



Economic and Social Council

Distr.: General
21 July 2010

Original: English

Economic Commission for Europe

Committee on Economic Cooperation and Integration

Team of Specialists on Intellectual Property

Fourth session

Geneva, 8–9 July 2010

Report of the Team of Specialists on Intellectual Property on its fourth session

I. Attendance

1. The Team of Specialists on Intellectual Property (TOS-IP) held its annual session on 8-9 July 2010. Experts representing government agencies, academic institutions and the business community from twenty-five UNECE member States participated in the meeting. The session was also attended by representatives of the European Commission, the World Intellectual Property Organization (WIPO), and the United Nations Conference on Trade and Development.

II. Adoption of the agenda and election of officers (agenda item 1)

2. The Team adopted the agenda of its session unchanged as provided in document ECE/CECI/IP/2010/1.

III. Substantive segment (agenda item 2)

3. The substantive segment was introduced by a keynote speech giving an overview of the role of intellectual property rights (IPRs) in the innovation strategy of a leading technology company, highlighting the international character of innovation today and the importance of a robust legal intellectual property (IP) environment. This was followed by a session on IPR enforcement and a session on IP and International research and development (R&D) and Knowledge Transfer.

4. The substantive segment provided an opportunity for policy makers from member States to engage in an exchange of experience with representatives of relevant stakeholder

groups, including global IPR owning companies, small and medium-sized companies, IP law firms, and the academic community.

5. The results of the discussions at the substantive segment will form the basis for a policy-oriented document to be submitted to the fifth annual session of the UNECE Committee on Economic Cooperation and Integration on 1-3 December 2010.

6. Some of the points made during the discussions at the substantive segment were:

(a) Robust national IP laws and the ability to enforce them are factors influencing the decisions by leading global technology companies on the location of their research and development activities;

(b) Beyond the legislative framework, research organizations and innovative companies looking to partner with leading global technology companies in R&D need to be aware of international IPR protection strategies and how to properly manage both the IP they contribute to such cooperations and the IP that results from such cooperations;

(c) The quality of national IP law and practice therefore is a factor determining whether a country will be able to participate in international innovation networks and the attendant knowledge transfer;

(d) At the same time, there is a need for IPR systems to be balanced in the sense that they facilitate rather than block the new forms of collaborative innovation, including across borders;

(e) Empirical evidence suggests that excessively broad IPR protection can be detrimental for foreign direct investment (FDI), knowledge transfer and hence innovation. From a policy point of view, there is a need to create incentives for R&D but also not to inhibit access to knowledge. Patent thickets and patent trolls are examples of phenomena that can reduce the level of innovative activity and knowledge diffusion;

(f) There is a need for adequate competition policies to complement the IPR system;

(g) It is important to build national capacity to absorb foreign technology in order to attract FDI and to benefit from the associated knowledge diffusion;

(h) Access to existing technologies is a key pre-condition for innovation, since most innovation comes out of incremental changes to existing technologies, including their adaptation to the specificities of different local, regional and national markets;

(i) As regards the enforcement of IPRs, curbing the international trade in counterfeit and pirated products clearly requires both multilateral cooperation among governments, and cooperation between the business community as the owners of trademarks and copyrights, and the IPR enforcement authorities;

(j) There is significant scope to improve public-private cooperation in this effort;

(k) There is a shared interest of rights holders and enforcement agencies in fast and cost-effective enforcement procedures, including at international borders. These may include ex-officio intervention powers for customs agencies, simplified procedures where infringing goods can be seized and destroyed unless the owners object, and facilitating out-of-court settlements to avoid costly civil and criminal proceedings;

(l) Training customs and law enforcement agents in how to identify and deal with counterfeit and pirated goods is key to maintain and increase awareness;

(m) In many cases, IPR owners end up paying the costs of stopping counterfeits, including the costs of seizing, storing and destroying counterfeits at borders. Proposals

were made to facilitate imposing these costs on the infringers instead, including enlisting the cooperation of the transport companies that do business with infringers;

(n) More generally, proposals were made on how to encourage intermediaries that profit from the trade in counterfeit goods, such as internet service providers and the international shipping industry, to join the fight against counterfeits. Proposals included for shipping companies to be assessed on their due diligence and knowing your customer policies, and IPR owners' audit departments making sure they avoid carriers that profit from counterfeiting;

