



# Economic and Social Council

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## Economic Commission for Europe

Committee on Economic Cooperation and Integration

### International Conference on the Commercialization and Enforcement of Intellectual Property

Moscow, 6 – 8 October 2010

## Report

### I. Introduction

1. At its third session on 3-5 December 2008, the UNECE Committee on Economic Cooperation and Integration had decided to strengthen the emphasis on capacity-building activities in its Programme of Work for the 2009-2010 biennium (ECE/CECI/2008/2). The International Capacity-building Conference on the Commercialization and Enforcement of Intellectual Property organized in Moscow, Russian Federation, from 6 to 8 October 2010 is part of this effort.
2. The Conference built on the policy discussions at the substantive segment of the fourth annual session of the UNECE Team of Specialists on Intellectual Property held in Geneva on 8-9 July 2010 (ECE/CECI/IP/2010/2) and served inter alia to disseminate the Synopsis of Good Practices and Policy Recommendations on the Management of Intellectual Property in Open Innovation (ECE/CECI/2010/7).
3. The Conference was co-organized with the All-Russian Association of Small and Medium-sized Enterprises (OPORA) and the United States Patent and Trademark Office and benefited from financial support from Dolby Laboratories Inc.

### II. Attendance

4. The Conference brought together some 90 representatives of governments, intellectual property offices, private companies, business associations, the academic, legal and law enforcement communities from Armenia, Belarus, Finland, Latvia, the Republic of Moldova, the Russian Federation, Switzerland, Turkey, Ukraine, the United Kingdom of Great Britain and Northern Ireland, and the United States of America. A representative of the World Intellectual Property Organization also participated.

### **III. Summary of the Discussion**

5. The Conference was organized into an opening plenary, two sets of parallel sessions, a closing plenary, and two site visits to organizations with activities relevant to the main topics of the Conference. The opening plenary set the stage for the Conference by discussing the role of intellectual property in knowledge-based development and economic integration. The parallel sessions dealt with the enforcement of intellectual property rights and with the management of intellectual property in cross-border open innovation, respectively. In the closing plenary, the rapporteurs reported on the discussions in the parallel sessions.

#### **A. Opening Plenary**

6. The opening plenary stressed that innovation is a key driver of long-term economic growth, that innovation involves turning new knowledge into commercially successful products and services that support new enterprises and new, better-paying jobs, and that this process is often time-consuming, expensive and commercially risky. Intellectual property rights have a key role to play in this process. They provide temporary or permanent exclusive rights to a new invention, idea, trademark or design, and thereby allow innovators to earn a sufficient risk-adjusted return on their investments, before imitators can enter the market. Intellectual property rights are also fundamental for creating markets for intellectual assets, and thereby allow for intellectual property rights to be traded, so that they can be commercialized more effectively.

7. The opening plenary also highlighted the growing internationalization of the innovation process, in that multinational companies, innovative small and medium-sized companies and research-oriented academic institutions increasingly cooperate across borders to generate and commercialize new knowledge. The benefits of cross-border cooperation on innovation include a more rapid and broader diffusion of knowledge across borders, and a more rapid and cost-effective innovation process.

8. Cross-border cooperation on innovation creates particular challenges for the management of intellectual property in an international context, both at the level of enterprises and research organizations engaging in innovation, and at the level of governments which need to create national intellectual property rights systems that provide an adequate legal framework for domestic and foreign innovators to cooperate. This includes on the one hand the framework for innovators to obtain legal protection for their intellectual property and to exploit it commercially by using it to raise financing, to establish a market niche for their own products, or to license it to third parties for commercialization. It includes on the other hand the framework for enforcing intellectual property rights against potential and actual infringers, in order to prevent would-be imitators from engaging in unfair and illegal competition.

9. The plenary provided concrete examples of the growing trends in cross-border innovation and the importance of intellectual property rights management and enforcement and discussed some of the challenges facing countries with economies in transition in this regard.

#### **B. Cross-border Open Innovation**

10. The segment on cross-border open innovation brought together national and international experts from intellectual property offices, university technology transfer

offices, academies of sciences, relevant government ministries, innovation agencies, the financial sector, and innovative enterprises. It focused on the challenges and opportunities of intellectual property management in cross-border open innovation, with sessions on research cooperation involving public research organizations, on the role of intellectual property rights in financing innovation, and on innovative companies.

11. Participants stressed the high relevance of intellectual property management in research and development cooperation for countries with economies in transition. Their future competitiveness in innovative industries will depend on sound intellectual property laws and regulations, but also on creating markets for intellectual property and high technology, and assisting particularly small and medium-sized enterprises and public research organizations in playing a more active role in the innovation and technology transfer process. Shortcomings as well as examples of recent improvements in intellectual property legislation were discussed.

12. Representatives of leading multinational innovative companies gave examples of intellectual property management and commercialization strategies, stressing inter alia the joint use of different types of intellectual property, such as patents, trademarks, designs and trade secrets, and their use in research and development cooperation with universities and small and medium-sized enterprises, as well as the different ways of commercializing intellectual assets, including through the creation of joint ventures, spin-off companies, and out-licensing.

13. Intellectual property rights valuation issues were discussed as well. The lack of expertise in this area was identified as a problem in countries with economies in transition. It was argued that problems with reliable intellectual property rights valuation constrain the use of intellectual property rights as collateral for the financing of innovative companies.

14. Representatives of university technology transfer offices presented good practices on how to create a culture supportive of intellectual property commercialization, including the sharing of financial returns among researchers, departments and the university as a whole.

