help them to preserve their long-term relationship.

But a number of WIPO cases also end in settlement after the termination of the mediation. By enabling the parties to identify their interests and to better understand their dispute, mediation can provide a basis for direct negotiation between the parties after the mediation. For example, in a recent WIPO mediation, a European university holding several pharmaceutical patent applications and a European pharmaceutical company used mediation in order to conclude a license agreement. The mediator, a lawyer with years of experience in the pharmaceutical industry, helped the parties to identify the issues and deepen their understanding of the legal circumstances. After the mediation, the parties resumed direct negotiations and reached an agreement.

Interestingly, a significant proportion of WIPO arbitration cases also result in settlement: 50 percent of cases settled (including consent awards), 39 percent did not settle and an award was issued (excluding consent awards) and 11 percent are pending. The WIPO Arbitration Rules provide that the arbitral tribunal can suggest that the parties explore settlement whenever it deems appropriate. If the parties so wish, the arbitral tribunal can give them a preliminary view of the case in order to facilitate settlement discussions. Where the parties conclude a settlement before an award is made, the arbitral tribunal can, upon the parties' joint request, record that settlement in the form of a consent award, which is enforceable under the New York Convention.

Remedies

ADR procedures are flexible mechanisms allowing parties to explore appropriate remedies that may not always be available in court litigation.

While monetary relief remains the most common form sought in WIPO cases, parties often also request specific actions as a remedy, such as a declaration of non-performance of contractual obligations, or of infringement of rights. Other forms of remedies sought are, for instance, further safeguards for the preservation of confidentiality of evidence, the provision of a security, the production of specific data, the delivery of a specific good or the conclusion of new contracts.

SIGNS OF THE TIMES

Article 6*ter* enters the e-communication era

The first electronic publication of signs protected under Article 6*ter* of the Paris Convention for the Protection of Industrial Property went live on March 31 on WIPO's website.* Signs – emblems, flags and armorial bearings – of States party to the Paris Convention and signs, names and abbreviations belonging to international intergovernmental organizations – all protected under Article 6*ter* – are now no longer being communicated individually and on paper but by means of grouped, biannual electronic publication in the "6*ter* Express" database.

Unlike trademarks, which have a commercial purpose and are owned by individual persons, companies and entities, State signs or the signs, names and abbreviations of international intergovernmental organizations cannot be the subject of individual property rights. The use of "World Health Organization" or "WHO" as a trademark, for example, would be highly misleading as to the origin or endorsement of any goods or services to which it was affixed. Article 6*ter*, therefore, prohibits the registration or use of such signs, names and abbreviations as trademarks. The provision also covers official signs and hallmarks indicating control and warranty, adopted by States.

The intention of Article 6*ter* is not to create a special form of intellectual property right for States and international intergovernmental organizations, but to prevent the signs, names and abbreviations associated with them from being used or appropriated as trademarks without proper authorization. The provision was first introduced into the Paris Convention in 1925 – then further extended and interpreted in 1958 and 1992 – and is binding on all 173 States party to the Convention and on all 153 members of the World Trade Organization (WTO) bound by the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement).

Communication under the provision

With the exception of State flags, the protection of signs under Article 6*ter* is subject to reciprocal communication – through the intermediary of WIPO – of the sign for which protection is requested. In the past, this meant that a State or organization had to send paper copies of the sign to be protected to WIPO, which, in turn, sent it to all other States party to the Paris Convention or members of the WTO.

Protection under Article 6*ter* is not immediate but subject to a 12-month objection period, which starts on the date of the receipt of the sign communicated by WIPO. Since signs were communicated by mail, each receiver had to determine individually the start and end date of the 12-month period, for which there was no central record.

To help resolve those difficulties, and make better use of modern communication technology, member States of the Paris Convention decided at their autumn 2008 meeting to replace individual paper communication by a periodic (half yearly) electronic communication, the first of which took place on March 31.

