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INTRODUCTION

It is a pleasure to be here, and I'm pleased to have the opportunity once again to participate in such a prestigious event. This year's program covers an extremely wide range of topics in international IP law and policy, so in preparing my remarks I found myself wondering how I'd be able to tailor them to the 20 minutes allotted. I even considered trying to cajole Professor Hansen into giving me more time, but you'll be pleased to know that I decided against that. So, we'll see how much territory I can cover.

When I spoke here last year, I devoted most of remarks to assessing the need and prospects for a global patent system. Today, I'll touch on a few developments in that area -- primarily on the procedural, rather than the substantive side of things -- but devote most of my remarks to other developments that are underway as we lay the groundwork for the eventual internationalization of intellectual property (IP) law.

OVERVIEW

First, however, let me just say that it's been quite a year on the intellectual property (IP) front -- both here and abroad.

Here in the U.S., late last year saw the enactment of the most sweeping changes in our patent law in a half century and -- pursuant to that legislation -- the USPTO itself is now being restructured into a more business-like, performance-based organization. At the end of last year, we also began implementing the Trademark Law Treaty and earlier in the year we became the first national intellectual property office in the world to offer electronic filing of trademark applications. On the copyright front, we've also had our first full year of implementing the Digital Millennium Copyright Act, which adopts copyright law to the Internet.

In recent months, significant issues have also been raised about the policy implications of expanding subject matter patentability in areas such as genomics and business methods on the Internet. Other important issues regarding compulsory licensing and parallel imports to deal with the world's most pressing health issues have been raised in the context of the TRIPs Agreement.

By the end of this year, we will likely have concluded two WIPO Diplomatic Conferences on important new treaties in the patent and copyright areas. The first one is next month on the Patent Law Treaty, and the second one, in December, will be devoted to Audiovisual Performances.

So, a lot is happening, and let me discuss some of the more noteworthy developments.

GLOBAL PATENT

As you know, one of the essential elements in the eventual internationalization of IP law will be the establishment of some sort of global patent system.

As global trade increases and multinational businesses grow, worldwide patent protection is becoming extremely important and desirable. Of course, our antiquated national and regional patent systems are simply too cumbersome and expensive. This leads to duplicative and wasteful efforts in obtaining worldwide patent protection, which deters and stifles trade.

In order to get to the point where the rights of inventors will be universally recognized without having to seek patent protection in individuals countries, we need to tackle both procedural and substantive patent law issues.

Fortunately, I think there are a number of market forces, if you will, that will help in this effort. For example, the increasing pressure on industrial property offices to decrease costs will spur the adoption of cost-saving measures, such as taking advantage of 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, the Japanese Patent Office is proposing a series of revisions to their patent regime that expand remedies for infringement and shorten the period during which the examination of applications may be deferred. And, here in the U.S., we have recently enacted legislation to provide for early publication of patent applications and expanded reexamination procedures.

Patent Law Treaty

Another encouraging development will occur next month in Geneva, when a WIPO Diplomatic Conference is convened on the Patent Law Treaty (PLT). The PLT's principal goal is to provide uniform filing requirements and formal procedures among the member countries -- in order to reduce the high costs of complying with various (and sometimes inconsistent) national and regional requirements. In so doing, the PLT would also reduce the risks incurred by the loss of potentially valuable IP rights due to filing errors.

Essentially, the PLT would take the requirement standards from the Patent Cooperation Treaty and transport them into national patent systems. These would 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.

I will be leading the U.S. delegation to the WIPO Diplomatic Conference, and we expect that at least two developed country-developing country issues will be on the table: access to genetic resources and

exceptions to mandatory representation. In spite of these issues, we are hopeful that the treaty will be concluded by the end of Conference on June 2nd.

Patent Cooperation Treaty

In addition to the PLT, we are working to streamline the processing of international applications by revising the Patent Cooperation Treaty (PCT). Although the PCT has had some success in providing 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. As a practitioner myself, I know first-hand that 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 are seeking to simplify and streamline the treaty and make the PCT more "user friendly."

Last Fall in Berlin, I unveiled the United States' proposal to reform the PCT at a meeting with our Trilateral Partners in the Japanese and European Patent Offices. I am pleased that it received a surprisingly warm reception, and it will also be discussed further by WIPO in Geneva.

In conjunction with the adoption of the PLT, our reform proposal 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.

The PCT Union Assembly met in Geneva earlier this Spring, and I am pleased to report that we're moving forward as we'd hoped on these reforms.

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 -- the journey to a global patent system is hopefully on its way.

Again, on the substantive side, we still have a ways to go. But the fact that the Europeans have been discussing the international grace period is at least one hopeful sign. Moreover, the week after next, I will be in South Wales with the heads of the other G-7 intellectual property offices, where the international grace period and other issues will be addressed.