15. The experts discussed the main barriers facing public research organizations and small and medium-sized enterprises in countries with economies in transition, including lack of competence in intellectual property rights management, lack of funding for intellectual property rights protection and enforcement, excessive regulations and administrative burdens, and lack of clarity in the legal rules for intellectual-property-based university spin-off companies. Supporting policies such as tax breaks and government co-financing were also discussed.

16. It was argued that innovation and technology transfer strategies frequently suffer from an excessive focus on the technology aspects of a research result or an invention, at the expense of the commercial potential. At the same time, it remains important for research organizations to maintain an appropriate balance between fundamental research without immediate commercial applications, and applied research suitable for commercialization.

17. Examples were given of national innovation agencies which provide financial support, including for international research and development cooperation projects, and which offer intellectual property management support to small and medium-sized enterprises and public research organizations.

18. There was an extensive discussion on the ownership of intellectual property resulting from research undertaken at public research organizations. International experts provided evidence on how granting ownership to public research organizations in conjunction with an obligation to actively pursue commercialization can result in significantly higher rates of technology transfer from academia to industry.

## C. Enforcement

19. The segment on intellectual property rights enforcement brought together experts from intellectual property offices, law enforcement agencies, and multinational trademark- and copyright-based companies. It had sessions on internet counterfeiting and piracy, border enforcement and product identification, regional integration issues, and enforcement on domestic markets.

20. Industry representatives showed the importance of reliably enforceable intellectual property rights, particularly trademarks and copyrights, for their businesses and provided information on the scale of counterfeiting and piracy, including lost sales revenues at the global and regional levels.

21. Intellectual property rights infringement over the internet involves the distribution of copyrighted content (music, software, movies), but also the sale via online stores of counterfeit physical goods. Some of the law enforcement challenges in stopping intellectual property rights infringement over the internet include the difficulty of collecting evidence at the level of internet service providers and peer-to-peer network, the fact that the individuals behind the infringement may be residing in jurisdictions with weak enforcement, and the fact that not only providers but also users of illegal content often hide behind aliases and proxy servers. Examples were discussed of successful, internationally coordinated law enforcement operations.

22. Industry representatives reported on examples of how they monitor the internet for infringements and work with internet service providers and online auction sites and stores to remove advertisements for infringing goods, and to bring legal cases against infringers.

23. Representatives of copyright-based companies also provided examples of legal, i.e. non-infringing ways of distributing copyrighted content over the internet, based on advertising revenues or user fees.

24. The discussions showed that there has been an increase in IP-related crime in some countries with economies in transition, especially as regards counterfeiting and unfair competition. Law enforcement systems often struggle to cope with this increase. The costs of enforcing intellectual property rights are frequently high.

25. Among the recommendations for strengthening enforcement were the following: making legislation more transparent and coherent; harmonizing laws and regulations across different agencies active in enforcement (intellectual property offices, customs administrations, anti-monopoly authorities, ministries of internal affairs, standardization and product safety authorities); reducing the costs of enforcement inter alia by developing out-of-court settlement procedures; improving professional standards in field of intellectual property rights protection and enforcement through enhanced training and capacity-building; and also curbing consumer demand for infringing goods, including through awareness raising campaigns. Examples were provided of international cooperation in these areas.

26. It was also argued that it was important to build a culture of respect for intellectual property, and improve enforcement to make countries more attractive for innovative foreign investors. Building a culture of respect for intellectual property requires creating a system that balances the interests of rights holders and the public at large, including protecting innovators from unfair competition by infringers, but also preventing abuses of monopoly power. It also requires policies that give domestic industry a stake in the intellectual property system by strengthening their innovative potential and assisting them in realizing it. Apart from general policies to improve the business climate and promote innovation, this also includes programmes to assist domestic innovators in managing their intellectual

property efficiently and in protecting and enforcing their intellectual property rights both at home and abroad.

27. On border enforcement, one of the main issues raised was how to make infringers bear the associated costs for the storage and destruction of infringing goods seized at borders and to get intermediaries such as shipping companies, landlords of open-air markets, or internet service providers to assist in the enforcement effort. This is important in order to increase deterrence and in order not to excessively burden enforcement authorities and rights holders with enforcement costs.

28. Examples of good practices on border enforcement included simplified procedures for rights holders to register their trademarks with customs, ex-officio powers for customs to seize goods suspected of infringing intellectual property rights, and simplified procedures which allow the seizing and destroying of infringing goods without court proceedings in cases where the owner of the infringing goods does not object.

29. Industry representatives also presented examples of comprehensive brand protection strategies which include counterfeit prevention in addition to enforcement. Prevention strategies combine product design (adding features that are difficult to fake), supply chain integrity (controls that make it more difficult for counterfeits to enter or leave the supply chain), market monitoring and intelligence gathering, and curbing demand for counterfeits through authorized dealer and customer loyalty programmes.

#### **D. Site Visits**

30. The Conference concluded with site visits to organizations relevant to the two main topics of the Conference, i.e. the role of intellectual property in innovation and intellectual property rights enforcement. International delegates with an interest in innovation visited the Science Park of Lomonosov Moscow State University. Delegates with an interest in enforcement visited the headquarters of the Federal Customs Authority.

31. At the science park of Lomonosov Moscow State University, delegates were briefed on the history of the park, its approach to technology transfer, the legal basis for its activities, the resulting spin-off companies and licensed technologies, and its cooperation with leading foreign universities and their technology transfer offices. Delegates also learned about the park's initiatives on raising awareness about intellectual property among researchers and on promoting research results with commercial potential, including in the international arena.

32. At the Federal Customs Authority, delegates had the opportunity to follow up on the discussions at the Conference on the current state of border enforcement, including the cooperation with foreign customs authorities and the private sector rights holders.

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