

# Know IP – The Stockholm Network’s Monthly IPR Journal Volume 3: Issue 4. May 2007

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## Commentary

### Here They Go Again – Oxfam, IPRs and Jordan – Helen Disney and Dr. Meir P. Pugatch <sup>1</sup>

The manner in which Oxfam operates in the IP field is admirable. Its studies and reports are formidable. Its recent report "*All costs, no benefits: How TRIPS-plus intellectual property rules in the US-Jordan FTA affect access to medicines*" (March 2007) is exemplary.<sup>2</sup>

Alas, it is exemplary not because of the accuracy of its findings or due to the scientific robustness of its methodology. As will be discussed shortly, these are fairly problematic. No, it is exemplary because it yet again allows Oxfam to seize the moment and to set the agenda. Once again, Oxfam has taken the upper hand in its ongoing battle with the mighty pharmaceutical industry and the heartless technocrats of the United States Trade Representative (USTR). By issuing this report, Oxfam has set the tone, the language and the parameters for discussion. All the responses that followed and that will follow, including this one, will be reactive, apologetic and have to justify themselves on Oxfam's terms. Oxfam has won.

Nevertheless, it is quite astonishing, as well as frustrating, to observe the responses to reports concerning the link between pharmaceutical IPRs, economic growth, foreign direct investments and prices. When such reports find this linkage to be devastating and crippling to developing and least developed countries (especially when they are issued by different NGOs) then surely they are objective and accurate. In contrast, when such reports (by pro-IP NGOs, or industry sources as well as from experts in international bodies such as the OECD) suggest that such a linkage is

actually quite positive, then they are considered to be biased, inaccurate and even corrupt.<sup>3</sup>

Back to the Oxfam report: the report finds that due to the TRIPS+ provisions (especially data exclusivity) secured in the US-Jordan free trade agreements, the prices of medicines in Jordan have increased by 20% since 2001, and that "higher medicine prices are now threatening the financial sustainability of government public health programmes".<sup>4</sup> The report finds that data exclusivity has delayed generic competition for 79% of newly launched medicines by 21 multinational pharmaceutical companies between 2002 and mid-2006, that otherwise would have been available in an inexpensive, generic form.<sup>5</sup>

So what is wrong with the new Oxfam report? Given that this issue is the subject matter of our research expertise and daily activities we are extremely tempted to provide a very long and detailed rebuttal of this report. However, since such a response is not suited to Know-IP, this criticism will necessarily have to remain brief and concise.

#### **Point 1 – Assuming the hypothetical existence of generic substitutes in Jordan (which did not exist prior to the US-Jordan FTA) is a highly problematic as well misleading working assumption**

In Appendix A of the report, Oxfam explains that it used IMS Health data to analyse "108 medicines, which were launched in Jordan by 21 foreign pharmaceutical companies since 2001."<sup>6</sup> Consequently, Oxfam finds that of these medicines, 81 products are not available in a generic form in Jordan "solely as a result of data exclusivity".<sup>7</sup> In other words, the Oxfam report

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<sup>1</sup> Helen Disney is CEO of the Stockholm Network. Dr. Meir Perez Pugatch, Haifa University, is the Research Director of the Stockholm Network.

<sup>2</sup>[http://www.oxfam.org/en/files/bp102\\_jordan\\_us\\_fta.pdf/download](http://www.oxfam.org/en/files/bp102_jordan_us_fta.pdf/download)

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<sup>3</sup> See for example Lippoldt, D. "IPRs, Pharmaceuticals and Foreign Direct Investment", in Pugatch M. P, Jenses, A. (eds) *Healthy IPRs – A Forward Look at Pharmaceutical Intellectual Property* (Stockholm Network: London, 2007)

<sup>4</sup> Oxfam press release: [http://www.oxfam.org/en/policy/briefingpapers/bp102\\_jordan\\_us\\_fta](http://www.oxfam.org/en/policy/briefingpapers/bp102_jordan_us_fta)

<sup>5</sup> *Ibid*

<sup>6</sup> Oxfam report, p. 22

<sup>7</sup> *Ibid*, p. 23

is basing its entire analysis on the assumption that without data exclusivity protection secured by the US-Jordan FTA in 2001, 81 generic products would have been in existence in Jordan, which would arguably have led to significant price reductions.