COPYRIGHT

In addition to my role as Director of the U.S. Patent and Trademark Office, I also serve as the Under Secretary of Commerce for Intellectual Property. So, before I talk about some Trademark issues, let me address some developments in the area of copyright policy.

First, it's worth noting just how far the U.S. has come on copyright protection since the dawn of the last century. In 1900, the United States wasn't a party to the Berne Convention and was something of a rogue state in honoring the rights of foreign copyright holders. In fact, the situation was so bad that Charles Dickens actually had to do book tours here in order to counteract the widespread piracy of his works.

Today, the U.S. is a leader in copyright protection. And copyright-based industries are currently among the largest and fastest growing sectors of our economy. In the last twenty years, the industry's share of GDP grew more than twice as fast as the rest of the economy. In fact, in 1997, they added about $350 billion to our GDP and provided nearly 4 million jobs here in the U.S.

Of course, the potential for massive international piracy of copyrighted works is becoming increasingly real in today's digital environment. Information technologies are having an enormous impact on the ways that copyrighted works are created, reproduced and disseminated.

Fortunately, the international community's understanding of this threat led to the adoption of the two WIPO Copyright Treaties in 1996 -- the WIPO Copyright Treaty (WCT) and the WIPO Performers and Phonograms Treaty (WPPT).

WIPO Copyright Treaties

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. But together they protect most of what is protected in the off-line world (books, films, music, photographs, paintings, audio performances, etc.) from unauthorized reproduction, performance, modification, or translation.

Last Fall, I joined Commerce Secretary Daley in depositing the U.S. instruments of ratification for these treaties with the Director General of WIPO. Currently, 14 members have ratified the WCT and 13 members have ratified the WPPT. However, the Treaties will only enter into force three months after 30 instruments of ratification have been deposited with WIPO.

Achieving their entry into force has been a keystone of the Administration's electronic commerce initiatives. And Secretary Daley's personal commitment to seeing their entry into force by the end of the year is very significant.

The USPTO is working along side the Secretary in this effort. For example we're helping our trading partners in Latin America, Africa, the Middle East and Asia draft implementing legislation so that they can ratify the agreements.

We are optimistic about the prospects. However, we would like our European counterparts to continue to move quickly to ratify the treaties themselves.

Although the European Parliament actually voted in February to ratify the Treaties, we're still a ways away from their depositing the instruments of ratification at WIPO. The formal decision to ratify on behalf of the EC still must be adopted by the Council of Ministers and then ratified by each of 15 member states. In addition, ratification must wait until the proposal for a directive on copyright in the Information Society has been adopted and implemented. Because EC Member States have between 18 and 24 months to implement the Directive in their national laws, the earliest we can expect deposit at WIPO is sometime in 2002. And that is probably very optimistic.

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Two of the issues left open under the WIPO treaties are audiovisual performers rights and protection for non-copyrightable elements of databases. Here, too, the USPTO is continuing to lead U.S. efforts on these important issue, and we're also working closely with the relevant industries.

Audiovisual Performances

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.

In order to achieve some degree of international harmonization, the Member States of WIPO are discussing the balance of rights among all rights holders, particularly those of the performers and the motion picture studios. And the U.S. is committed to working in WIPO to achieve a compromise on the protection of audiovisual performers rights that will further the goals of all relevant U.S. interest groups -- performers and film producers. In fact, we have put forward a proposal that is strongly supported by the U.S. motion picture industry and the performers unions.

We are also very pleased that the WIPO Special Session of the Standing Committee on Copyright and Related Rights recently recommended that the WIPO General Assembly convene a Diplomatic Conference on the Protection of Audiovisual Performances later this year, from December 7-20. This will hopefully lead to a new instrument in the area of audiovisual performers' rights.

Database

As some of you may recall, when the two WIPO copyright treaties were adopted in 1996, the third treaty to be discussed -- dealing with protection of non-copyrightable elements of databases -- was set aside.

So, because of that -- and in the wake of the Supreme Court's ***Feist*** decision -- the U.S. is concerned that databases can be misappropriated and that the substantial investment needed for large information products can be destroyed, particularly through online piracy. Unfortunately, there has not been much movement recently in extending this protection.

The Member States of WIPO continue to discuss the issue, both in meetings of the Standing Committee on Copyright and Related Rights and in special regional "consultations." However, it is generally agreed that the WIPO process will not move forward until the U.S. has formulated our own domestic regime for non-copyright database protection.

Towards that end, there are currently two bills pending in Congress -- one in the House Judiciary Committee (H.R. 354) and one in the House Commerce Committee (H.R. 1858). Both adopt a "misappropriation" approach, although H.R. 354 offers stronger protection and is similar to legislation which passed the House twice in 1998.

The Administration's desire is to protect commercial database developers from commercial misappropriation of their products where other legal protections and remedies are inadequate. However, we also want to make sure that any legislation has "permitted use" provisions at least as broad as the fair use provisions in copyright law. And in creating an incentive for new database products, we don't want to permit "capture" of government-generated data by private entities.