(o) The vast majority of counterfeit goods pass through one or more countries in transit before reaching their final destinations. There was a discussion on how to preserve the legal scope for enforcement actions against goods in transit, while recognizing that some goods may infringe IPRs in the country of final destination, but not in the transit country;

(p) The latest IPR Enforcement Report of the European Commission and the latest developments on the proposed plurilateral Anti-Counterfeiting Trade Agreement (ACTA) were discussed;

(q) There is a need for improved methodologies, data and studies on the economic and social impact of counterfeiting and piracy, in order to improve the factual basis for governments to allocate resources to fight piracy and counterfeiting. WIPO and the European Commission's Counterfeiting and Piracy Observatory among others are working on this;

(r) There is a need to address the demand side of the counterfeiting problem by raising the awareness of consumers of the hazards and potential economic damage caused by counterfeits. The Swiss Stop Piracy program is one example of this;

(s) The importance of cross-border knowledge transfer was highlighted. Even the leading innovative countries in the world produce only a fraction of world-wide knowledge and therefore depend on sharing knowledge with the rest of the world. One response to this is the European Union's initiative to create a single European Research Area (ERA);

(t) In this context, the importance of open innovation was stressed, i.e. innovation processes that build on cooperation between different actors, such as large and small innovative companies, or innovative companies and universities or individual research teams;

(u) The conference highlighted the challenges for IP management in cross-border R&D cooperations, open innovation and knowledge transfer, and the approaches to address such challenges in international cooperative projects in the European Union which are also open to non-EU-members;

(v) Among the national government policies that can support sound IP management in this context are financial support for research projects which is tied to demonstrating a sound IP commercialization strategy, awareness raising programs for research organizations and financial support for buying IP advisory services from specialized providers;

(w) Lack of awareness of the importance of IPRs and lack of competence in managing IPRs was identified as a barrier to successful innovation and technology transfer in many countries with economies in transition. This includes capability problems of potentially innovative companies with preparing patent applications and cost of filing patent applications abroad, among others. Existing advisory services offered to small and medium enterprises (SMEs) are often poor, and most of these services focus on patents and

tend to cover only the pre-application stage. But there often remains a large gap in advice on how to use IP more broadly in a business strategies, including the use of non-patentable intangible assets. The TOS-IP can help to address some of these challenges;

(x) It was stressed in this context that not all innovation is technology-driven. A significant part is in improved business models or finding new applications for existing technologies. Hence awareness needs to be raised also about non-patent modes of IPR protection;

(y) Several examples of national innovation and IP strategies and government action plans were presented;

(z) It was observed that these strategies need to be based on a solid evaluation of the economic situation and development priorities of the country in question. In order to be effective, innovation and IP strategies also need to be designed and implemented in tandem with strategies to improve the business environment more generally.

IV. Review of the work carried out since the third session (agenda item 3)

7. The Chair introduced the item by explaining that the Team had not met in 2009. Instead, there had been only an agenda item at the Annual Session of the Committee on Economic Cooperation (CECI) with a joint discussion of the work of the Teams of Specialists on Innovation and Competitiveness Policies and on Intellectual Property. The previous session of the TOS-IP therefore had been in 2008.

8. The secretariat referred to a conference room paper on agenda items 3 and 4 which had been distributed to participants and gave a presentation summarizing the main results of the work done since the previous session. It was explained that the CECI Programme of Work in 2009-2010 had called for a stronger emphasis on capacity-building and technical cooperation activities, and for an integrated approach to capacity-building and policy-oriented activities reflecting complementarities between the various focus areas under CECI.

