

Global Intellectual Property Commission Meeting

SUMMARY

8 June 2023, 14:00 – 18:00 CEST (Paris Time)

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1. Opening remarks from IP Commission Chair

Vishal Amin, ICC Global Intellectual Property Commission Chair (Intel, USA), opened the meeting, welcoming participants. He emphasized the importance of a strong IP system that protects innovators' rights and enables innovation to flourish. Vishal highlighted the need for a level playing field and addressed the concerns around abusive third party litigation funding (TPLF). He pointed out the lack of disclosure requirements on TPLF funding in the US. Vishal called for collaborative efforts between businesses and governments to address this threat.

2. Update from Global Policy Director

*Delivered by **Andrew Wilson – ICC Global Policy Director***

Andrew Wilson took the floor to provide a policy update on the workstreams of ICC Global Policy Commissions. He highlighted the upcoming [COP 28](#) Annual UN Climate Conference and emphasized the need for businesses to play an active and positive role in implementing the Paris Agreement. Andrew mentioned that ICC would be hosting the main business pavilion for two weeks. Addressing the disconnect between policy and business needs, he mentioned the presentation of case studies on cross-border solutions for the circular economy. The goal was to highlight policy frictions that hinder cross-border solutions.

Regarding the reform of the World Trade Organization (WTO), Andrew noted that despite the commitment made at the last ministerial conference, the reform process had not progressed. The [ICC Trade Commission](#) is working to expedite the reform process and propose business-friendly solutions. Andrew also mentioned the [ICC Tax Commission](#)'s work on implementing the OECD two-pillar solutions to reform the tax system.

In addition, he informed the participants that the ICC recently hosted the [13th World Chambers Congress](#) in Geneva, where the World Intellectual Property Organization (WIPO) had a presence, and the WIPO Director General delivered a speech at the convention center.

3. Keynote Speaker – Director of the EUIPO Observatory

*Delivered by **Paul Maier – Outgoing Director of the EUIPO Observatory on Infringement of IP Rights***

Paul Maier is the former Director of the [EUIPO Observatory on Infringement of IP Rights](#), who recently concluded his 28-year tenure at the European Union Intellectual Property Office on June 1, 2023. In his speech he provided an overview of the developments at EUIPO, highlighting his involvement in copyright harmonization and participation in negotiations for the [WTO TRIPS agreement](#) and the dispute resolution system at WIPO. He emphasized four essential components for a strong intellectual property rights (IPR) system: a robust legal framework, effective measures against counterfeiting and piracy, awareness-raising among consumers, and the role of industry.

Regarding legislation in the EU, Paul discussed the [Digital Services Act](#), which will significantly impact consumer protection and IP rights. He mentioned the new regime of oversight for intermediaries, the designation of digital service coordinators by member states, and the need for large platforms to identify and mitigate systemic risks under independent oversight.

Paul also addressed EUIPO's involvement in combating live events piracy, awaiting the [EU toolbox against counterfeiting](#), and the development of a [new EU customs code](#) and IP in Customs regulation. He also acknowledged the discussions on AI and copyright protection at WIPO.

During the Q&A session, the question was raised regarding the non-acceptance of the term "counterfeiting" in the WTO despite the significance of the TRIPS agreement. Another participant highlighted the issue of a negative feedback loop, where developing countries do not implement TRIPS due to a lack of tech transfer, and tech transfer is hindered due to the absence of a strong IP system. Lastly, members expressed gratitude to Paul Maier for his dedicated service at EUIPO.

4. Overview of ICC Global IP Commission workstreams

*Delivered by **Danny Grajales – Policy Manager, ICC Global IP Commission***

Danny Grajales provided an overview of the commission's workstreams. He highlighted recent milestones achieved and mentioned that the previous Global IP Commission meeting was hosted by WIPO in Geneva in December 2022. Danny discussed the ICC Task Force on Anti-Counterfeiting and Piracy (ACP-TF), chaired by Isabelle Leroux from Dentons Paris. This task force serves as the contact point with OECD and EUIPO for their work on anti-counterfeiting, piracy, and IP enforcement. The ACP-TF conducted the 2023 ICC survey on anti-counterfeiting and piracy.

He addressed the ICC's involvement with the [WIPO Global Innovation Index](#) (GII) and the appointment of ICC Chair Maria Fernanda Gaza to the GII advisory board. Danny highlighted GII's recognition among public officials but emphasized that it is not sufficiently known within the business community.

Danny also mentioned the collaboration between the ICC Global IP Commission and the [ICC Centre of Entrepreneurship](#) (CoE), which focuses on capacity building for SMEs. The ICC and WIPO have a close partnership on the [WIPO IP Diagnostics](#) which includes capacity-building efforts for chambers of commerce, CoE hubs, Latin American entrepreneurs, the MENA region, and African entrepreneurs, particularly women traders in the African Continental Free Trade Area (AfCFTA).

