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FORUM ON CREATIVITY AND INVENTIONS – A BETTER FUTURE FOR HUMANITY IN THE 21ST CENTURY

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CREATING (ESTABLISHING) A SUPPORTIVE ENVIRONMENT FOR THE USE AND DEVELOPMENT OF INVENTIONS AS A SERVICE TO SOCIETY

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Forum on Creativity and Inventions:
A Better Future for Humanity in the 21st Century

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Introduction

Thank you very much. It's a pleasure to be here in Helsinki representing the U.S. Patent and Trademark Office (USPTO). I want to commend WIPO and the National Board of Patents and Registration of Finland for putting together and hosting such an exceptional conference.

Overview

At no other time in history has today's topic -- creating a supportive environment for invention -- been more important. For today, unlike ever before, intellectual property is an increasingly invaluable resource that is essential to the well-being of society.

As we near the end of the first year of the 21st century, a wave of invention and innovation is transforming societies and economies around the world. Information-based industries -- such as biotechnology, telecommunications, and microelectronics -- are changing the landscape of intellectual property law and the contours of the global economy.

In the United States, these industries have helped fuel the longest economic expansion in our history. Those of us who work at the USPTO see this on a daily basis. So far this year, our trademark filings are up 40%, in part because of the explosion of Internet domain names. Patents filings are up about 13%, and that's on top of a 25% gain in the previous two years.

Added to the sheer volume of filings, the complexity of some of these applications is increasing as well.

At the start of the last century, one-third of all patent applications filed at the U.S. Patent Office concerned one bicycle technology. Today, we routinely examine patent

applications in areas such as genomics, bioinformatics, and combinatorial chemistry. And earlier this year we received an electronic biotech patent application with a sequence listing equivalent in size to 400,000 pages of paper.

So, it is an exciting time for those of us in the field of intellectual property (IP). Even more important, this dynamic environment is a time of both great opportunity and great challenge.

The USPTO, as the U.S. government's principal intellectual property office, is working on a number of different fronts to seize these opportunities and to facilitate global protection for all creators. We seek to harmonize IP law in order to make protection stronger, more affordable, and more accessible. This, in turn, will support innovation and provide even more incentives for the ideas that are driving the global economy.

In the area of patents, the United States strongly supports patenting of all technologies. We believe that history has shown that patent protection for all types of new technologies is critical for the development and commercialization of new ideas. In fact, we have been issuing patents on methods of doing business since the inception of our patent system, and we also have a long tradition of quality patents issued to chemical inventions, including those derived from the human body. These are two areas that receive quite a bit of attention in the media lately.

TRIPs

One focus of the office I run at the USPTO, the Office of Legislative and International Affairs, is working with developing economies to bring their domestic laws into compliance with the TRIPs (Trade-Related Aspects of Intellectual Property) Agreement. TRIPs is a fundamental component of world intellectual property protection, because it weaves patent, trademark, and copyright norms into the international trading system. More specifically, Article 27.1 of the Agreement requires that patents be available in all fields of technology.

As many of you know, Article 65 of the TRIPs Agreement required that all World Trade Organization (WTO) developing country Members be in full compliance by January 1, 2000. Least developed country Members have until January 1, 2006, to be in full compliance.

One of our priorities in the United States is to help these developing economies bring their domestic laws into compliance with the Agreement. We've reviewed numerous draft laws to determine their consistency with TRIPs provisions. We provide practical advice, based on our own experiences, in order to help countries avoid problems we've actually had ourselves or have observed. We also provide direct training for governmental officials on everything from patent examination to *inter partes* judicial proceedings.

In August, for example, I headed a delegation to Senegal to provide technical assistance to officials of Francophone African countries on enforcement of intellectual property rights. It was a very successful trip and, along with other training programs we have conducted in recent months in Thailand, Russia, and Washington, D.C., will help make TRIPs implementation a reality.

Global Patent

With TRIPs as a foundation, the challenge -- or opportunity -- for us now is to get to the point where the rights of inventors will be universally recognized, without having to seek patent protection in individuals countries. This type of seamless, worldwide protection is becoming increasingly important and desirable as global trade expands and economies become more interdependent.

Of course, there are a number of procedural and substantive patent law impediments to such a global patent system. Fortunately, I think there are a number of market forces, that will help us overcome these hurdles.

For example, the increasing pressure on industrial property offices to decrease costs will spur the adoption of cost-saving measures, such as utilizing the search and examination results of other industrial property offices. Similarly, advances in information and communication technology will heighten the need to make our electronic systems converge.