9. The TOS-IP organized the following IP-specific capacity-building activities:

(a) **Subregional Seminar on the Role of Intellectual Property Rights in Technology Transfer: Problems, Solutions, Examples from Turkey and World, Ankara, Turkey, 12 - 13 March 2009.** The Seminar was co-organized with the Turkish Patent Institute. It was attended by some 50 representatives of intellectual property offices, government ministries, universities, and technology parks from Azerbaijan, Kazakhstan, Kyrgyzstan, Tajikistan and Turkey, as well as international experts from the United Kingdom, the United States and WIPO. The Seminar discussed international good practices and national experiences on the management of IPRs at public research organizations, and ways and means through which IP offices and other government agencies can facilitate the successful commercialization of university-generated IP;

(b) **Subregional Seminar on the Commercialization and Enforcement of Intellectual Property Rights, Skopje, the former Yugoslav Republic of Macedonia, 1 - 3 April 2009.** The Seminar was co-organized with the State Office of Industrial Property of the former Yugoslav Republic of Macedonia. It was attended by some 120 representatives of intellectual property offices, government ministries, universities, technology parks, courts, police, customs authorities and the business community from Albania, Bosnia and Herzegovina, Bulgaria, Croatia, Montenegro, Romania, Serbia, Slovenia, and the former Yugoslav Republic of Macedonia, as well as international experts from WIPO, the United Kingdom and the United States. The Seminar had two parallel sessions, one discussing the

management of IPRs at public research organizations, and the other discussing international good practices and national experiences on IPR enforcement, including the cooperation between rights holders and enforcement agencies;

(c) **International Seminar on the Enforcement of Intellectual Property Rights**, Bishkek, Kyrgyz Republic, 11 November 2009. The Seminar was co-organized with the Intellectual Property Service of the Kyrgyz Republic and the United States Patent and Trademark Office.

10. Team members also actively participated in a number of policy-oriented meetings and capacity-building events cutting across different thematic areas of CECI's Program of Work and combining knowledge-sharing and elements of learning such as:

(a) **International Conference "Promoting Innovation-based Entrepreneurial Opportunities in the UNECE Region"**, Geneva, 28-29 September 2009 (which was held as part of the agenda of the fourth CECI session);

(b) **International Conference on Ways and Means of Attracting External Finance for New Innovative Enterprises**, Astana, Republic of Kazakhstan, 21- 22 May 2009. The Conference was jointly organized by the UNECE and the Ministry of Economic Affairs and Budget Planning of the Republic of Kazakhstan. It brought together about 100 national and international experts from 13 UNECE member States, as well as representatives of the Secretariat of the Commonwealth of Independent States (CIS), Eurasian Economic Community (EurAsEC), Eurasian Patent Office and the World Intellectual Property Organization (WIPO). The Conference discussed major issues of financing of innovative enterprises throughout their life cycle and paid particular attention to the commercialization of R&D results in strengthening the capacity of innovative enterprises to attract external funding;

(c) **International Conference on Knowledge-based Development**, Minsk, Republic of Belarus, 10-12 June 2009. The Conference was jointly organized by the UNECE and the State Committee on Science and Technology of the Republic of Belarus in cooperation with the Secretariat of the CIS, the United Nations Development Programme (UNDP) Office in Belarus and the Belarusian Institute of System Analysis and Information Support of the Scientific and Technical Sphere. The Conference brought together more than 250 participants – high-level policymakers, government experts, representatives of academia and the business sector – from 15 UNECE member States, including participants from 10 CIS countries, as well as a participant from Australia. Representatives of the UNDP, the CIS secretariat, WIPO, the Parliamentary Assembly of the Union of Belarus and Russia also took part in the event. The Conference provided a platform for a broad exchange of practical experiences and lessons learned among policymakers, representatives of businesses and academia, and other experts and practitioners on good practices and policies promoting knowledge-driven economic development;

(d) **Subregional Capacity-building Seminar on Financing Innovative Enterprises, Commercialization of Intellectual Property and Public-Private Partnerships**, Bishkek, Kyrgyz Republic, 10-11 November 2009;

(e) **International Conference on Policies to Address Financing and Entrepreneurial Challenges in High-growth Innovative Firms**, Helsinki, Finland, 2-4 June 2010.

11. Overall, some 600 participants from 19 countries with economies in transition attended these events.

12. The secretariat also contributed substantively to, and in some cases facilitated the participation of Team members in, the following capacity-building events organized by partner organizations:

(a) **Interregional Seminar on the Management of Academic Intellectual Property and Early Stage Innovation in Countries in Transition, Kiev, Ukraine, 9 June 2009.** The Seminar was organized by WIPO, the State Department of Intellectual Property of Ukraine, and the Ministry of Education and Science of Ukraine;

(b) **Interregional Symposium on the Enforcement of Intellectual Property Rights, Skopje 5-6 October 2009.** The Symposium was organized by WIPO and the State Office of Intellectual Property of the former Yugoslav Republic of Macedonia;

(c) **WIPO Inter-agency Meeting on the Development Agenda, Geneva, 17 February 2010;**

(d) **Conference “Intellectual Property: Quality and Competitiveness” and roundtable discussion “Economic Aspects of Intellectual Property”,** Minsk, 9-10 June 2010. The conference and the roundtable were co-organized by the National Center for Intellectual Property of the Republic of Belarus and WIPO.