He highlighted the importance of IP at the ICC World Chambers Congress 2023, with key figures such as Director General of WIPO Daren Tang (DG of WIPO), Marco M. Alemán, Assistant Director General for Innovation Ecosystems at WIPO and Piotr Stryszowski, Senior Economist at OECD

Danny concluded by mentioning important upcoming dates, including the WIPO Assemblies in July 2023, the Global Innovation Index in September 2023, and the end-of-year meeting of the ICC Global IP Commission.

5. Discussion on developments in Anti-Counterfeiting and Piracy (ACP)

Delivered by **Charlotte de Jouffroy – Manager IP Enforcement, Pernod Ricard** and **Warda Duale Pfaff – Anti-Falsified Medicines Manager, Governance, Novartis**

Moderated by **Isabelle Leroux – Senior Counsel, Dentons Paris – Chair of ICC ACP Task Force**

The discussion on developments in Anti-Counterfeiting and Piracy (ACP) was moderated by Isabelle Leroux, Senior Counsel at Dentons Paris and Chair of the ICC ACP Task Force. Isabelle started by providing an overview of the ACP Task Force survey, aimed at understanding the priorities of companies in combating counterfeiting and piracy.

Charlotte de Jouffroy from Pernod Ricard, the second-largest spirits company globally, spoke about the challenges they face in the spirits market, where one in four bottles is illicit. She emphasized the need to combat online illicit trade and highlighted the importance of protecting consumers from the risks associated with consuming toxic substances. Charlotte mentioned that the COVID-19 pandemic has contributed to an increase in fake bottles and counterfeit alcohol manufacturing. Pernod Ricard is working with competitors through the [Alliance against Counterfeit Spirits](#), engaging in training programs with local authorities.

The discussion then shifted to Warda Duale Pfaff from Novartis, who focused on the issue of falsified medicines. She outlined Novartis' three pillars: intelligence to identify and track illicit drugs, enforcement to collaborate with authorities, and engagement to build capacity with advocacy organizations and the public sector. Warda also emphasized the importance of prevention through engagement with local authorities and the use of technology to detect fake products. She highlighted the geographical specialization in manufacturing and tampering of medicines and mentioned Novartis' involvement with the [Pharmaceutical Security Institute](#) (PSI) for ACP cooperation.

When asked about policy recommendations, Ward stressed the need for advocating the digitalization, localization, and standardization of medicines, along with localized detection to prevent and combat counterfeiting and piracy.

The discussion also touched upon the role of postal carriers and local delivery systems in combating illicit trade. Warda mentioned that Novartis has Memorandums of Understanding (MoUs) with various postal services to address this issue, although tracking systems and the sheer volume of packages pose challenges.

6. Keynote Speaker – Senior Economist from the OECD

Delivered by **Piotrs Stryzowski, Senior Economist, OECD**

Piotr Stryzowski, Senior Economist from the OECD, delivered a keynote presentation during the meeting, discussing the work of the [OECD Working Party on Countering Illicit Trade](#) (WP-CIT).

In the first part, he provided an overview of the WP-CIT's history, which began in 2012 with an Ad Hoc Meeting under the High-Level Risk Forum. Over the years, the WP-CIT conducted various

studies and established a partnership with EUIPO to gather evidence on illicit trade in counterfeits. Highlighting the significance of informing the public about illicit trade, Piotr mentioned that the OECD, in cooperation with WIPO, has produced multiple reports on Trade in Counterfeited goods.

Piotr emphasized the substantial scale of smuggled fake goods, amounting to 460 billion dollars annually worldwide. He also shed light on the negative impacts of counterfeiting, such as the significant economic costs to countries like Sweden and the UK, where it accounts for 0.4-0.5 per cent of GDP. SMEs also suffer, often leading to bankruptcy due to counterfeit goods.

He then discussed the efforts of the OECD and EUIPO to address the issue through enhanced governance and diagnostic approach. He identified four areas lacking transparency: Free Trade Zones, container ships, E-commerce, and small parcels. Regarding Free Trade Zones, he mentioned that the OECD Council adopted a [Recommendation on Transparency in FTZs](#) in 2019, providing guidelines to establish best practices for FTZs. The OECD has been working on a voluntary [certification scheme for Clean FTZs](#).

Furthermore, Piotr emphasized the importance of the WP-CIT as a platform for dialogue on trade and enforcement. It brings together country delegates from customs, police, the trade community, and various international organizations such as WTO, WCO, Interpol, and WIPO. Establishing public-private partnerships is key to addressing illicit trade effectively.