There are two problems with this assumption. First, if this is the case then why did Jordan not simply import or locally manufacture all these generic products before the agreement with the US entered into effect (Oxfam itself notes that the products were available on world markets long before the US-Jordan FTA). According to Oxfam's logic, prior to the US-Jordan FTA there were no barriers to the marketing of such generics in Jordan.

Yet the fact is that these products did not exist in Jordan prior to the agreement. As such, to base one's entire analysis on this assumption is not only problematic but also misleading. Secondly, given that the above generic products did not exist in Jordan prior to the FTA, then by definition the launch of innovative products in Jordan after the FTA actually allowed the population in Jordan greater access to medicines. For some reason Oxfam does not acknowledge this fact in its report.

### **Point 2 – Assumptions of price reductions due to generic competition are based on invalid values**

The Oxfam reports states that "according to Jordan's national pricing policy, generic medicines are to be priced up to 80% of the originator's price." The report then goes on to say that "earlier studies of generic competition indicate that, on average, generic competition can reduce medicine prices from 30-70%".<sup>1</sup> Yet a careful reading of Oxfam's report suggests not only that the previous studies to which the report refers did not review Jordan, but also that the report only refers to one particular study (footnote 44 of the report) without acknowledging other

studies that find a much lower gap between generics and innovative drugs.<sup>2</sup>

Thus, the assumption that the prices of the (hypothetical) generic drugs could be as much as 80% lower than the prices of the original 81 drugs is weak at best. Accuracy would have demanded Oxfam state in its press release that the cumulative costs to the population of Jordan between 2001 and 2006, due to the lack of the introduction of 81 hypothetical generic drugs, is \$6.3m (or \$1m annually). But this would not have been considered a very scary number, would it?

### **Point 3 – Oxfam's assertions about the role of Scientific Offices in Jordan are spurious**

Oxfam argues that "the only FDI (foreign direct investment) into Jordan by multinational drug companies has been to expand scientific offices, which use aggressive sales tactics to ensure that expensive patented medicines are used instead of inexpensive generics."<sup>3</sup> How did Oxfam reach this damning conclusion? Well, it argues that "these offices are staffed with sales representatives employing aggressive marketing strategies that encourage doctors to prescribe expensive, new medicines, even though existing generic treatments are equally effective and far more affordable." Indeed this is without a doubt the most serious scientific and undisputed proof that multinational companies in Jordan do not intend to expand their clinical research in Jordan but rather to exploit and manipulate the public in Jordan.

But seriously, the argument is infuriating because it concerns a much more fundamental element – the manner in which multinational pharmaceutical companies increase their R&D capacity in different markets, including Jordan. Oxfam is well aware of the fact that in the pharmaceutical industry the bulk of R&D is carried out through clinical trials aimed at collecting data on the safety

<sup>1</sup> *Ibid*, p. 23

<sup>2</sup> See footnote 44 in the Oxfam report. For alternative studies see : Danzon, M. P., Furukawa, F.M. 'Prices And Availability of Pharmaceuticals: Evidence From Nine Countries', in *Health Affairs Web Exclusive*, (29 October 2003), pp. W3 521-536, particularly Table 4

<sup>3</sup> Oxfam report p. 2

and efficacy of a new medicine (which represents more than 65% of the total costs of R&D). Countries today compete globally on the ability to secure more clinical trials in their hospitals. Not only do these clinical trials bring significant income to the countries that host them but they also raise the scientific level and standards of the professional staff that take part in these trials. Data exclusivity aims to protect the very data that is being collected in these clinical trials. That is its essence.

The establishment of scientific offices in Jordan (including the recruitment of medical directors and scientific advisors) suggest that pharmaceutical companies are not just paying lip service but actually do intend to invest more in Jordan in terms of R&D. This process does not occur overnight as clinical trials also require adequate facilities and infrastructure.