13. Representatives from Albania, the former Yugoslav Republic of Macedonia and Turkey provided additional detail on some of the above activities and expressed their appreciation for the work done.

14. The representative of WIPO’s Division for Certain Countries in Europe and Asia then made a presentation of WIPO’s ongoing activities in UNECE member States with economies in transition. He invited the TOS-IP to take these activities into account when planning its own programme of work. He also expressed WIPO’s satisfaction with the cooperation with the TOS-IP, which enabled both ECE and WIPO to utilize limited resources efficiently, invited the TOS-IP to participate in those WIPO’s activities falling under its mandate, and offered for WIPO to participate actively in future TOS-IP activities.

V. Implementation plan for the remainder of 2010 and proposals for the programme of work in the next programming cycle (agenda item 4)

15. The secretariat explained that in the past, the biannual programming cycle of CECI had not been synchronized with the biannual internal budget-planning cycle of the UNECE Secretariat. In order to synchronize the two cycles, CECI would likely adopt at its upcoming fifth session on 1-3 December 2010 only a Program of Work for 2011 “and beyond”, and would adopt a 2-year Programme of Work for 2012-2013 at its session in 2011.

16. Delegates were therefore invited to consider, on the one hand, specific plans for activities and outputs in the remainder of 2010 and in 2011, and on the other hand, conceptual proposals for the orientation of work beyond 2011, which would form the basis for planning specific activities and outputs in the next biannual programming cycle. The specific plans for 2011 and the conceptual proposals would be submitted to the fifth annual session of CECI on 1-3 December 2010 for consideration in preparing its Programme of Work.

17. The secretariat referred to the conference room paper on agenda items 3 and 4 which had been distributed to participants and gave a presentation summarizing the main proposals for the work to be done in the remainder of 2010, and in 2011 and beyond.

18. For the remainder of 2010, two capacity-building activities had been scheduled. The first would be organized together with OPORA Russia, Rospatent and the United States Patent and Trademark Office in Moscow on 6-8 October 2010. It would involve two days of parallel sessions on IPR commercialization and on IPR enforcement, targeted at relevant

government officials, academics and businesses from CIS countries. The second would be an International Conference “From Applied Research to Entrepreneurship: Promoting Innovation-driven Start-ups and Academic Spin-offs“ followed by a Capacity-building Seminar “Intellectual Property Management at Public Research Organizations” in Kiev, Ukraine, from 9 to 11 November 2010 (cf. information notice ECE/CECI/Conf.9/1). The aim would be to share knowledge and build capacity in the following three interrelated CECI thematic areas: entrepreneurship and enterprise development, commercialization of intellectual property rights and financing of innovation. The event would be organized in cooperation with the Ministry of Education and Science and the National Technical University of Ukraine “Kyiv Polytechnic Institute” and with the support of the Science and Technology Centre in Ukraine.

19. At the session, the secretariat received concrete expressions of interest for hosting capacity-building events from the representatives of Serbia, on IP commercialization and enforcement, and the Kyrgyz Republic, on the valuation of IP. The representative of Serbia proposed that awareness raising targeting academics and the private sector, in particular for the representatives of SMEs, as well as issues related to PPP could be among the aspects to be covered. The TOS-IP agreed that the secretariat would liaise with the representatives of Serbia and the Kyrgyz Republic to discuss the organization of these two events, preferably in the spring of 2011.

20. The secretariat encouraged Team members to consider contributing their expertise to these capacity-building activities.

21. In its Programme of Work for 2009-2010, CECI mandated the TOS-IP to produce a policy-oriented document (cf. ECE/CECI/2008/2). TOS-IP agreed that the secretariat would prepare a draft policy document capturing the main problems and recommendations emanating from the substantive segment of the 4th annual session of the TOS-IP. The draft would be circulated for comments among Team members. The final document would be submitted to the fifth annual session of CECI in December 2010.