On the substantive side of things, as competition for technological advantage and investment increases, many nations will also feel compelled to harmonize their systems and adopt the positive features of other nations. For example, in the U.S. we recently enacted legislation that requires early publication of patent applications and expanded reexamination procedures. In addition, the Eurasian Patent Convention has taken the concept of a global patent a step beyond the European Patent Convention, albeit on a regional level.

On the procedural front, progress is also being made in areas such as the Patent Law Treaty and the Patent Cooperation Treaty.

Patent Law Treaty

Last spring, the WIPO Diplomatic Conference in Geneva successfully concluded with the signing of the Patent Law Treaty (PLT) by 43 WIPO member states, including the United States.

As many of you know, the PLT will provide a way around the variety of national and regional requirements through uniform filing standards and formal procedures among the member countries. Essentially, the PLT takes the requirement standards from the Patent

Cooperation Treaty and transports them into national patent systems. These will then be the maximum formal obligations a PLT country could impose on patent applicants.

By providing more consistent treatment of applications and prosecution procedures, the PLT will allow applicants to develop worldwide protection with greater confidence and at reduced costs. It will also reduce the risks incurred by the loss of potentially valuable IP rights due to filing errors. In other words, exactly the type of supportive environment we are talking about today.

Right now, the USPTO is preparing the ratification package for the PLT and drafting the necessary implementing legislation to submit to Congress.

Patent Cooperation Treaty

In addition to the PLT, progress is also being made towards harmonization through reforms to the Patent Cooperation Treaty (PCT). The United States is leading an effort to streamline the processing of international applications under the PCT.

Although the PCT has helped provide patent protection in a number of worldwide markets, the fact remains that it's not living up to its full potential. The reason is that it's far too complicated and rule-bound. Many inventors and patent applicants -- in the U.S. and elsewhere -- refuse to use the PCT system because of its complexity and perceived inefficiency.

That is why we have put forward a proposal to make the PCT more "user friendly." Our proposal is the result of formal and informal discussions with other major patent offices, our Trilateral partners, WIPO officials, and PCT users in the United States.

In conjunction with the adoption of the PLT, these reforms would allow applicants to prepare a relatively simplified patent application in a single format, preferably in electronic form. This would be accepted by all patent offices, throughout the world, as a national patent application or an international PCT patent application.

Processing of such an application -- whether national, international or both -- could be accomplished in a much more seamless fashion, minimizing any distinctions between the two. In addition, the system could move away from its current, non-binding patentability opinions and adopt procedures where substantive rights may eventually be granted through the PCT channel.

Our proposed changes to the PCT would be accomplished in two stages. In the first stage, we propose that the PCT be amended to simplify certain procedures and to conform the PCT to the PLT. These revisions -- which could take place within the next five years -- include simplification of filing date requirements, residence and nationality requirements, and demand requirements. They also include acceptance of fees for

postponing national processing, electronic publication of applications and transmission of search and examination results.

The second stage of reform includes a much more comprehensive overhaul of the entire PCT system. These measures -- a more long-term undertaking -- would incorporate the regionalization of current search and examination authorities and elimination of distinctions between national and international applications. It would also include relaxation of timing for designated country processing, as well as adoption of positive examination results in originating countries or certain authorities that have agreed to be bound by these results.

I am pleased that we're moving forward as we'd hoped on these reforms. In fact, at the meeting of WIPO Governing Bodies that has just concluded, the Assembly approved a proposal of the Director General that establishes a special body to consider the U.S. proposal. That body will consist of member States, International Searching and Preliminary Examining Authorities, and non-governmental organizations representing PCT users.

So, as we continue our efforts on the PCT and the PLT and monitor the progress of developing nations in the context of the TRIPs Agreement, we are moving in the right direction. That's not to say that achieving a consensus on the outstanding substantive issues will not be challenging. Clearly, it will. Tough questions -- such as sovereignty issues, the United States traditional first-to-invent system, and the need to harmonize standards of patentability -- all must be addressed. The lack of a meaningful grace period in much of the developed world is a critical issue, as well. Nonetheless, the journey to a global patent system and an environment that is even more conducive to invention and innovation is on its way.

Trademarks

Fortunately, patents is not the only area where we are making progress in streamlining and strengthening IP protection. We also are making important headway in simplifying trademark registration around the world. Last year, the U.S. implemented the Trademark Law Treaty, which harmonizes the procedures of national trademark offices worldwide. This year, we are hopeful that even more progress will be made with our ratification of the Madrid Protocol.