It is very important that the U.S. moves forward on domestic legislation, because until we address the hole in our IP system created by ***Feist***, U.S. database producers marketing in Europe may be unprotected by the EU Directive because it has a "reciprocity" provision that grants protection to foreigners only if their own country protects European databases. We oppose this approach and believe that intellectual property rights should be extended on a "national treatment" basis.

So, hopefully legislation can be crafted that: (1) ensures database producers don't become the victims of free-riding by people who take their work and reintroduce it as a competing product, and (2) protects reasonable, free uses of data by the education, scientific, research, and commercial sectors. Then we can move beyond the EU Directive and toward an international treaty regime that contains the needed kinds of protection for science, research, and education.

TRADEMARKS

Lastly, let me address a few Trademark issues.

Madrid Protocol

On the Trademark front, one of our priorities right now is simplifying the process for registering a trademark in multiple countries. That, of course, means implementing 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 in the U.S. will be able to register their marks in any of the 65 Madrid counties by filing a single application, in either English or French, at our offices.

Now, until recently, we've been unable to join the Protocol due to a dispute over the voting rights of the European Community. The State Department believed these rights violated the principle of one-vote-per-country and might establish an unacceptable precedent for future international agreements.

Fortunately, there was a breakthrough in this dispute earlier this year when the EU and the other Madrid Protocol member countries agreed to use 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 very close to wrapping this up. Currently, the Protocol accession documents are being circulated through the State Department. They then will be sent to the White House for signature and to the Senate for their advice and consent.

The House has already passed implementing legislation for Madrid, and the Senate Judiciary Committee approved its version of the Madrid bill (S. 671) just a few weeks ago. It's now pending on the legislative calendar for consideration by the full Senate.

The proposed Senate legislation would require us to implement the Protocol within one year from the date that the implementing legislation takes effect. Fortunately, our recent experience with the Trademark Law Treaty (TLT) has given us good training for implementing significant legislation within a one-year time period.

ICANN/ Domain Name Issues

Another active area on the Trademark front is our work to establish new international legal standards to govern the relationship between domain names registered and used on the Internet and trademarks. Obviously, this is a very important subject given the explosion of global electronic commerce.

As many of you know, a public corporation approved by the U.S. government, ICANN, (the Internet Corporation for Assigned Names and Numbers), adopted a Uniform Dispute Resolution Procedure last October. It's a simple and inexpensive on-line procedure to provide relief in cases where a domain name has been registered and used in bad faith. A number of disputes have already been filed and resolved under this procedure.

ICANN is also in the process of accrediting companies around the world to register new domain names in the current domain space, such as .com, .net and .org. In addition, ICANN is considering adding new top level domains to the current list of generic top level domains (TDLs).

The ICANN Board is expected to make a decision on the timetable for adding new TLDs at its next meeting in Japan in July. Understandably, there's a great deal of discussion going on right now between the Registrar community, the Business community, and the IP community about the addition of new TLDs and the protection of famous marks.

Trademark owners are already dealing with cybersquatters in the existing TLDs, so the prospect of a proliferation of new areas to police has them understandably concerned. The consensus now is to try and reach a compromise on the protection of famous marks so that the registrar constituency can go forward with opening new TLDs.

As far as the timeline for this goes, I understand that ICANN recently received a paper from its internal Working Group B on the protection of famous marks and that this proposal is now being published for public comment.

With respect to new TLDs, there's also discussion right now about "chartered" TLDs -- that is, TLDs with specific limitations on who may register in the TLD. For example a ".car" TLD would only be open to entities that made, repaired or sold automobiles.

Chartered TLDs would protect Trademark owners from pornography sites, pirates, and others, but many questions remain about just how they would work. For example, who would be the gatekeeper and decide who would be able to register? Needless to say, that's a difficult question.

So, many issues remain in determining just how best to protect the rights of Trademark owners on the Internet. Therefore, the USPTO will play an active role in working with ICANN to ensure that changes in the Internet aren't to the detriment of trademark holders -- or consumers. The U.S. is committed to self-governance of the Internet, but it has to be effective self-governance that protects consumers and promotes e-commerce.

CONCLUSION

More than thirty years ago, economist John Kenneth Galbraith observed that "the imperatives of technology and organization, not the images of ideology, are what determine the shape of economic society." In all corners of the globe today, we are seeing just how true this statement was -- and is.

The explosion of Internet and digital technologies is transforming economies around the world. Patent and trademark systems are under increasing pressure to enhance efficiency, reduce costs, and simplify procedures. And the potential for massive international piracy of copyrighted works is becoming increasingly real.

So, a little more than 100 days into the 21st century, the pressure is on all of us to ensure that our I.P. 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?

I know that it's dangerous to make predictions, but let me just say that we at the USPTO are bullish on the future.

Thank you very much.