

**UPDATE**

## AT WIPO, NEW THREATS TO INTELLECTUAL PROPERTY RIGHTS

(Updating *Backgrounder* No. 215, "At the U.N., A Mounting War on Patents, October 4, 1982.)

The work of the World Intellectual Property Organization--or WIPO--a Geneva-based specialized agency of the United Nations, would hardly seem destined to become a controversial subject. With an annual budget of roughly \$6 million and a small secretariat, WIPO promotes the protection of intellectual property and administers a number of international conventions and unions relating to patents and trademarks. As a number of other U.N. agencies with relatively narrow, technical mandates, WIPO for the most part has avoided the politicization that has come to characterize larger U.N. agencies such as UNESCO. This happy situation for WIPO may be changing. A series of recent developments within the organization points to increasing politicization. Most serious are WIPO's moves that threaten to undermine the Reagan Administration's recent initiatives on global economic liberalization.

This January, the "Group of 77" developing countries proposed that WIPO reopen the Diplomatic Conference for Revision of the Paris Convention for the Protection of Industrial Property. This 1883 Convention defines and enumerates certain basic principles relating to international property rights and patent protection. It is described by the State Department as "the principal worldwide convention in the industrial property field."

The changes in the Convention which the "Group of 77" have been demanding for the better part of the last decade have little to do with improving patent protection. To the contrary, the changes would weaken patents to aid the radical redistribution of world resources. When the movement to revise the Paris Convention began in the mid-1970s, the U.N. had committed itself to achieving a "New International Economic Order" by mandating massive resource and technology transfers from the developed "North" to the underdeveloped "South." Patents and other forms of intellectual property protection were seen by the U.N.'s Third World majority as artificial barriers by which developed countries prevented the transfer of technology to developing countries and perpetuated their hold on the world's wealth.

Accordingly, at a series of negotiating rounds beginning in the late 1970s and ending in 1984, the "Group of 77" developing countries proposed weakening the already minimal patent protection afforded corporations and inventors by the Convention, as well as granting a whole series of special advantages to Third World countries.

The most controversial proposals were those relating to Article 5A of the Convention. One change proposed by the developing countries would have authorized a developing country to compel a corporation to grant an "exclusive compulsory license" to a designated individual or entity in the developing country. This would have been permissible if, 30 months after the issuance of the patent to the corporation, the country determined that the corporation had not sufficiently "worked" the patent there. Another proposal would have authorized patent forfeiture or revocation if the invention had not been "worked" in the country within five years of the grant of the patent. Importing the product containing the patent into a developing country would no longer have constituted "working" it.

Were these changes to be adopted, multinational firms would have had to fund local competition in every market in which they operated, and to hand over patented products to governments and local enterprises, with all the possibilities for patent "pirating" this would have entailed. They would have had to do this, moreover, without assurance that they themselves could sell patented products in which they had invested huge sums to develop and test.

These drastic proposals prompted the developed countries, led by the United States, to take a strong stand in the negotiations, which were eventually stalemated in 1984. Since then, a consensus has begun to emerge that increased, not weakened, international patent protection is necessary. Several newly industrialized countries, such as Mexico, South Korea, and Thailand, have been strengthening their copyright and patent protection laws. Many members of Congress, meanwhile, have recognized how patent and copyright pirating increases the U.S. trade deficit, costing American businesses billions in lost revenues every year.

Nonetheless, the Group of 77 continues to push for weakened patent protection and demands reconvening the convention. While the Group of 77 had been trying to force corporations into granting a potentially unlimited number of licenses to individuals and firms in developing countries, now proposes mandating only one "sole exclusive compulsory license" be granted by the corporation to a domestic enterprise to produce the patented technology. In return for this "concession," the Group of 77 is proposing two changes in the Convention, one relating to patents on the processes by which products are developed, and the other concerning the conditions under which patent forfeiture or revocation is justifiable. Both clearly would weaken the already minimal patent protection afforded enterprises by the Convention.

These events are particularly ironic given the fact that the developed countries agreed in September 1986 to develop new rules for the increased protection of industrial property under the auspices of the General Agreement on Tariffs and Trade (GATT), at GATT's ongoing Uruguay Round. If the Diplomatic Conference is reopened, the U.S. would therefore simultaneously be negotiating to stiffen standards for trade-related aspects of intellectual property at GATT and fighting against further weakening of intellectual property standards in WIPO. In another



ironic twist, WIPO itself has asked to participate in the development of "minimum standards" for intellectual property protection in GATT--while it is sponsoring a conference aimed at lowering the "minimum standards" in the Paris Convention.

The U.S. strongly should oppose reopening the Diplomatic Conference at the September 21 meeting of the Governing Bodies of WIPO, even threatening not to participate in the Conference if necessary. Just as important, the U.S. should pressure its European and Japanese allies, who somewhat support reopening the Conference, to adopt a similar position. A conference without the major developed countries, who are the source of most of the world's patents, would be meaningless. Moreover, by making it clear that the U.S. is unwilling to play the G-77's political games, the U.S. would underline its seriousness on the patent issue. The Reagan Administration must therefore argue forcefully that the proposed revisions in the Paris Convention are unnecessary, and conflict with a growing consensus that international patent protection should be strengthened, not weakened. Although the U.S. does have interests in WIPO, the prospect of being pressured into changing the Convention represents a fundamental threat to U.S. interests that progress in other areas of intellectual property protection, such as a proposed convention on semiconductors, would do little to mitigate. More important, weakening the patent convention would threaten the more realistic and constructive economic dialogue which several developing countries have begun having with the West. The Reagan Administration should not allow this dialogue to be jeopardized by the outdated demands at WIPO by a few radical Third World countries.

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