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Sustainable development & INTELLECTUAL PROPERTY

Access to technologies in developing countries

OVERVIEW

Sustainable development, this meta-project that aims to secure development without harmful consequences for humankind and the environment, is of great necessity as our planet is threatened by climate change. In developing countries in particular, it requires the large-scale deployment of “clean” or environmentally sound technologies. The role of industrial property is often evoked in this deployment, either as a catalyst or a hindrance to the development of environmentally sound technologies. One aim of this study is to answer the question of the role of industrial property in the adoption of environmentally sound technologies in developing countries.

This study is based on an observation: all too often the universes of intellectual property (research labs, patent applicants, National IP Offices, etc.) and of sustainable development (politicians, militants, international convention negotiators, social entrepreneurs, etc.) are unaware of each other. The objective of this study is therefore twofold:

The first aim is to establish a dialogue between these two worlds - between two *modes* of thought - represented by stakeholders in sustainable development and intellectual property, in order that on one hand, stakeholders in sustainable development perceive the benefits offered by intellectual property in the implementation of sustainable development policies: this study aims to highlight the conditions under which industrial property, and in particular patents, may become an *opportunity*. And on the other hand, so that intellectual property stakeholders identify the technological, economic and social issues of sustainable development and the manner in which patent or trademark rights can be enforced to contribute to the deployment of environmentally sound technologies and more generally in the pursuit of sustainable development.

The second aim of this study is to suggest that innovation in developing economies is as much a challenge for the evolution of industrial property tools as for sustainable development.

Our methodology is essentially based on case studies. Indeed, it seems essential to illustrate with concrete examples cases of technology transfer 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.

Several realities have been highlighted:

- 1) Contrary to what is sometimes postulated, patents are not an obstacle to the transfer of technologies, and particularly sustainable technologies, to developing countries, because most patents are not applied for in these countries, so the technologies are freely accessible at no charge.

Also, as part of international negotiations on climate change, a single country, in this case India, continues to put a strong case forward for patents to be made available to developing countries, not for free, but with the financial support of the Green Climate Fund, or via a reduction in the severity of rights, as it claims that intellectual property is a barrier to the widespread use of green technologies.

- 2) The primary issue is the transfer and control of know-how. As know-how is intrinsically secret and complex because it collates disparate 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. The development of industrial property infrastructures (IP Offices, training for judges, for IP attorneys, for lawyers, etc.) is a useful strategy 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 avenue has been used by the member states of the African Intellectual Property Organization (OAPI), the only IP Office in the world to grant industrial property rights valid in 17 countries.

- 3) The other principal observation is that today, innovation is multi-polar and businesses in developed countries are now competing with firms from emerging economies, even those from developing countries, on the market for environmentally sound technologies. Developing countries have at their disposal a multitude of originators able to transfer technologies ('traditional' developed countries, major emerging economies, developing countries with expertise in certain fields, etc.). The consequence is that an increasing number of technologies, except for leading edge techniques, are accessible to a great many stakeholders, so that in the majority of technology transfers, the role of pure intellectual property (patents) is tending to decline, replaced by know-how and technical *guidance*.

It is largely incumbent on the governments of developing countries to coordinate activities with their businesses and national industrial fabrics to support the access of their economic agents to environmentally sound technologies; a country such as Morocco has shown the way through the Moroccan Industrial and Commercial Property Office (OMPIC).

4) Concerning international negotiations, aside the funding used to support the low-carbon, climate-resilient economy of developing countries, the essential issue is to make the best use of the existing mechanisms under the UNFCCC (United Nations Framework Convention on Climate Change), in particular the Technology Mechanism (TM), and to develop a genuine 'positive agenda' to ensure better coordination of multilateral initiatives in other forums, including those aiming at reinforcing the political dialogue specifically dedicated to intellectual property, under the auspices of the TRIPS Agreement.

This effort to optimise the synergy between existing multilateral mechanisms is the core element in the proposal for a Technology Facilitation Mechanism (TFM), which aims to deploy environmentally sound technologies on a large scale to foster sustainable development. This Mechanism is currently being discussed in the wider framework of the United Nations. Concerning patents and other intellectual property rights, the Mechanism should promote public-private partnerships to develop collaborative systems and enable direct contact between technology owners (originators) and potential recipients, in order to target real opportunities for market growth while respecting the environment. Because beyond institutional facilitation, the dialogue between originators and recipients takes place firstly between private businesses. Most technology transfers are carried out with private funding: 80% of transfers concerning climate change are private, 20% are public. Today the annual value is around \$300 billion.

5) In this global economy, a key factor in accelerating technology transfer is the dissemination of *information* concerning existing technologies and the needs of developing countries.

Capacity building of public authorities in developing countries remains a priority, with a view to identify the needs and support the creation of innovative businesses. This capacity building already exists, in particular within the framework of the UNFCCC and needs further support still, especially to enable developing countries to assess their needs according to their situation and national priorities.

In parallel, National IP Offices should pursue their efforts to simplify and optimise patent databases to make them accessible to the greatest number of parties possible. 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.

In the field of environmentally sound 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. This platform helps

make available to development agencies a selection of tools used to identify the technologies available and the needs. It should also be noted that these agencies could use intellectual property rights to improve the effectiveness and the effects of their programmes, both financially and in terms of technology.

On the increasingly informative role of patents, it must be noted that the filing and above all grant of a patent is a strong signal transmitted by the holder to the market: the signal is that it represents a guarantee of the quality of the holder's research and development. This information is essential to all partners (banks, investors, business partners, public aid agencies, etc.). And patent applications in developing countries are often considered as a sign of economic transition by foreign investors.

- 6) What is more, trademarks and geographical indications are the other two main industrial property rights available to developing countries, but still under-used. They are essential legal and communication tools for developing countries, both to attract foreign investors and to sell their products on international markets.

They offer immense perspectives to stakeholders in developing countries who produce a large number of products, in particular agricultural products, sold on international markets. Experience shows that the cost of setting up these tools is reasonable and that the positive impact for local populations can be rapid and significant. It is therefore in the interest of developing countries to develop policies to raise awareness and provide guidance in using trademarks and geographical indications.

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.