The date of the electronic publication is considered the general starting point of the 12-month objection period. In addition to the enhanced legal security resulting from this procedure, it is no longer necessary to send paper copies back and forth. This new publication procedure uses the "6*ter* Express" database, which contains 2,416 individual records, is fully accessible and searchable online, and is free of charge. Updated versions of the database are also being made available on CD-ROM, and can be ordered from WIPO. The next e-publication of Article 6*ter* protected signs will be on September 30.

The first Article 6*ter* electronic publication on March 31 concerned 59 signs of five States and 59 signs of six international intergovernmental organizations, including the below.

Official Sign of Tunisia indicating control and warranty over handicraft products

Emblem of the United Nations Industrial Development Organization

Armorial bearings of the Czech Republic

Agreement on the Conservation of Cetaceans of the Black Sea, Mediterranean Sea and Contiguous Atlantic Area

For more information concerning Article 6*ter*, see *www.wipo.int/article6ter/en/*.

COMMITTEE MEETING

SCP to Intensify Work on Several Patent-Related Issues

The Standing Committee on the Law of Patents (SCP) agreed on March 27, at the close of its week-long meeting, on a range of work items that will continue to clarify and focus attention on key substantive issues relating to patent law and practice.

The Committee reaffirmed that the non-exhaustive list of issues identified at its June 2008 meeting would remain open for further elaboration and discussion at its next session, scheduled for November 9 to 13. It also decided to include two further issues in the list, namely "patents and the environment, with a particular attention to climate change and alternative sources of energy" and "patent quality management systems."

SCP members agreed that the four preliminary studies on standards and patents, exclusions from patentable subject matter and exceptions and limitations to the rights, the client-attorney privilege and dissemination of patent information which had been the subject of the discussions, would remain open for further comments at its next meeting. In summarizing the work of the Committee, the Chair said that the SCP agreed to ask the Secretariat to:

(a) commission external experts to prepare a study on exclusions, exceptions and limitations focused on, but not limited to, issues suggested by members, such as public health, education, research and experimentation and patentability of life forms, including from a public policy, socio-economic developmental perspective bearing in mind the level of economic development;
(b) prepare a concept paper on technical solutions to improve greater access to, and dissemination of, patent information;
(c) expand the preliminary study on the client-attorney privilege to reflect the current state of play, taking into account the perspective of various stakeholders and using external experts, if necessary; and
(d) establish preliminary studies on "Transfer of Technology" and "Opposition Systems."

It was also agreed that the Secretariat would present the studies to member States at the beginning of the SCP's November session.

A number of member States stressed the importance of encouraging broad engagement in the work of the Committee and requested availability of all studies in the six official UN languages – Arabic, Chinese, English, French, Russian, and Spanish. At present, SCP documents are prepared in English, French and Spanish. Delegates further expressed their support for a Conference (see the announcement on the inside front cover of this issue) to be held on July 13 and 14 as suggested by the SCP at its June 2008 session.

Delegations from 103 countries, 10 international organizations and 28 non-governmental organizations participated in the Committee which was chaired by Mr. Maximiliano Santa Cruz from Chile.

BOOK REVIEW

Intangible Cultural Heritage and Intellectual Property – Communities, Cultural Diversity and Sustainable Development

Intangible cultural heritage (ICH) consists of all practices, expressions, knowledge and skills that communities and individuals recognize as part of their cultural heritage. Oral traditions, dance, music, rituals and festive events, knowledge concerning nature, and craftsmanship, among others, are all manifestations of ICH. In 2003, UNESCO adopted the Convention for the Safeguarding of the Intangible Cultural Heritage, whose purposes are to safeguard ICH, but also to ensure its respect, to raise awareness about its importance, and to provide for international cooperation and assistance.