Yet since these facts are not in line with Oxfam's arguments, reasoned analysis takes a back seat to unfounded accusations.

What can we say? Oxfam has won the media front. Its report, however, should by no means be considered a serious contribution to the bulk of scientific research on the link between IPRs and access to medicines.

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## Topic of the Month

### Latin America Intellectual Property Challenges – Felix Rozanski<sup>1</sup>

Latin America is faced with the need to improve its competitiveness and is slowly absorbing the key role innovation plays and the value of intellectual property (IP) as a platform for spurring growth. At the same time, the region has to comply with the international obligations set out in WTO/TRIPS and post TRIPS Free Trade Agreements, when many still see IP with indifference, know little about it, or even worse,

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<sup>1</sup> Executive Director of the think-tanks CEDIQUIFA and ASDIN: [www.cedi.org.ar](http://www.cedi.org.ar)

IP is presented as a monopoly means of domination by multinational companies and foreign powers.

Arguments based on the need to protect national industries against foreign competition, the belief that public health will suffer, or that the public domain better serves development goals tend to prevail both in political rhetoric and governments policies. It is thus of utmost importance to address the issue of 'why intellectual property for developing countries?' There are several reasons.

Property rights are for the people. As far back as 1852, Alberdi, the father of the Argentinian Constitution, wrote: "Threaten to seize property, that is to say the exclusive right every man has to use and dispose extensively of his work, his capital, his land to produce whatever is convenient to satisfy his needs or wishes, and by doing that you are snatching away the tools of production, you are paralysing the same in their most fruitful functions, you are making abundance impossible..."<sup>2</sup>

More recently, Vargas Llosa included among the five components which in his opinion explain Latin American failures, the existence of fragmentary property rights for those chosen by the State, instead of broader property rights for the people.<sup>3</sup> Making distinctions between tangible and intangible property rights is erroneous. All property rights are "intangible" in the sense that they are legal relations; the subject matter of the property right however may be tangible or intangible. As Epstein points out, the supposed

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<sup>2</sup> Juan Bautista Alberdi: "Sistema Económico Rentístico de la Confederación Argentina según su Constitución de 1853" in "Economía y Constitución", Editorial Plus Ultra, B.A., 1990

<sup>3</sup> Alvaro Vargas Llosa: "Rumbo a la Libertad, Por qué la izquierda y el neoliberalismo fracasan en América Latina, Planeta, Bs.As. 2004. The other four components Vargas Llosa details are: *corporatism*: rights are for the corporations, functions, or groups, not for the individual persons; *State mercantilism*: fiscal rapacity and intense intervention in the private economic sector; *transfer of wealth* to the State and the privileged; and *political law*: imposition of the State policies in the public and private spheres.

inferiority of IP rights to those in tangible objects should be categorically rejected.<sup>1</sup>

Another crucial reason is trade. In times of growing integration and exchange among countries, free trade agreements (FTAs) tend to strengthen legitimate trade, removing tariff and non-tariff barriers. In countries where IP protection is weak, national firms may trade in domestic or imported imitations of original products, while these same firms may, when they have innovations (and some do have them), take advantage of the IP systems of the most profitable developed markets. IP issues were the subject of the international technical treaties administered by the World Intellectual Property Organization, but after the approval of the Agreement on Trade Related Aspects of Intellectual Property Rights (TRIPS) at the World Trade Organization, IP became a part of trade negotiations, establishing minimum standards of harmonisation and protection. This is necessary to promote fair competition and fight piracy and plagiarism in international and national markets.

Latin American countries are in the process of implementing the standards incorporated in various FTAs and there has been, of course, resistance, as reform of long held beliefs and practices are necessary. Institutional reform is more than a technical change whereby some rules are replaced by others. It is indispensable to act through processes that are incremental and, with few exceptions, slow, in which old conceptions, ideas, and interests gradually lose their strength and are replaced by new ones.

Knowledge-based products typically cannot be created and adequately diffused without massive investments. Innovators may incur in great losses if unsuccessful, or if not protected by IP in those cases that they are successful.