7. Briefing on the new international agreement under discussion at WIPO

*Delivered by **Begona Venero Aguirre, Senior Counsellor, Traditional Knowledge Division WIPO***

During the meeting, Begona Venero Aguirre, Senior Counsellor at the [Traditional Knowledge Division of WIPO](#), provided an overview of the division's functions and discussed the ongoing discussions regarding an international agreement at WIPO related to intellectual property and genetic resources. The Traditional Knowledge division of WIPO engages in international negotiations through the [Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge, and Folklore](#) (IGC). The IGC, although not a standing committee, receives its mandate from the WIPO General Assembly and is renewed every 2 years since 2000. Its membership consists of WIPO member states and accredited observers.

The [current mandate of the IGC](#) (2022/23) involves continuing with text-based negotiations to finalize an international legal instrument(s) that ensures the balanced and effective protection of genetic resources, traditional knowledge, and traditional cultural expressions. When the decision to engage in text-based negotiations was made, there were already draft articles on the [protection of Traditional Knowledge](#) (TK), [traditional cultural expressions](#) (TCEs), and [Genetic Resources](#) (GRs), along with submissions and proposals from member states and observers.

In addition to the negotiations, virtual activities and meetings have been conducted to facilitate the discussions. The General Assembly of WIPO decided in July 2022 to convene a [Diplomatic Conference to conclude an International Legal Instrument Relating to Intellectual Property, Genetic Resources, and Traditional Knowledge Associated with Genetic Resources](#). The Diplomatic Conference is scheduled to take place no later than 2024.

To prepare for the Diplomatic Conference, an IGC Special Session and a Preparatory Committee will be convened in the second half of 2023. The timeline for the Diplomatic Conference is as

follows: the GA decision was made on July 21, 2022; the [IGC Special Session](#) will be held on September 4-8, 2023; the [Preparatory Committee on the Diplomatic Conference](#) is scheduled for September 11 to 13, 2023; and the Diplomatic Conference itself will take place in 2024.

During the briefing, the Chair's Text, titled "[Consolidated Document Relating to Intellectual Property and Genetic Resources](#)," was discussed. The objectives of the Chair's Text are to enhance the efficacy, transparency, and quality of the patent system concerning Genetic Resources (GRs) and Associated Traditional Knowledge (TK) and to prevent the granting of patents for inventions that lack novelty or inventiveness about GRs and Associated TK. However, it was noted that the Chair's Text is not final, and amendments may be made during the IGC Special Session.

The structure of the Chair's Text was explained, which includes various sections such as Objectives, List of terms, Disclosure requirements, Exceptions and limitations, Non-retroactivity, Sanctions and remedies, Information systems, Relationship with other international agreements, and Review. The Chair's Text includes two non-mutually exclusive approaches to Intellectual Property (IP) and GRs: specific patent disclosure requirements for genetic resources and/or databases and other information systems for genetic resources. Furthermore, reference was made to a [disclosure requirement table](#), which showcases the differences in national laws across jurisdictions regarding genetic resources.

8. Updates on priority IP commission workstreams

Members heard updates from seven ICC NCs on current digital projects and recent policy developments in their respective countries.

- Virtual Classification of Goods – Trademarks Working Group delivered by **Myrtha Hurtado Rivas, Vice-Chair of the Commission, Nestlé**

Myrtha Hurtado Rivas presented the first update on the IP issue of Virtual Classification of Goods which constitute a priority for the Trademarks Working Group. Hurtado Rivas began by defining virtual goods as goods that are consumed in virtual environments. She highlighted that the Swiss IP office was among the first to raise this issue.

A suggestion was made to include Class 9 protection for all virtual goods. However, it was noted that this classification might not be suitable as it would result in an excessively large class and would require resources that could be better utilized elsewhere. Therefore, the idea of adding Class 9 protection to all virtual goods was deemed impractical. A concept note on this issue was circulated with participants.

- New developments on Standard Essential Patents delivered by **Susan Wilson, Intel Corporation**

Susan highlighted the [EU Proposal on Standard Essential Patents Licensing](#), which has generated controversy due to its departure from the Commission's previous stance. The proposal aims to harmonize the system across the EU and involves actors not traditionally linked to patents.

The proposal's main features include the establishment of a mandatory register of standard essential patents, a system for conducting essentiality checks, a process for determining aggregate royalty rates, and a FRAND evaluation and reconciliation process. Additionally, the proposal also includes transparency requirements for patent pools and provisions for preferential treatment of SMEs. These proposed changes would have a direct effect as they are intended to be

enacted through regulation. The EU proposal is in the consultation period, providing an opportunity for stakeholders to provide feedback and input.

- Access and Benefit-Sharing Task Force – Post-COP15 developments and latest actions delivered by **Daphne Yong-d'Hervé, Director at ICC Global Policy**

Daphne Yong-d'Hervé, provided updates on priority workstreams. The Access and Benefit-Sharing (ABS) Task Force, focused on biodiversity and innovation, was discussed.