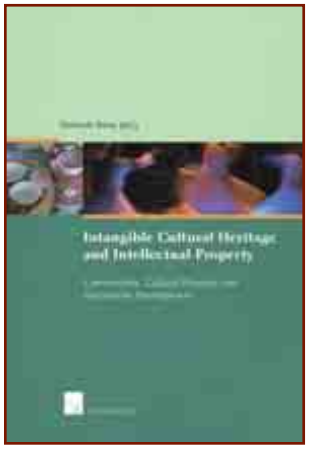
Professor **Toshiyuki Kono**, Faculty of Law, Kyushu University, Japan, participated as an expert in the drafting of the Convention. In the course of his work, Professor Kono sensed that cooperation between WIPO and UNESCO on ICH issues could be strengthened and that mutual understanding needed reinforced. To help remedy that situation, Kyushu University co-organized an international conference in India in 2007 on the interface between ICH and intellectual property (IP) under the Convention. The conference provided a forum for professionals in the field of protection of cultural traditions.

The book, meticulously edited by Professor Kono, is a compilation of extended conference papers, which together compose a major work on the interface between the legal protection and safeguarding of ICH. Several chapters address the work of WIPO and, in particular, the WIPO Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore (IGC)

The book gathers the views of scholars and practitioners with diverse expertise (lawyers, anthropologists, policy makers, academics, ethnomusicologists, archivists, and others), and national backgrounds (e.g., India, Brazil, Australia and Canada). It offers a broad overview of the issues crucial to the survival of ICH, a mainspring of cultural diversity and a source of sustainable development.

The book covers four main themes and opens with an outline of unanswered questions surrounding the ICH Convention that are then developed in subsequent chapters.

Part two provides an analysis of ICH inventories as a means of safeguarding ICH, and lays out the controversies and limits arising from the establishment of inventories. Wend B. Wendland, of WIPO's Global IP Issues Division, explores the IP dimension and takes a look at IP options when documenting, recording and digitizing ICH. In part three, the book delves into the important issue of community ownership of ICH. The authors explain the issues of control over cultural traditions and the recognition of communities and their ICH. In part four, the authors examine the notion of prior informed consent (PIC), designed to empower the bearers of cultural traditions. Perhaps the book's most interesting feature is that it addresses, in part five, the benefits and potential negative consequences of ICH safeguarding efforts and regulatory regimes.



Toshiyuki Kono (ed.) January, 2009
ISBN 978-90-5095-758-8
xvi + 416 pp.
Price: €75.00

This thorough approach to the topic of ICH will be of great value to anyone whose activities touch upon the legal protection or safeguarding of ICH. Despite the variety in contributions, the book reflects the authors' hope that ICH will not only be safeguarded in archives and museums but also in its living form. With insightful analyses and well-researched examples, Professor Kono's book serves as a helpful tool for those involved in the management of ICH and its relationship with IP, policy, law and practice.

LETTERS AND COMMENT

Raising IP Awareness in the Philippines

Photos: IP Philippines

From
Atty Adrian S Cristobal Jr,
Director General,
IP Philippines

Not as simple as selling a bar of soap was how we described raising IP awareness in the Philippines in 2007 for the *WIPO Magazine* (see issue 5/2007 "No Short Cuts – Raising Awareness of IP in the Philippines"). Well, it still is not as simple as selling a bar of soap, but we're making headway.

In 2008, IP Philippines Communications Team made certain breakthroughs in public outreach that has set an irreversible momentum for 2009 and the years to come. Strategic actions to improve public outreach included public relations (PR), advertising, exhibition areas, seminars, workshops and conferences, the Customer Service Area, active promotions via trade fairs and partnerships. Today, while advertising is still used sparingly, PR is enhancing IP Philippines' public outreach. With materials tailored to fit various target media, news about IP Philippines has covered the gamut of print, broadcast and web.

With such wide PR coverage, IP Philippines expects to expand its audience reach and clientele. A dynamic Communications Plan has also allowed IP Philippines to be more proactive in addressing the issues and developments that fall under its purview. In the first quarter of 2009, IP Philippines organized several media events to create a buzz around priority areas identified by the agency. IP Philippines's PR has also started reaching out via blogs and other emerging online communication venues, mostly to enhance the agency's reputation as the leader in the IP arena.

IP Philippines extended its IP outreach nationwide in 2008, conducting 50 Basic Orientation Seminars around the country. The exhibit spaces at the IP Philippines corporate office (Alab Art Space and Innovation Area) housed seven exhibits, ranging from editorial cartoons to furniture made of renewable waste material as well as inventions from young minds.

