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Sustainable development & INTELLECTUAL PROPERTY

Access to technologies in developing countries

INTRODUCTION

“Innovation concerning emerging economies is as much a challenge for the development of industrial property tools as it is for sustainable development.”

1. Sustainable development: a necessity. Sustainable development is a long-term human necessity, a genuine inter-generational project. Yet due to climate change, it has become an urgent matter. In developing countries in particular, it requires the large-scale deployment of “clean” or environmentally sound technologies and systems. Such deployment needs to be considered with two factors in mind:

- The current rate of deployment of technologies and know-how is too slow. Indeed, in light of the urgency to act and declared ambitions in terms of sustainable development, the deployment of “clean” technologies must be widespread and rapid: it needs to involve all technologies in all sectors, in all countries of the world, whether developed or developing.
- New practices and new networks are born each day to stimulate innovation.

2. Industrial property: a much-debated role. The role of industrial property is habitually invoked in this distribution role, either as a catalyst or a hindrance to the development of environmentally sound technologies. Industrial property comprises a diverse palette of tools whose essential essence, at least for patents, is to guarantee a geographical monopoly (on a specific and defined element) for a certain amount of time in a certain territory *in exchange* for the disclosure of information to assist in the development of the ‘next generation’ of techniques and know-how.

But the multiple natures of stakeholders, territories and time-related dynamics associated with the current phase of industrial globalisation could shed new light on the question of the methods of application of industrial property tools.

Moreover, a very clear observation is required: whether it concerns research or implementation, the worlds of intellectual property and sustainable development are all too often unaware of each other. Disagreements and at least misunderstandings occur about the global issues and their respective dynamics. Consequently, each of these “two universes”, or fields of activity, risks underestimating the impacts of changes generated by developments in practices in the other field.

3. Bringing together two worlds unaware of each other. The purpose of this study is twofold:

- a) Establish a dialogue between these two worlds – between two *modes* of thought – represented by stakeholders in sustainable development and intellectual property. So that on one hand, the stakeholders of sustainable development perceive the benefits offered by intellectual property in the construction and definition of sustainable development policies, and on the other hand, so that stakeholders in intellectual property identify the technological, economic and social issues of sustainable development and the manner in which patent law or trademark law can be exercised to participate in the deployment of environmentally sound technologies and more generally in the pursuit of sustainable development.
- b) Suggest that innovation concerning emerging economies is as much a challenge for the development of industrial property tools as it is for sustainable development.

4. Obstacles to technology transfers. For several years, one of the issues debated on both national and international policy levels is permitting access to these technologies by developing countries. The debates are often difficult as the possibilities and indeed the success of these transfers are conditional on multiple factors and encounter many different obstacles, such as political, technological and human conditions for receiving a technology, knowledge of the needs of receiving countries, need to adapt existing technologies, knowledge of new markets, the vision of ‘requesting’ countries according to their knowledge of what is available on the ‘technology market’ around the world, etc. In particular, concerning the dissemination of innovation, the market is more influenced by demand than by supply, which must sometimes needs stimulation or even creation, from access to analysis to the creation of support functions, via the creation and supply of qualified and quantified information.

It is therefore useful to ask questions about the tools and methods used to *accelerate* access for developing countries to sustainable development technologies. The intention of this study is to highlight the role already played by industrial property and which it will continue to play in technology transfers to developing countries, including new trends which are admittedly recent but already influential.

5. Identifying the role of industrial property in sustainable growth. In an effort to go beyond the positions of principle for or against industrial property, the purpose of this study is to leave these antagonistic and epidermal positions aside and highlight the firm and successful uses of industrial property rights to facilitate access to technologies. Indeed, alongside “conventional” contracts, a myriad of erstwhile atypical technology transfers have now taken on a greater importance. Starting as secondary phenomena, they become ‘weak signals’, precursors of the foundations of the industrialisation of developing countries.

This is the objective of our study: Identify, understand, analyse and critique these new modes of access to technologies, particularly environmentally sound technologies. Our ambition is therefore to highlight these new practices which reconcile the interests of developing countries without sacrificing those of persons who have invested to develop new technologies, even offering them perspectives of growth, because the economy, even in a development context, is not a zero-sum game. On the contrary, it enables the establishment of fields of co-creation of value, well-being and development *capacities*.

This issue is part of the larger question of determining the conditions that will enable the use of environmentally sound technologies in developing countries. In the end, the issue for developing countries is that of *access* to sustainable development technologies, whatever the method. Intellectual property is only one aspect of the issue.

Providing a response to the issue of sustainable development in developing countries requires us to extend our questioning much wider:

- What is the role of industrial property (patents and trademarks) in favouring access to these technologies?
- Where is innovation occurring to stimulate development in a global and post-emergent economy?
- What is the support role played by official policies on access to technologies (bilateral and multi-lateral cooperation)?

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Therefore, although this study focuses principally on patents, it is not limited to this field and covers access to environmentally sound technologies on a wider basis, as part of international cooperation and in a rapidly-changing world economic and industrial context due to the arrival of businesses from large emerging economies. We have also considered the general conditions that enable the development of sustainable industries or technology transfers. In this respect, the precise role of patents in the area of environmentally sound technologies and their transfer to developing countries may be clarified.

6. Industrial property: an opportunity for sustainable development. Intellectual property is often regarded as a constraint. One of the aims of this study is to highlight the conditions under which industrial property and in particular patenting, can become an *opportunity*.

In addition, the role of other industrial property rights shall be discussed, with trademark law at the top of the list. This tool is within the grasp of the majority of developing countries and enables the monetization of local products, occasionally to a significant extent.

The role of intellectual property will be considered, taking into account international modes of governance and the possibilities offered by the international climate regime and other multilateral forums to aid in the transfer of environmentally sound technologies to developing countries.

Lastly, another more political issue is to *anticipate* the manner in which developing countries could claim rights within the framework of negotiation on the climate change agreement, which must be concluded at the UNFCCC COP21 in Paris.

7. Method: a stylised empirical study. The methodology adopted in this study is founded primarily on case studies. Indeed, it seemed essential to illustrate this work with concrete examples of technology transfers and use of industrial property rights, so as to understand the reasons for the successful or failed reception of environmentally sound technologies in developing countries. The selection of case studies is conditioned by the objective of revealing certain principles and best practices that may be used to guide developing countries and their representatives in order to ensure successful technology transfers and co-innovation.

SUSTAINABLE DEVELOPMENT & INTELLECTUAL PROPERTY

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Intellectual property and sustainable development are two separate universes which often ignore each other or meet with distrust.

This work shows that fruitful dialogue is not only possible but essential.

The world of sustainable development and access to clean technologies by developing countries may make highly effective use of patents and trademarks to optimise, or enable, technology transfer.

For intellectual property stakeholders, the field of clean technologies is a source of innovative ideas (creation of technology markets, better information) that are likely to serve as models in all areas of innovation.

The authors have illustrated the work with enlightening practical examples that demonstrate just how much this dialogue is needed.