‘A global patents regime only holds advantages’

WIPO chief Gurry believes India has no reason to fear the Patent Cooperation Treaty

Interview by Joe C. Mathew

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FRANCIS GURRY SAYS INNOVATION IS GOING TO BE A VERY IMPORTANT COMPONENT IN THE SUCCESSFUL IMPLEMENTATION OF MAKE IN INDIA

THE GENEVA-BASED World Intellectual Property Organisation (WIPO) works to foster innovation through the creation of an international intellectual property (IP) regime. It strives to do this by balancing the interests of its 188 member countries — a task rendered complex as member states are not at the same level of economic development. Members, therefore, have differing priorities, shaping their outlook on IP. In an interview with *BW | Businessworld*, WIPO director general Francis Gurry elaborates on his efforts to bring about consensus among a divergent group of member nations, about India’s approach to IP and WIPO’s role in a world of fast-changing technologies. Edited excerpts:

Have you seen any change in India’s approach as a WIPO member since the coming of the new government?

I can’t make any judgment based on the last seven months, but all I can say is that in the recent past, we have seen a more consistent engagement from India. Also, in this period, we have seen a great deal of new energy, and announcements such as Make In India and Digital India, where we feel WIPO can make contributions.

I was referring to India’s stance on approving pending treaties and ongoing negotiations...

India was the first to ratify the newest pact — the Marrakesh Treaty, which facilitates access to published works by persons who are blind or visually impaired. That’s a very positive sign. India has joined our international trademarks system, which we feel will benefit Indian industry. Recently, the country has commenced operations as a searching authority in the international patent system — the Patent Cooperation Treaty (PCT). This is also a positive sign.

How do we justify the PCT system when 74 per cent of patent filings in India are done by foreign entities and not by local firms?

There are very few countries which have more patent applications domestically than foreign. If I am not mistaken, China is one of those exceptions where around 85 per cent of all applications are filed by local applicants. The US has always been around 50-50, and Japan is similar to China, where the share of local applications is around 83 per cent. The majority of countries, including many industrialised countries, receive more foreign applications than domestic ones. For instance, Canada is 87 per cent foreign. And Canada is not a technologically unsophisticated country. Similarly, in Singapore — a technologically advanced Asian country — local applicants’ share is around 12 per cent. That’s understandable because you are measuring one country’s output against the whole world.

But how will it help Indian industry?

The PCT is a treaty that is procedural in nature. It reduces transaction costs, and improves efficiency of the patent system and provides applicants extra time to decide whether or not to seek patent protection. You don’t have to file separate applications in 148 countries (the number of countries that have ratified the PCT). You can search for patents in all these countries from a single database. So, it can only help industry

as you have the advantage of a preliminary international search, and preliminary application scrutiny. I can only see advantages, and no disadvantages. Further, the treaty does not touch either the national policy or the flexibilities extended by international agreements such as the Trade-Related Aspects of Intellectual Property Rights (TRIPS). The patent remains national. It's just that the filing is simplified.

How do you rate India's draft national IP policy?

When you look at what is happening in the IP world, you will see an extremely active agenda in bilateral, regional, and multilateral fora. In some cases, multilateral agendas become extremely difficult to reconcile due to the asymmetry and diversity among countries.

In a fast moving world, where everyone is impatient, there is a tendency to do things by taking the quickest route. There is also the reality of global economic behaviour where a company expanding beyond its territory is looking to maximise its revenues. Seen from this context, we have to be careful not to ignore the multilateral system. India's draft policy is very much in that direction. It does pay attention to the multilateral system.

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The World Trade Organisation (WTO) has the most powerful instrument related to IP in the form of the TRIPS agreement. What is WIPO's significance as a global IP body?

The TRIPS agreement is not very recent. It dates back to 1994. Lots of things have changed in the world since then. For instance, commercial activity on the Internet had not commenced in 1994. The burgeoning digital market that you have today is a post-TRIPS development. The world hasn't stood still. It has evolved. It evolved in response to the development in commerce and technology. Then, there are areas which require national policy improvements. Cultural policy is one, copyright is another. These are the areas where WIPO has been very active, since the TRIPS Agreement.

Can you elaborate...