All these efforts have contributed to a 32 percent increase in patent filings and 5 percent increase in trademark applications. More important, however, is the enthusiasm among artists, inventors, academicians, entrepreneurs and public officials for IP.

Marketing IP will never be easy. With a continually diversifying and discriminating audience, products have been categorized and re-categorized time and again. IP Philippines continues to break down its messages, to identify specific targets and zoom in on their needs and requirements. Communication is, and will always be, an integral component in building a stronger IP regime. ■

Copyright in the Courts: Moral Right in Architecture (Part II)

Photo: Josean Prado (2006)

From Professor
Juan José Marín López,
Gómez-Acebo & Pombo,
Madrid, Spain

WIPO Magazine issue 1/2008 reported on a ruling handed down by a Spanish court regarding the moral right of an architect to the integrity of his work. At appeal, the Bilbao Provincial Court partially overruled the decision of the Judge of first instance.

As will be recalled, Santiago Calatrava was commissioned by the Town Hall of Bilbao to build a bridge over the Bilbao river. A few years later, a footbridge was added to that bridge, allowing direct access to a residential area designed by another prestigious architect, Mr. Arata Isozaki. The addition of the footbridge, which was also of a completely different architectural style, made it necessary to break part of the balustrade on Mr. Calatrava's bridge. The Court of First Instance considered that there were reasons of public interest justifying the changes to the bridge, consisting in allowing direct access for citizens to the residential area designed by Mr. Isozaki. In the Judge's opinion, this public interest should prevail over Mr. Calatrava's moral right to integrity of his work. Mr. Calatrava lodged an appeal.

The Provincial Court of Bilbao decided in his favor on March 10, stating that the moral right for integrity in his architectural work had been infringed. The Provincial Court confirmed the opinion of the Judge of

the Court of First Instance whereby the bridge is an original work protected by copyright. It also considered that the changes made to the bridge constituted an infringement of the moral right of integrity. But contrary to the opinion expressed by the Judge of the Court of First Instance, the Provincial Court considered that there are no reasons of public interest which should prevail over the moral right. The Provincial court reasoned as follows:

Mr. Calatrava's bridge, on its own, already served the public interest by providing a means to cross the river at a place where it was not previously possible. After crossing the bridge, pedestrian had to go down one flight of stairs and up another to reach the residential area. The footbridge added to Mr. Calatrava's bridge fulfilled a function of simple comfort, as it allowed a direct connection with the residential area, without the need to go up or down stairs. The Court considers that, in these circumstances, the footbridge does not represent a public interest that prevails over and above the author's moral right. Simple comfort is not then, at least in this case, a public interest prevailing over the moral right.

Furthermore, the fact that in the Bilbao urban plan had a provision for direct access to the residential area did not justify the infringement. The Town Hall recruited a prestigious architect, such as Mr. Calatrava, not in order to plan the complete work provided for in the urban plan, but only to design and construct a bridge over the river. Some time later, once the bridge was complete, it decided to add the footbridge in order to connect the bridge to the residential area. According to the Court, the Town Hall could have made good on the provision made in the urban plan, by facilitating direct access to the residential area, in a manner that did not harm Mr. Calatrava's moral right. However, as it did not do so, it infringed the copyright.

The court ordered the defendants (two construction firms and the Town Hall of Bilbao) to pay the architect €30,000 in compensation and to publish the details of the ruling in two widely distributed newspapers. ■

Google AdWords Challenged

We write to bring the *WIPO Magazine*'s attention to the Google™ AdWords system which is being challenged in the European Court system. Google AdWords allow anyone to purchase keywords and to advertise their product when a Google search is performed for the word in question. A significant amount of cases on various grounds have been brought before the courts against Google AdWords.

When the cases concerned trademark infringement, the French Courts took into account the unauthorized reproduction and use of trademarks in the computer tool proposed to advertisers and ruled in some of the cases that trademark infringement was embedded in the computer screen display of the plaintiff's marks for identical and similar products. But difficulties arose in some of the proceedings: technically Google was not itself using or reproducing third parties' trademarks.