22. The Team agreed that the secretariat should explore with the speakers at the substantive segment the possibility of disseminating the results more widely by editing the conference proceedings as an official UN publication.

23. The TOS-IP then considered proposals for topics to be discussed in the substantive segment of its fifth annual session in 2011 and agreed that the discussions at this substantive segment should provide the basis for preparing one or two policy-oriented documents for submission to the sixth annual session of CECI in 2011. Among the proposals made at the session were:

(a) Policies to raise awareness among consumers, researchers and IP enforcement agencies about the importance of intellectual property for innovation and economic development and the potential risks and economic damage of counterfeiting and piracy;

(b) IPR enforcement issues in the light of TRIPS and TRIPS-plus initiatives, to be discussed in cooperation with the World Trade Organization.

24. The Team invited the secretariat to continue consultations with team members and the bureau in order to decide on the priority topics.

25. The TOS-IP is also mandated to produce training materials to be used in future capacity-building and training activities. Developing such materials requires resources and is therefore subject to financial and in-kind contributions being made available by member States and stakeholders. In view of this, the development of training materials and modules should be focused on areas where a genuine need exists that is not being met through other means.

26. Prior to the annual session, the secretariat had polled the members of the TOS-IP to solicit their views on what subjects these training materials should cover as a priority. The results of the poll indicated that there appeared to be a strong demand for additional training materials on most of the topics covered by the TOS-IP. At the same time, the responses did indicate that some training materials already existed on most of these topics, and users usually rated the quality of these materials highly.

27. The Team agreed that the secretariat should collect samples of existing training materials and put them, or descriptions thereof, on the password-protected CECI Information Exchange Platform. The secretariat would lead a discussion among TOS-IP members on which existing training materials are suitable for our purposes, which ones could be modified (and if so how) to make them suitable, and on which issues there is a need for completely new materials to be developed. The secretariat may invite selected TOS-IP members to participate in dedicated task forces in the modification or development of training materials, to be ready for testing in 2011.

28. The TOS-IP also agreed that the secretariat and bureau should explore, together with the UNECE Team of Specialists on Innovation and Competitiveness Policies and the UNECE expert networks on financing innovative activities and on entrepreneurship and enterprise development, the feasibility of issuing a quarterly electronic newsletter. The secretariat may invite selected members of the Team to participate in a “board of editors” for the newsletter, taking responsibility for different topics.

29. Regarding the orientation of work for the period beyond 2011, the TOS-IP agreed to continue to contribute to cross-cutting activities, as this approach had received broad acceptance and filled a genuine niche. The same holds for CECI events that combine policy discussions with an element of exchanging experience and peer-to-peer learning.

30. On IP-specific activities, the TOS-IP agreed to move towards more thematically focused, in-depth activities. This would be in line with expressed demand, but would require either more resources or a stricter prioritization of topics to be covered. The TOS-IP invited the secretariat to seek to mobilize additional resources, but also to leverage more the expertise and leadership of Team members, e.g. by creating dedicated task forces.

31. At a policy level, future work on the broad IP and innovation agenda should focus more on strengthening national innovation performance by removing obstacles to cross-border cooperation and knowledge transfer. At a capacity-building level, future work under the broad IP and innovation agenda should stress the opportunities and challenges of international IP protection and exploitation strategies.

32. The representative from the Kyrgyz IP Service expressed interest on thematic topics such as: transfer of technology; management of IP at SMEs; enforcement of IPR; how to market IP; how to deal with issues related to counterfeit products; the optimal level of state control over the use of IP, among others. He suggested that there is a need of technical support in establishing a market for IP rights and development of R&D and IP policy and requested the TOS-IP to consider sending specialists to provide advice on the national strategy on innovation, including on creating a center of technology transfer.

VI. Other business (agenda item 5)

33. Participants agreed that the Secretariat prepare the meeting’s report no later than ten days following the meeting and that it be reviewed and adopted by the Bureau on behalf of the Team.

34. The Team agreed to schedule its fifth annual session for 7-8 July 2011 in Geneva. The Chair encouraged delegates to retain these dates and to share them with relevant stakeholders in their respective countries.
