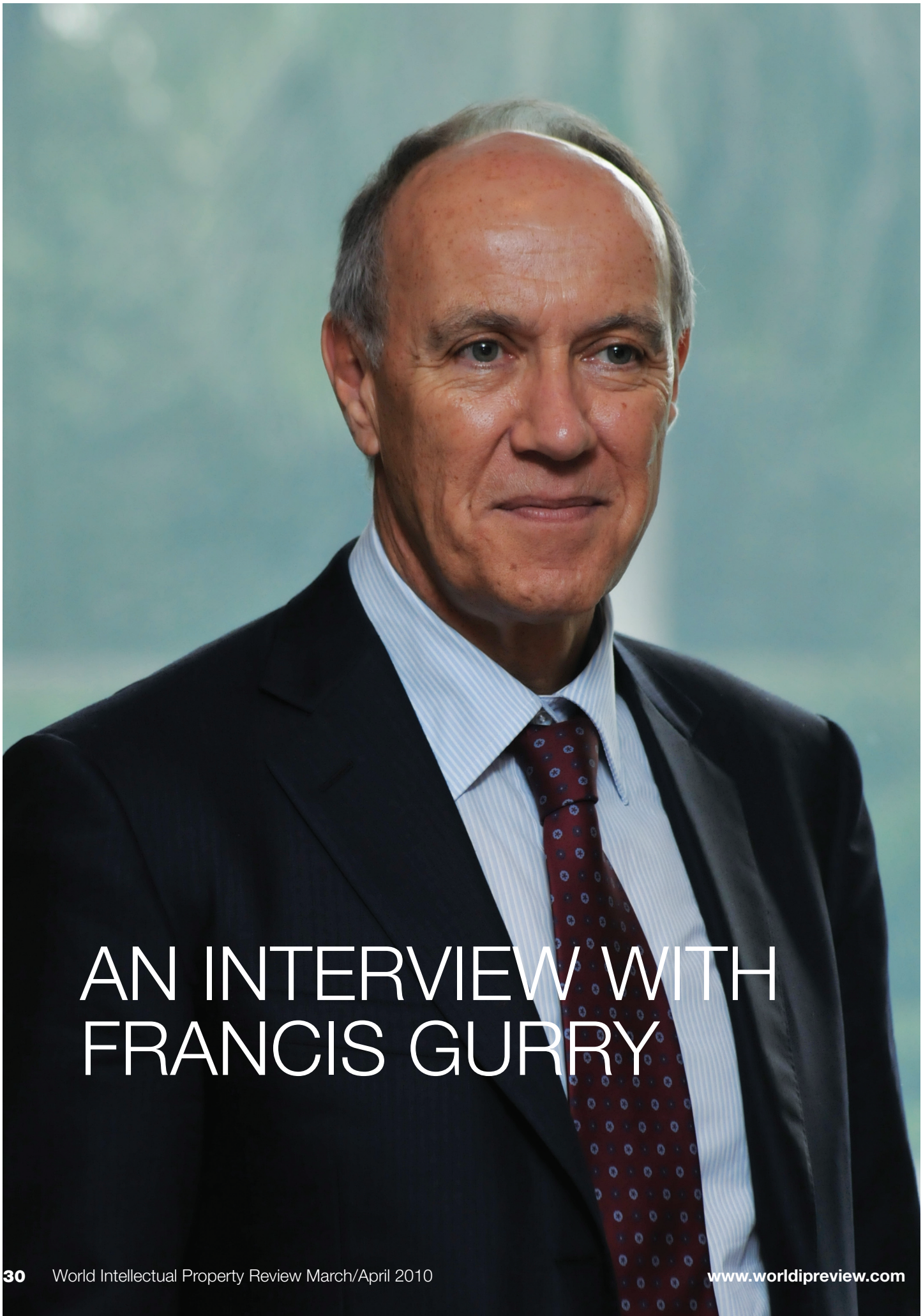

AN INTERVIEW WITH FRANCIS GURRY

Francis Gurry took over as director general of the World Intellectual Property Organization in 2008. The job is the culmination of a 25-year career at WIPO and presents a unique set of challenges. *WIPR* spoke to him about the organisation's achievements so far and its targets for the future.

As a United Nations special agency, the World Intellectual Property Organization (WIPO) is in part subject to the internal politics of its parent body: a fiercely contested field when it comes to IP. Its aims, says director general Francis Gurry, are threefold: WIPO is an executive body, which administers services for countries, companies and inventors; it is also a diplomatic organisation, attempting to negotiate, mediate and arbitrate between competing national interests; and finally, it is a development agency, tasked with supporting and encouraging IP protection in countries that currently have poor or non-existent regulation.

The three overlap to an extent, but each also presents its own distinct challenges. Gurry says that the service element of the mandate is going well, despite a decline in Patent Cooperation Treaty (PCT) applications during the financial crisis. The main challenge is to really internationalise the Madrid Protocol on trademarks and the Hague System for industrial designs, he adds.

More broadly, there is a "need to make a regulatory framework so that it is more responsive to technology and business", Gurry says. "There is a jetlag between the speed of development of technology and the slowness of the multilateral process. It is a challenge of keeping the system relevant. If we fail, then either bilateral or market-based answers will replace WIPO." This would be damaging for several reasons, not least because in a bilateral system, the stronger economy tends to call the shots. And in a world where technology operates in a global market, it makes sense to provide "global solutions to global problems".

This is easier said than done, especially when political pressures are taken into account. "We're going through great changes at the moment, including significant geopolitical change," Gurry says. "There is also rapid change in technologies and the culture of creative industries. We have to ask ourselves if the legal model is anachronistic, not to mention how to influence the opinion of those who are hostile to IP. You only need to look at the recent iiNET case in Australia [where an ISP was found not to be liable for illegal downloads from its network] and the success of Sweden's Pirate Party to see that attitudes have changed."