We have two treaties since 1996 to upgrade the international copyright system to the digital environment. We concluded the Beijing Treaty in 2004 to ensure the protection of audio-visual performances in the digital environment. And, we have an ongoing discussion on the protection of broadcasting organisations, a sector where technology has changed in the last 20 years. For example, we once used to think of television as a box, an instrument. The reality today is that as many people are watching television on mobile platforms as they are on the stationary old television. And, indeed, broadcasting has become platform-agnostic. That's where we see the need to adapt an international framework. Likewise with traditional knowledge. It was not on the agenda in 1994. It is very much on the agenda now. I think there is more space for WIPO, particularly as IP becomes more central to technology development.

IP provides market exclusivity for some, and additional cost and less access to others. How is a balance between innovation and societal needs possible? What is WIPO's development agenda?

Well that is the central question of IP, and the central challenge. It is not easy because different countries, with different interests, perceive this in different ways. For example, there is a movement amongst consumers and others for access to knowledge. But I don't see a similar movement for access to petroleum. Both are resources. That said, there is asymmetry in the world and different countries are approaching it differently. So, striking the right note is something that we need to do in every particular question that we consider. The Marrakesh Treaty is perhaps a good example of how countries came together to address the problem of access to knowledge for persons who are blind, or visually impaired.

Another instance is that of the Medicines Patent Pool (not administered by WIPO, but supported by it), where companies voluntarily pool their patents for HIV drugs. This will allow generic drug companies to manufacture medicines or stimulate more research, for example, developing a drug for pediatric indications. Another example is WIPO Re:Search, a multi-stakeholder platform that is administered by WIPO. IP assets are shared between members to develop new drugs for neglected diseases. We have 92 collaborations between companies, national research institutions, etc., for sharing specific molecules to accelerate drug discovery in such areas. So, meritorious groups and special circumstances will all get special consideration. All I can say is it is very complex and we need multiple instruments.

How important is IP to the Make In India campaign?

The whole process of manufacturing is undergoing significant technological change. We see the arrival of robotics. So, innovation is going to be a very important component in the successful implementation of Make In India. When we look at innovation, we need to have a comprehensive view. It is science and technology, but it is also branding and marketing. You need patents, design protection, trademarks and so on. In this context, we hope that India will join the international design system, which greatly facilitates the process of design protection in multiple countries.

WIPO has a lot of training programmes. Are there any that are specifically meant to create awareness about national IP laws, TRIPS flexibility, etc.?

We have many programmes. We look forward to having more collaborative programmes with national institutes in India. We also have a very good relationship with India's patent office.

Unlike other global institutions, WIPO sustains itself through service fee-based revenues. Do you think this has in any way influenced its actions?

I agree that we are 95 per cent funded by fees for our services. But on the expenditure side, we spend 21 per cent of our budget on development among member countries. This includes capacity building and infrastructure development. There are over 60 countries that use our IP administration system free of charge in their IP offices. We have partnerships where we provide over 4,000 technical journals free to anyone in low-income countries. For middle-income countries, the facility exists, but there is a cost for universities, research institutions, and individual scientists.

You have recently been given a second term as DG of WIPO. What are the immediate tasks before you?

WIPO member states set the organisation's agenda. Our duty is to facilitate those discussions. If you take an area like traditional knowledge, India is in the forefront of this discussion. All we can do is to facilitate the discussions. So, the agenda is member-state driven. The difference in the level of development among member states is so large that to devise programmes that will be useful in advancing their objectives is itself a complex task. For example, in Tanzania, the principal objective is to transfer the country from subsistence agriculture to modern, organised farming. We have a programme on appropriate technologies specifically for such purposes. We also share technologies that are no longer patent protected. That's one area. The second is improving the effectiveness and efficiency of the patent system in the global arena.

India is one of the few countries that has developed a digital database of traditional knowledge. As you mentioned, the country is also keen to see more discussions and agreements in this area. What is the hurdle?

There are two different aspects to it. One is defensive; that is to say, unauthorised third parties are not able to acquire rights over traditional knowledge. This is where the digital library of traditional knowledge can come in handy. The other is positive: to enable commercialisation of traditional knowledge. What is the obstacle? Well, like everything else, the resources on traditional knowledge are differentially distributed among countries. Some have it, others don't. So their interests and positions differ. BW

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