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Sustainable development & INTELLECTUAL PROPERTY

Access to technologies in developing countries

LIST OF OBSERVATIONS

1 The patent is a legal tool that facilitates investment in a new market by ensuring the patentee has an exclusive right on its use.

2 The patent is a legal tool that facilitates the implementation of a price differentiation policy according to markets and the control of local partner activities.

3 To access a technology, the primordial issue is the transfer and mastering of the know-how involved. A basic patent licence is more often than not insufficient, even useless, to ensure effective technology transfers to a developing country.

4 Patents cannot be an obstacle to access to technology by developing countries, because most patents are not applied for in these countries, so the technologies are freely accessible at no charge.

5 Today, innovation is multi-polar and businesses in North countries are now competing with firms from emerging economies, even those from developing countries, on the market for environmentally sound technologies.

6 A growing proportion of non-leading edge technologies is accessible to a great many players, for the lion's share of economic activity, so that in the majority of economic transactions, competition through purely intellectual property tends to disappear in favour of competitive offerings concerning technical guidance delivered by originators to recipients.

7 The filing and above all the grant of a patent is a strong signal transmitted by the patentee to their market. In this case the signal is that the patent guarantees the quality of the patent owner's research and development efforts.

In a real economy where information is asymmetric, this signal is an element that reduces this asymmetry. The information is essential to all partners (banks, investors, business partners, government aid agencies, etc.).

8 Patent databases are becoming a primordial source of information, particularly for developing countries who know how to obtain the appropriate capacities to analyse and make use of the patents. This tool remains under-utilised, yet supplies top-quality information both on existing technologies that are often free because unprotected, and on potential partners.

9 In terms of clean technologies, several initiatives intend to enable recipient countries to declare their specific needs. Both public and private entities in developing countries should use the WIPO Green platform.

10 The development of competitiveness clusters is often achieved through initiatives of the public authorities which set up and support private stakeholders. Detecting the real and specific needs of enterprises is an essential factor in their success. This tool is accessible to South countries (also remember that the concept and practice emerged first in Brazil).

11 For businesses investing on new markets, the trademark is often the most important asset to protect. A trademark protection system is therefore highly useful and efficient to attract originators to the markets.

12 Trademarks and geographical indications offer huge potential to stakeholders in developing countries who produce a large number of products, in particular agricultural products, which are sold on international markets. Experience shows that the cost of setting up these tools is reasonable and that the positive impact for local populations is rapid and significant.

It is therefore in the interest of developing countries to develop policies to raise awareness and to provide guidance in using trademarks and geographical indications.

13 The concern about providing developing countries with access to environmentally sound technologies has become omnipresent in the international dialogue on the environment and climate change. Initiatives are multiple but too fragmented, which impairs their effectiveness.

LIST OF RECOMMENDATIONS

- 1 Contrary to what is sometimes claimed, patents do not represent an obstacle to technology transfers, and particularly sustainable development technologies, to developing countries. The vision entertained by developing countries of the patent as a legal padlock is erroneous.

The key factor in ensuring technology transfers is know-how.

As know-how is intrinsically secret and complex because it collates elements of information, it cannot be transferred by using a legal weapon such as compulsory licensing.

To access a new technology, developing countries need to convince investors and technology owners to carry out these transfers of their own accord.

The development of industrial property infrastructures (IP offices, training for judges, IP attorneys, lawyers, etc.) is a useful strategy for developing countries because if industrial property rights are protected, technology owners are more inclined to grant licences and transfer their technologies.

Pooling is an efficient solution to limit the cost of developing these infrastructures. This method has been used by the member states of OAPI, the only IP office in the world to grant industrial property rights valid in 17 countries.

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- 2 In a global economy, developing countries have at their disposal a multitude of originators able to transfer technologies ('traditional' developed countries, large emerging economies, developing countries with expertise in certain fields, etc.).

For originating countries and firms located there, the markets of developing countries are their best hope for growth.

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- 3 One of the essential issues in speeding up the deployment of environmentally sound technologies is the circulation of information, both on existing technologies and on the needs of developing countries.

4 National IP offices should pursue their efforts to simplify and optimise patent databases to make them accessible to the greatest number of parties possible.

5 Furthermore, stakeholders involved in supporting development, in particular development agencies, should learn to use these databases to identify existing technologies and to encourage recipients to declare their needs.

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7 In the last 20 years the mechanisms intended to speed up the transfer of environmentally sound technologies have multiplied, with varying degrees of success: International Technology Centres (ITCs), Global Environment Facility (GEF), Clean Development Mechanism (CDM), Sustainable Development Goals (SDGs), etc.

The current challenge is to rationalise technology transfer mechanisms in order to raise their effectiveness.

8 Dialogue and cooperation between the worlds of sustainable development and industrial property are in their early days. They need to intensify.

SUSTAINABLE DEVELOPMENT & INTELLECTUAL PROPERTY

Access to technologies in developing countries

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.