This brought the French High Court, the Austrian High Court and the Dutch Supreme Court to question the Court of Justice of the European Communities (CJEC) on whether unauthorized trademark use was the proper basis for action. The CJEC's will respond in the coming months.

The cases filed for misleading advertising pertain to the "Commercial links" which appear in the right side column of a page as a result of a Google search. In certain of these cases, the French Court decided that the "Commercial link" misled consumers into believing that there was a relationships between the trademark owner and the advertisers, thus they expected to find authentic products when they clicked on the links.

The French Court considered it unfair competition to purchase key words which only served the purpose of attracting consumers away from the authentic trademark owner's website to that of a competitor. The Courts also found Google liable under civil law for not having elaborated a system to ensure that keywords did not infringe on a third party's IP rights.

Trademark infringement will remain as grounds for cases against Google AdWords users until the CJEC's decision comes through.

From Franck Soutoul and Jean-Philippe Bresson, INLEX IP Expertise, and reporters for IP TALK, France

Calendar of Meetings

MAY 13 ■ GENEVA

■ ***Seminar on the Hague System of International Registration of Industrial Designs (in English and French)***

This Seminar is aimed at increasing awareness and practical knowledge of the Hague system of international registration of industrial designs among industry and private practitioners who use, or will use, the system.
Invitations: Registration is open to all interested parties subject to the payment of a registration fee. The competent authorities of the States members of the Hague Union will be exempt from the payment of the fee.

MAY 14 AND 15 ■ GENEVA

■ ***Seminar on the Madrid System of International Registration of Marks (English session)***

This Seminar is aimed at increasing awareness and practical knowledge of the Madrid system of international registration of marks among industry and private practitioners who use, or will use, the system.
Invitations: Registration is open to all interested parties subject to the payment of a registration fee. The competent authorities of the States members of the Madrid Union will be exempt from the payment of the fee.

MAY 25 ■ GENEVA

■ ***Information Meeting on the Protection of Broadcasting Organizations***

This meeting will consist of presentations from international experts on the current conditions of the broadcasting environment with special reference to developing countries and least developed countries.
Invitations: All States members of WIPO and/or the Berne Union, other States, the European Community; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

MAY 25 TO 29 ■ GENEVA

■ ***Standing Committee on Copyright and Related Rights, Eighteenth Session***

The Committee will examine questions of limitations and exceptions regarding education, libraries and disabled persons, particularly visually-impaired persons. It will continue discussions on the protection of audiovisual performances, broadcasting organizations and future work.
Invitations: As members, the States members of WIPO and/or the Berne Union, and the European Community; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

MAY 28 AND 29 ■ GENEVA

■ ***WIPO Workshop for Mediators in Intellectual Property Disputes***

The Workshop is an intensive two-day training course in the techniques of mediation, based on lectures and simulated mediation exercises in the intellectual property field.
Invitations: Participation is open against payment of a fee. This event is designed for lawyers, business executives, patent and trademark attorneys and others wishing to familiarize themselves with the mediation process.

JUNE 10 TO 12 ■ GENEVA

■ ***Interregional Intermediate Seminar on Industrial Property***

The WIPO Academy will organize its annual seminar directed towards government officials from IP offices in cooperation with twelve partner institutions.
Invitations: Government officials from IP offices and relevant Ministries.

JUNE 15 AND 16 ■ GENEVA

■ ***WIPO Coordination Committee***

The Committee will meet in extraordinary session to consider staffing matters, including a proposal to approve the nomination of candidates for appointment to the posts of Deputy Directors General and Assistant Directors General of WIPO.
Invitations: States members of the WIPO Coordination Committee and, as observers, States members of WIPO not members of that Committee.