Burstein asks “why should a developing country offer IP if it can buy patented products from

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<sup>1</sup> Richard A. Epstein: “Why Libertarians Shouldn’t Be (Too) Skeptical About Intellectual Property”, in “Progress on Point”, The Progress and Freedom Foundation, Washington D.C., February 2006.

private imitators at lower prices?”<sup>2</sup> He indicates that responses may come at two levels. The first is quality. This is crucial for medicines as similars are sold as ‘equivalents’ without the corresponding tests. In most of Latin America, health agencies approve the marketing of copies (similars) of pioneering medicines immediately after the latter are registered in the US or Europe, as if they were therapeutically equivalent to the original drugs, without proofs of this presumed but untested bioequivalence. Quality assurance is a very serious problem in the region. The second response is important to the optimal diffusion of new knowledge. Innovating companies are best perceived as potential conduits for knowledge creation, diffusion, and participation, all vital to progress.

Last but not least, IP is also necessary for enhancing the national innovation systems, i.e., the network of public and private institutions that generate, import, absorb, transfer, use and diffuse innovation. When the value of innovation is fully appreciated, it is of crucial importance to develop a friendly and trustworthy climate for its transfer and application.

The IDB (Inter-American Development Bank) reports that for those Latin American and Caribbean countries for which data is available, investment in R&D increased by 15%, from US\$ 9.5 billion in 1955 to almost US\$ 11 billion in 2002, part of an estimated world figure of US\$ 677 billion.<sup>3</sup> This means that the whole Latin American region invests less than 2% of the world total. Notably this total is less than only one country: South Korea, where investment in R&D amounted to US\$ 12 billion in 2003.

While in advanced economies, the business sector is the largest supporter of R&D accounting for two-thirds or more of the total, in Latin

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<sup>2</sup> M.L. Burstein: “Diffusion of knowledge-based products: Applications to developing countries”, Economic Inquiry, Vol. XXII, N° 4., 1984, US

<sup>3</sup> Inter American Development Bank: Education, Science, and Technology in Latin America and the Caribbean. A Statistical Compendium of Indicators (2006).

<http://idbdocs.iadb.org/wsdocs/getdocument.aspx?docnum=866082>. Last Visit 3/21/2006

America the public sector dominates R&D spending. Therefore, the real challenge is to attract private capital to R&D. Public funds are always scarce. It is the private sector which has the best growth potential for R&D investments.

The future in Latin America may be different. The decentralisation process experienced in the manufacturing sector (OECD believes that emerging economies will account for 90% of industrial world production in 2010) has also started to take place in the area of R&D.

There has been significant growth in the amount of extramural or contracted out research. This includes Contract Research Organisations (CROs), Contract Research and Technology Organisations (CRTOs), and Research and Technology Organisations (RTOs), which may support infrastructure in the national systems of innovation and their connectivity. There are also new international Partnerships that need national research centres.

To take advantage of the new opportunities for investments in Latin America, IP has turned into a powerful asset, for the public, for investors, and for recipients.

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## Experts' Corner

### Reporting Intellectual Property – Mapping What Drives Value – Roya Ghafele<sup>1</sup>

This article makes the case for reporting systems that lie outside traditional accounting statements

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This article was released for external publication by the Director General of the World Intellectual Property Organization on November 23 2006 under the working title "Financial Transactions on the Basis of Patents and Licenses". The views expressed in this article are those of the author and can not be attributed to WIPO, its secretariat or its member states.

so as to overcome existing information gaps on intellectual property. It is argued that IP can be a key driver of an innovative or creative firm, yet information necessary to understand and track what gets business going in markets for ideas is, due to current financial reporting standards, scarce and unsystematic.

The double entry accounting system that is used world wide underpins the notion that all business transactions constitute a unique and identifiable exchange of assets, which results in equal credits and debits.<sup>2</sup> This architecture may however prevent borrowers and investors from fully grasping the relevance intellectual property has to a business.

