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Backgrounder UPDATE

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MESSAGE TO VERITY: DON'T LET THE U.N. UNDERMINE PATENTS

(Updating *Backgrounder Update* No. 51, "At WIPO, New Threats to Intellectual Property Rights," September 11, 1987, and *Backgrounder* No. 215, "At the U.N., A Mounting War on Patents," October 4, 1982.)

Patents and copyrights create important incentives for the development and adoption of new technologies and innovative products and processes. The Paris Convention for the Protection of Industrial Property (known simply as the "Paris Convention"), originally signed in 1883, provides the basis for protecting international property rights and patents. This Convention is once again under attack at the World Intellectual Property Organization (WIPO), a specialized agency of the United Nations responsible for administering the Paris Convention. On September 19, a meeting of some 30 nations convenes at WIPO headquarters in Geneva to decide whether to open negotiations to change the Paris Convention.

The Group of Developing Countries, one of the four blocs represented in WIPO deliberations, has been proposing since 1981 that WIPO reconvene the Diplomatic Conference for Revision of the Paris Convention. So far, the developed countries, under American pressure, have prevented the reopening of Paris Convention negotiations. Yet it appears that, except for the United States and Japan, Western governments now are willing to bow to the developing countries. This could undermine the Paris Convention's international protection of intellectual property. The Department of Commerce, which will be representing the U.S. position at the September 19 meeting, should continue to defend patents and copyrights and thus resist this attempt to reconvene the Paris Convention.

Discredited Formula. The movement to revise the Paris Convention began in the mid-1970s as part of the U.N.'s call for a massive redistribution of wealth from the industrialized north to the underdeveloped south. This is to be achieved through a U.N. scheme known as the New International Economic Order (NIEO). The basic premise of the NIEO is that wealth is not earned or created, but exists as part of the "inheritance of mankind." As such, developed countries are not entitled to their wealth since, as the argument goes, they have obtained it at the expense of poor countries. Although NIEO has been widely discredited and revealed as a formula for keeping poor nations poor, the radical nations which control the bloc of developing countries continually attempt to revive NIEO.

In the context of the NIEO, patents are seen as unfair barriers to economic development and technology transfer and as proof that developed nations refuse to share their wealth. Similarly,

many developing countries believe that patents impose an unwarranted premium on products and that these products would be available at a lower cost if they could just dispense with patent protection altogether. Therefore, these countries insist that they should be exempt from international measures that protect intellectual property.

Blocking the Transfer of Wealth and Innovation. This is short sighted. It would not result in a transfer of wealth, technology, or innovation to the developing countries. To the contrary, it would block the transfer. Innovators seek patent protection from a country to ensure that they will be compensated for taking the risks inherent in researching, developing, producing, and marketing their patented product. Faced with the possibility that patented inventions or processes will be stolen, innovative firms and individuals will operate only in countries that offer adequate patent protection. The result would be a reduction of much-needed foreign investment and technology transfer from the developed to the developing countries.

The flawed notions advanced at WIPO by the Group of Developing Countries are typified by the proposed changes to Article 5A of the Paris Convention. These would weaken patent protection severely. The most contentious proposal would authorize a developing country to grant "exclusive compulsory licenses" if a patented product or process had not been "sufficiently worked" in that developing country by the patent owner. A compulsory license, which the developing countries call a "non-voluntary license," would allow individuals, or any other agent of the developing country's choosing, to work a patented invention or process without authorization and with no compensation to the patent's owner. The rationale for this purportedly is to ensure that a patented product or process will be utilized in the developing country. A major problem with this proposal is that determining when a patent is "sufficiently worked" would be left largely to the developing country. Importation of the patented product or process into the developing country would no longer qualify as "working" the patent. The result of these revisions would be to sanction, by international treaty, the abrogation of patents.

Trend Toward More Stringent Protection. Despite these developments at WIPO, the trend in patent agreements, as demonstrated at the ongoing Uruguay Round of Multilateral Trade Negotiations of the General Agreement on Tariffs and Trade (GATT) and elsewhere, has been toward more stringent protection. In September 1986, for example, participants in the Uruguay Round agreed that new GATT rules and procedures are needed to protect intellectual property. Unlike the Paris Convention administered by WIPO, GATT has an enforcement mechanism for patent protection.

The Group of Developing Countries is hoping to use its influence in WIPO not only to subvert the minimum protection provided by the Paris Convention, but also to undermine the progress toward tougher patent protection being made by GATT in the Uruguay Round negotiations. WIPO indeed has begun directly to challenge the GATT initiatives. WIPO Director General Arpad Bogsch of Hungary has asked the Governing Bodies of WIPO to vote on whether WIPO, rather than the Uruguay Round, should develop standards for trade-related aspects of intellectual property rights. In a July 21, 1987, memorandum entitled "Role of WIPO in the Uruguay Round of Multilateral Trade Negotiations of GATT," Bogsch states that, "Any such definition of new norms, in the Uruguay Round, would risk causing serious confusion at the international level. This is why, it is believed, if dealing with the trade-related aspects of intellectual property rights, such definition should take place within the framework of WIPO...."

Insisting on Minimum Standards. The U.S. Department of Commerce must strongly oppose this. The U.S. should not permit any weakening of international standards of intellectual property protection. These proposals by the Group of Developing Countries at WIPO are virtually the same as those which have been rejected by the U.S. and other developed countries in previous discussions of reopening the Paris Convention talks. Accordingly, U.S. Commerce Secretary William Verity should try to enlist other developed countries to continue to refuse to open the Diplomatic Conference to revise the Paris Convention. If this fails and the conference reopens, the U.S. should attend and insist on the adoption of the minimum standards for patent protection already developed for use in the Uruguay Round of GATT. If the Diplomatic Conference weakens the Paris Convention, Verity should instruct the U.S. delegation not to sign. Instead, the U.S. should declare that it will adhere to the existing Convention while continuing to work toward more effective patent protection through the Uruguay Round of multilateral trade negotiations.

To be sure, patent protection helps firms in the U.S. and other Western nations. Far greater beneficiaries, however, are the developing nations. Without the transfer of Western technology and products, these nations would be condemned to underdevelopment. Protecting intellectual property is a key ingredient of economic growth and progress. WIPO should be striving to strengthen patent protection rather than weaken it.

Mark A. Franz
Policy Analyst