Currently, in order to register a trademark in countries outside the U.S., a trademark owner has to file separate applications in each country, in the language or languages of those countries. Under the Madrid Protocol, however, trademark owners will be able to register their marks in any of the 65 Madrid counties by filing a single application in either English or French.

Until a few months ago, the U.S had been unable to join the Protocol due to a dispute over the voting rights of the European Community. Our State Department believed these

rights violated the principle of one-vote-per-country and might establish an unacceptable precedent for future international agreements.

Fortunately, a compromise was reached earlier this year on a consensus-based decision-making process. The EU also agreed that if consensus is not possible, the votes of the EU and its member states will not exceed the total number of EU member states.

What this means is that we're just waiting for final action by the Senate on U.S. ratification, and we are hopeful that will occur any day now.

With respect to implementing legislation for Madrid, the House of Representatives and the Senate Judiciary Committee have already approved measures. The Senate proposal would require us to implement the Protocol within one year from the date that the implementing legislation takes effect. Thanks to our recent experience with the Trademark Law Treaty, we have some experience in implementing significant legislation within a one-year time period.

Copyright

To complete the triumvirate, let me conclude by discussing a few developments on the copyright front. I know this is a topic for the final session tomorrow afternoon, and it is obviously an important area of IP in today's digital world.

Today in the U.S., and indeed in other parts of the world, copyright-based industries are among the largest and fastest growing economic sectors. In the last twenty years, the industry's share of U.S. gross domestic product (GDP) grew more than twice as fast as the rest of our economy. In fact, in 1997, they added about $350 billion to our GDP and provided nearly 4 million jobs.

That is the good news. That bad news is that the potential for massive international piracy of copyrighted works is becoming increasingly real thanks to the technologies available on the Internet. As a result, information technologies are having an enormous impact on how copyrighted works are created, reproduced and disseminated.

Fortunately, the international community understood this threat and in 1996 adopted the two WIPO Copyright Treaties -- the WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT).

WIPO Copyright Treaties

Today, nothing is more important to protecting copyrighted works in the digital environment than the WCT and the WPPT. They make several small changes in the international copyright standards established by the Berne Convention and the TRIPs Agreement, including clarifying copyright protection of computer software and

databases. Together they protect most of what is protected in the off-line world -- such as books, films, music, photographs, and paintings -- from unauthorized reproduction, performance, modification, or translation.

The United States implemented these changes into our own law via the Digital Millennium Copyright Act of 1998. Last year, we deposited the U.S. instruments of ratification for the treaties.

The Treaties will only enter into force three months after 30 instruments of ratification have been deposited with WIPO. Last I checked, we were about halfway there, so we still have work to do. Achieving their entry into force has been a keystone of this Presidential Administration's electronic commerce initiatives, and we strongly urge our European counterparts to move quickly to ratify the treaties.

Audiovisual Performances

One of the issues left open under the WIPO treaties is audiovisual performers rights. In fact, the protection of the IP interests of audio-visual (AV) performances is a long-standing, unresolved issue in international intellectual property negotiations.

Traditionally, the position of the United States and most other common law countries has been that no specific treaty provisions were necessary in this area because the protection of the interests of performers is best dealt with by collective bargaining and private contracts. However, the continuing developments in technology -- and the continuing success of the collective bargaining process in resolving differences between the unions and the motion picture studios -- has led to a change in this position. In addition, developments in European AV Policies have emphasized the need to resolve differences between the U.S. and European system of protection for performers rights.

The United States is very pleased that the WIPO General Assembly will convene a Diplomatic Conference on the Protection of Audiovisual Performances later this year, from December 7th to the 20th. This will hopefully lead to new protections for performers on television, videos, and film -- and, in so doing, further the goal of the international harmonization of IP law.

Conclusion

As I indicated at the beginning of my remarks, I believe we are in the midst of one of the most significant periods for intellectual property in history. The challenges and opportunities are great.

The explosion of the Internet and digital technologies is transforming economies. Patent and trademark systems are under increasing pressure to enhance efficiency, reduce costs,

and simplify procedures. And copyrighted works face numerous threats from large-scale, international piracy and counterfeiting.

So, today, less than 300 days into the 21st century, the pressure is on all nations to ensure that our IP systems are up to the challenges of the future.

Will our systems be able to adapt quickly to the needs of emerging technologies and to respond more effectively to the needs of current users? Will we be successful in encouraging the adoption of effective I.P. systems in countries currently lacking them? And most importantly, will we be stewards of an environment that rewards and protects human creativity -- on which so much of our future depends?

The stakes are high, but I am confident that working together we can succeed.

Thank you very much.