The [Nagoya Protocol](#) to the [Convention on Biological Diversity](#) which established national sovereignty over biological diversity, allows countries to control and benefit from their genetic resources. ABS aims to disclose the origin/source of genetic resources in IP applications and establish access and benefit-sharing obligations. This involves agreements and authorizations for GRs and associated traditional knowledge, potentially including royalty payments.

The ABS Task Force defines business positions, facilitates information exchange, and raises awareness. COP15 outcomes were mentioned, including extending benefit sharing to [digital sequence information](#) (DSI) and the development of a multilateral mechanism for DSI at COP16 in 2024. Private sector involvement is expected to finance biodiversity goals. ICC actively participated in COP15 and will be engaged in COP16.

- Generative Artificial Intelligence – Music industry perspective - AI Task Force, delivered by **Richard Pfohl, Vice-Chair of the Commission, Music Canada**

Richard Pfohl, provided updates specifically focusing on generative artificial intelligence (AI) from the perspective of the music industry. The Global IP Commission, leadership in collaboration with the AI Task Force, wants to explore principles for generative AI applications in the music industry. The report aims to strike a balance between creators and rightsholders while considering copyright and free market licensing frameworks.

He also highlighted the challenges posed by AI-generated music for artists and mentioned the emerging consensus among industry stakeholders through the [Human Artistry Campaign](#), which promotes core principles for AI applications. He also discussed the involvement of Music Canada in the work of the [International Federation of the Phonographic Industry](#) (IFPI), known for producing the [Global Music Report](#).

Richard reiterated the ICC Leadership Priority Objectives, which include informing discussions, ensuring ICC's position in the debate, highlighting member companies' concerns, and supporting free market principles in this field. Lastly, he mentioned an upcoming forum organized by WIPO on the topic of generative AI and intellectual property. Overall, the updates provided insight into the ongoing efforts of the ICC Global IP Commission in addressing the challenges and opportunities associated with generative AI applications in the music industry.

- Third-Party litigation funding (TPLF) – New developments and next steps delivered by **Susan Wilson, Intel Corporation**

During the ICC Global IP Commission meeting, Susan Wilson from Intel Corporation provided updates on the priority workstreams of the commission, specifically focusing on third-party litigation funding (TPLF). The commission will continue its advocacy, research, and outreach efforts to advocate for healthy innovation ecosystems based on trust and transparency. Susan

mentioned that the World Semiconductor Council is also addressing this issue, and the ICC has reached out to WIPO to ensure that TPLF is on the radar of our partner institutions.

In the United States, initiatives are being pursued to enhance transparency in patent registration and transfers. Similarly, in the EU, there is a push for transparency for entities involved in TPLF. A forthcoming [Commission study on the matter](#) in the EU should provide valuable insights. These updates demonstrate the active engagement of the ICC IP Commission in addressing TPLF challenges, fostering transparency, and promoting accountability in the realm of intellectual property.

9. Presentation from guest National Committee – ICC France

*Delivered by **Cecile Foucher, Orange – Chair of ICC France IP Commission** and **Thomas Mattei, Policy Manager, ICC France***

The IP Commission of ICC France presented their recent work. Led by Cecile Foucher, the ICC France IP Commission highlighted its organizational structure, including diverse membership, biannual meetings, and regular information sharing.

The presentation showcased the commission's expanded scope, now covering not only strict intellectual property but also information technology. They shared several achievements, starting with the intersection of artificial intelligence (AI) and intellectual property. Recognizing the challenges posed by AI technologies, the commission emphasized the need to address IP implications in this domain.

The metaverse's impact on intellectual property was also discussed, acknowledging the emerging digital space's unique IP considerations. Another important area of focus was combatting illicit trade, as the commission highlighted the significance of robust IP protection in ensuring fair competition and preventing counterfeit goods.

Acknowledging the creative contributions of interns, the commission addressed the importance of protecting interns' inventions and copyrights. They emphasized the need for adequate IP safeguards for intern-generated intellectual property.

Lastly, the Commission shared its engagement in discussions surrounding the Unified Patent and Unified Patent Court. Their active involvement aimed to promote harmonization and efficiency within the patent system.

10. Closing remarks

*Delivered by **Vishal Amin – ICC Global Intellectual Property Commission Chair – Intel Corporation** and **Danny Grajales – Policy Manager, ICC Global Intellectual Property Commission**.*

During the closing remarks of the Global Intellectual Property Commission Meeting, Vishal Amin, the Chair of the ICC Global Intellectual Property Commission from Intel Corporation, expressed concern over the current state of intellectual property (IP). He emphasized the importance of combating piracy and intellectual property theft, as well as addressing the growing challenges posed by TPLF. He stressed the significance of an IP system that effectively protects the rights of IP holders, promotes innovation, and fills policy gaps. In his concluding statement, Vishal thanked all the attendees for their participation.