Gurry suggests that the keys to the internationalist argument lie in getting individual countries on board and developing new approaches to engage with those inimical to IP protection. "If you want an indication of buy-in to the system, China is

the fifth-largest user of the PCT," Gurry says. "In this respect, it's not just a Western system. Because China is both a First World and Third World country, it's difficult to generalise, but I am convinced that China sees IP as vital to its economic future." That confidence will come as a relief to those still concerned that China has a less than vigilant approach to IP enforcement. Gurry acknowledges the perception, but argues that the country is progressing quickly towards stricter enforcement.

Indeed, those who doubt multilateral support for the international patent process would be well advised to look at the most recent figures. While there was an overall decline in international patent filings in 2009—a predictable outcome of the global financial crisis—several countries bucked the trend. Many countries commonly thought of as bastions of IP protection, such as the US and UK, saw numbers fall. Korea, by way of contrast, saw a 2.6 percent rise, while China became the fifth-largest user following a huge increase of 29.7 percent in international patent filings. And of the top 20 filing companies, nine are headquartered in Asia, compared to four in the US. These are undoubtedly positive signs for an international process that looks set to have to rely more and more on the enthusiasm of East-Asian countries for success, as global economic power continues to shift in that direction. But these statistics show that work still needs to be done. In 2009, 92 percent of all international patent applications were filed in just 15 countries. While it is true that this reflects the level of investment and innovation in those countries, it also demonstrates that more is needed to encourage use of the system by others with more fledgling IP cultures.

"Developmental efforts are a challenge," Gurry says. WIPO pursues a four-pronged approach to assisting developing countries with IP. Helping countries create intellectual property is one aspect, but it means little if there is no appropriate legislative framework in place. And for any legislative framework to be effective, there has to be infrastructure—not just in the form of institutions to handle IP, but also the technology necessary to properly administer patent filing or trademark registrations. Finally, there is the challenge of capacity building. WIPO tries to assist on all these fronts, by providing technical and legal expertise, but also with funding for development efforts.

According to Gurry, these efforts are bearing fruit. "Demand is unlimited," he says. "We've recently come back from Vietnam, where there is great enthusiasm for IP. Now it will move up the value chain in the country."

While WIPO will undoubtedly continue to make its case, what will really shape its future will be its response to an ever-changing technological environment and the associated implications for international communication. Whether Gurry and WIPO can seize the initiative and dictate some of the effects of these changes will have a great influence on the success of the overall agenda. Take online platforms for example:

"We live in a world where the instruments of international co-operation are changing," Gurry says. "The default for co-operation used to be the treaty. But different platforms can be as important as a treaty for co-ordinating international action. It would have been impossible to develop instruments such as Twitter or Facebook in a treaty. The challenge is now to work out how to use these sorts of platforms for international co-operation."

> "ONE OF THE IMPORTANT THINGS WE HAVE TO DO NOW IS TO FACILITATE CO-OPERATION ON THE POST-GRANT USE OF IP."

One method that Gurry favours is providing "access to published works for the visually impaired. We are also looking at encouraging companies to make available technologies where there is no commercial market. The infrastructure of the platforms will develop over time, but it has a lot of potential." Other possible options include creating an international brands database or trying to increase the number of trademarks registered internationally.

"Throughout the first 100 years of IP, most of the international co-operation was directed at systems for obtaining IP and harmonising the associated conditions. One of the important things we have to do now is to facilitate co-operation on the post-grant use of IP. That is where the important stuff is for the future," Gurry says.

Of course, there are potential pitfalls to being too aggressive in increasing and centralising tasks such as licence registration, and Gurry is alert to potential problems. "One has to proceed carefully here," he says. "Economists would love to have everything registered, but that is a big no-no. Companies would not like that. That said, it's perfectly normal to develop the apparatus to protect the market. It's not only desirable but absolutely necessary."

The same goes for patents. As much as a one-stop-shop for patents would be desirable in an ideal world, the discrepancies between national systems and competencies make it improbable, even in the medium to long term. "I don't think it's politically feasible," Gurry says. "The day will come when people will appreciate the use of this. If you're a non-governmental organisation and you oppose a patent, you currently have to do it in 180 countries. We need a sensible mechanism for dealing with such a patent invalidation, but there are lots of questions. Would you have an international court or would you allow a court in Togo (or any other country) to invalidate a US patent?"

For now at least, the most sensible compromise lies in further developing and refining the PCT. This should also deal with another problem seen in national patent agencies worldwide: backlog.

Gurry says: "There are a limited number of new inventions per year. The capacity that we have to process those applications has to be used in a rational and effective manner. The capacity should not be misused by searching and examining the same application in different offices." The question is one of work-sharing. To a degree, the PCT achieves this with a single application, international searches and international publication. But other, radical agreements are carrying it even further.

"The Vancouver group, incorporating the UK, Canada and Australia, has agreed to apply mutual recognition of national patents. We are building platforms for similar groups, but there is a long way between the PCT and mutual recognition," Gurry says. "There are limits on work-sharing and, ultimately, you have to be careful to maintain TRIPS flexibilities. At the end of the day, you cannot impose on countries the decision on patentability."

There is no legislative or regulatory panacea for the ills of the IP world. WIPO operates under restraints that are largely beyond its control, whether they be political, practical or even financial. But it is clear that its influence continues to grow, and in a world that is becoming ever smaller, it is well placed to guide the multilateral solutions that will be needed.