JUNE 17 TO 19 ■ GENEVA

■ ***Program and Budget Committee***

The session of the Committee is convened as required by the mechanism for the preparation and follow-up of Program and Budget and will, in particular, consider the Draft Proposed 2010/11 Program and Budget in parallel with the Medium-Term Strategic Plan 2010-15, as well as other matters agreed on at its thirteenth session, held on December 10 and 11, 2008.
Invitations: All States members of the WIPO Program and Budget Committee are invited to be represented at this session of the Program and Budget Committee. All other States members of WIPO are invited to be represented at this meeting in an observer capacity.

JUNE 22 TO 26 ■ GENEVA

■ ***Standing Committee on the Law of Trademarks, Industrial Designs and Geographical Indications, Twenty-First Session***

The Committee will continue to work on issues identified at its twentieth session, in particular, on grounds for refusal of trademarks, technical and procedural aspects relating to certification and collective marks, possible areas for convergence on industrial design law and practice and Article 6ter of the Paris Convention.
Invitations: As members, the States members of WIPO and/or of the Paris Union and the European Community; as observers, other States; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

JUNE 29 TO JULY 3 ■ GENEVA

■ ***Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore, Fourteenth Session***

The Committee will continue its work on the current mandate from the WIPO General Assembly, including work on the protection of traditional cultural expressions/expressions of folklore, traditional knowledge and genetic resources and related issues, and will consider options for outcomes of its current mandate and its future work, including possible recommendations for a future mandate for consideration by the WIPO General Assembly, and any other proposal by its Members.
Invitations: As members, the States members of WIPO and/or of the Paris and Berne Unions, and the European Community; as observers, other States; and as Permanent Observer and *ad hoc* observer organizations, certain organizations.

JULY 6 TO 17 ■ GENEVA

■ ***WIPO Summer School on IP***

The WIPO Academy will organize the WIPO Summer School directed towards senior students and young professionals.
Invitations: Graduate students, post-graduate students, and young professionals from any discipline.

JULY 13 AND 14 ■ GENEVA

■ ***Conference on Intellectual Property and Public Policy Issues***

The conference will address issues relating to the interface of intellectual property with other areas of public policy, in particular, health, the environment, climate change, food security and disability.
Invitations: The Conference will be open to the public.

SEPTEMBER 17 AND 18 ■ GENEVA

■ ***Global Symposium of IP Authorities***

The Symposium will discuss issues relating to the modernization and administration of IP Offices (Patent and Trademark Offices), brainstorm the vision for the future on the global IP infrastructure including common tools and databases for facilitating international collaboration, study the value of IP statistics for managing IP Office operation, and exchange experiences on different financial models of IP Offices.
Invitations: The Symposium will be open to the public.

Call for Papers
Invitation to Submit Content to The WIPO Journal: Analysis and Debate of Intellectual Property Issues

Editorial Board Members

Pravin Anand, Professor Guillermo Cabanellas, Professor David Llewelyn, Professor Keith Maskus, Professor Jan Rosen, Professor Joseph Straus, John A. Tessensohn, Brian Wafawarowa

The **WIPO Journal** is a new quarterly review being launched in November 2009, by Sweet & Maxwell, in association with WIPO. Published in English, it is intended to be an interdisciplinary, international journal focusing on global IP issues across the 184 WIPO member states.

Who Can Submit?

We welcome contributions from a broad range of professions, including lawyers, policy makers, patent and trade mark attorneys, academics, scientists and economists.

What Is Up for Discussion?

Debates on international matters from across the IP spectrum covering legal, technical, economic and policy issues. We are particularly interested in submissions covering current 'hot' topics or controversial issues of the day. Submissions will be reviewed independently of WIPO to present an unbiased view on the global issues.

Be a Part of the First Issue

If you would like to submit an original article or other piece please read the following.

Scope – submissions can take the following form:

Articles – approx. 7,000-10,000 words

- Authors should focus on IP issues and explain in a practical way (as far as possible) the matters being discussed. Comparisons across jurisdictions are encouraged.

Comments – approx. 3,000 words

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Opinions – approx. 1,500 words

- Authors can use opinions to express their personal views on IP matters, they should be 'punchy' and written in the style of an Editorial.

NOTE: The deadline for the first issue is August 31.
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