

SYMPOSIUM ON ACCESS TO MEDICINES:

Pricing and Procurement PRACTICES

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Current Developments and ongoing work in WHO/WTO/WIPO

Access to patent information, competition policy and arbitration and mediation

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Directors General Pascal Lamy, Margaret Chan, and Francis Gurry, Hon. Ruth Dreifuss, distinguished colleagues, my co-panelists, Ladies and gentlemen, good morning.

My intention is to outline some of the intellectual property aspects that may be of relevance for procurement and pricing practices in a public health context. I shall not endeavor to talk about why intellectual property is important for access to health, since this is a topic that has been discussed over and over for years.

Access to medicines and intellectual property has been a central topic of the international policy discussions for years, as you have repeatedly heard; and as you heard from WIPO's Director General in his opening remarks. I shall however attempt to give you a practical impression about the wealth of information that is available from the intellectual property system; and WIPO's continuing challenge, an imperative in fact, to assess how intellectual property systems and policies can and should enable access to medicines, and not be seen as a barrier. This is why a symposium like this is an excellent opportunity for exchange of ideas; learn from each other's contributions, opinions and views.

WIPO has the potential to be *the* leading intergovernmental forum for addressing the intersection between intellectual property and global policy issues, one of which is public health and access to medicines; a continuing global challenge even today; But also exacerbated by the other global challenges the world is facing today like climate change, food security, the attainment of the Millennium Development Goals and protection of biodiversity.

Continued access to health solutions requires an active policy of promoting innovation, but ensuring that the results of this innovation are easily accessible to patients, doctors, governments, academics and others who play a role in promoting of public health. As Aristotle once said; "It is clearly better that property should be private, but the use of it common: and the special business of the law maker is to create in men this benevolent disposition".

We see ourselves at WIPO as that interface between encouraging strong intellectual property principles, and being the enabler of a benevolent disposition to share this

- objective & transparent pre-established criteria for the evaluation of tenders
- fairness, integrity and transparency of the procurement process

So what is the role of intellectual property in procurement?

At the outset, one might think that intellectual property would not appear as an issue for procurement; however the provider would need to make sure that his offer does not infringe the rights of others, including intellectual property rights. The procurer too would trust that the provider is entitled to sell the product without infringing other people's rights, especially if this is an international procurement involving purchasing and distributing medicines in different countries. It may be necessary to ensure that this distribution activity does not have the possibility of infringing intellectual property rights.

What seems to be crucial, from an intellectual property perspective, is information;

It particularly features full-text search in bibliographical data, descriptions and claims; & allows viewing and downloading the available relevant documents. A new open source search engine has introduced some new features which help to improve the search results through, for example;

- automatic analysis by cluster for every search
- better relevance ranking
- multiple languages support
- machine translation of titles and abstracts
- full text descriptions and claims with embedded images.

And because of the challenge of the different languages and translations of certain technical terms, WIPO also recently launched what is called Cross-Lingual Information Retrieval (CLIR); a new exciting facility of the **PATENTSCOPE** Search system which will open up a new way of carrying out multiple linguistic searches of patent databases in different languages and will significantly enhance access to patent information throughout the world. The search query in one language will be translated at best into several other languages by special software which has been developed by WIPO. CLIR has extensive rich coverage in English, French, German and good coverage for Japanese and Spanish. The next languages to be considered are Chinese and Portuguese.

process. The primary focus is the completion & updating of the national intellectual property legal systems of all WIPO, WTO and UN Members over the next few years. In the medium-term, WIPO Lex will also feature all IP-relevant treaties (other than WIPO treaties), at the international, regional and bilateral levels. Due to constraints in resources, English is the priority language of the WIPO Lex, although every effort will be made to provide translations in French and Spanish soon.

WIPO Lex, or for now CLEA, the Collection of Laws for Electronic Access, will be very useful in knowing more about patent law exhaustion in countries, especially in relation to procurement; whether when a medicine is sold and delivered by the holder of a patent right on the basis of a procurement contract, in the same market where they are bought, the patent may be exhausted, meaning that the purchaser is free to use the medicine and there should be no further problems for the distribution of the medicine from the intellectual property point of view. However, if the right is exhausted not only in the country of procurement but also in another country, the patent holder cannot prevent the exportation into another country. Whether the rights are exhausted or not though is a question of what the national law says, the exhaustion regime in the receiving country becomes relevant. WIPO Lex will become very useful.

I was also asked to speak on Competition Policies. The question again here is; is IP against competition? Does it inherently trump on competition? IP however does differentiate, and that in itself is the core of competition between businesses; be they multinational companies or the artisan in a flea market in Jot(r)(t)21()11n1 0 Td[pi]-7(n th3()-1(P)5-4

- survey and analysis on the use of compulsory licenses to repress anticompetitive practices
- studies on intellectual property & competition in selected countries and regions
- meetings on intellectual property and competition at the regional level
- symposia on emerging challenges over the anti-competitive use of intellectual property
- WIPO training programs on technology licensing
- development of a guide on franchising
- publication of studies and proceedings of relevant meetings

To complete my presentation on availability of information and data, and WIPO's role in access to medicines, Procurement and Pricing practices, I would like to mention yet another area WIPO service; the Arbitration and Mediation Center, which provides services that deal with disputes.

Disputes are often neglected matters; however thinking about dispute resolution well in advance is essential for success. The WIPO Arbitration and Mediation Center was established in 1994. The Center promotes alternative dispute resolution other than

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- WIPO's patent information systems, PATENTSCOPE as an example, is a valuable tool at various stages of procurement, providing world leading references sources, databases and portals for patent and licensing policies to maximize availability of innovation, including research tools and platform technologies for the development of products relevant to public health particularly in conditions prevalent in developing countries or affect developing countries disproportionately.
- A range of specific supporting activities, such as facilitating licensing agreements and dispute resolution; and

WIPO is committed to do whatever is within our possibility to enhance worldwide access to information related to innovation and connected intellectual property rights, and in turn access to medicines.

Thank you for your attention.