Internally generated intellectual property can be of major relevance to a firm, even if it is not involved directly in a business transaction. This has led Guo and Lev argue that transaction-based accounting may give a distorted picture of a creative or innovative company since their driving factors are not necessarily based on an arm's length transaction between a willing buyer and seller.<sup>3</sup>

Therefore, the transaction-based value reported by accounting may have little to do with the economic value of a company in cases where internally generated IP is the main driver of a business.

Take the following three examples, where intangible assets, such as patents, trademarks or trade secrets were a main driver of business:

- Texas Instruments leverages its patents through licenses and collected some US\$ 800m in royalties between 1986 and 1992.
- The Austrian SME Tinnitronics built its business around the internally developed device Ti-Ex that seeks to fight tinnitus. The firm's business model is to rent and sell the IP (patents

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<sup>2</sup> Rodov I./Leliaert P. FIMIAM: Financial method of intangible assets measurement. Journal of Intellectual Capital. 2002. 3/3: 323-336.

<sup>3</sup> Guo R./Lev B./Zhou N. The Valuation of Biotech IPOs. Journal of Accounting, Auditing & Finance. 2005. 20/4: 423-459.

and trademark) protected device to patients. Without IP, Tinnitronics would not be in business.

- Coca Cola has kept its recipe a trade secret since 1891. Paired with successful trademark management, the company's trade secret accounts for most of its success since the 19<sup>th</sup> century.

Nevertheless, current accounting regulations allow one to fully understand how the IP relates to business only in the context of Texas Instruments, since revenue streams can be directly related to a discernible, separately identifiable asset (key criteria for an intangible asset under International Accounting Standards IAS 38). The value of the patent and trade secret in the latter two cases can/need not be made explicit, which does not allow an outsider to understand the value IP has to the company. Thus, both the earnings and the book value of equity may be distorted.

The consequences of this are far reaching:

Firstly, the cost of capital increases, meaning that IP-rich companies may find it difficult to pass the funding hurdle, confirming that little has changed since Arrow published his findings some forty five years ago, showing that competitive markets fail to provide socially optimal levels of technology investment.<sup>1</sup> Since IP is literally absent from the accounting, reporting and managerial discourse, investors find it difficult to access information on how a firm's IP portfolio relates to its income streams. For this reason, risk rates associated with investments in knowledge-intensive sectors may not be adequately assessed and a higher premium may be charged when funding is provided on the basis of IP.

Secondly, the management of a company becomes a much greater challenge since adequate information on all the assets and liabilities of a company are not available.

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<sup>1</sup> Arrow K.J.: Economic Welfare and the Allocation of Resources for Invention. In: Nelson R.R. (ed.) *The Rate and Discretion of Innovative Activity: Economic and Social Factors*. Princeton University Press. Princeton 1962

As Ian Harvey, former CEO of BTG, argues: "Today, IP underpins between 50-70% of a country's private sector gross earnings, so it is often decisive for... commercial success or failure. This stands in strong contrast to IP management skills of top management. Many chairmen or CEOs do not grab the simple distinction between patentability and freedom to operate. It is like not knowing the difference between profit and cash flow."<sup>2</sup>

The internal management of IP is seriously hampered since its value is not made explicit on the balance sheet. Since the bulk of the space of the balance sheet is devoted to tangibles, managing intellectual property becomes a very intangible undertaking. The efforts put into this may at best be indirectly reflected, but do not directly become visible.

Thirdly, ratios, such as the market to book value are largely distorted, making it difficult for regulatory authorities and market participants alike to capture the worth of a company. For example, because Gillette's wealth relies mainly on its trademark portfolio, it had a book value of US\$ 3 million, but was bought by Procter and Gamble for US\$ 59m, which suggests a gap in the market to book value of US\$ 56m that had never been reported anywhere.<sup>3</sup>

The information provided in financial reports frames perceptions and ultimately determines business behaviour. The current information gap, expressed in hidden information on the value of internally generated intellectual property may therefore seriously distort markets for innovation and creativity.

From multinational to micro-enterprise, no business can afford to ignore these issues forever, even though they have to learn to navigate the

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<sup>2</sup> In Ghafele, Roya, Wurzer, Alexander Reboul Yves and Hundertmark, Stephan; *Rethinking IP Education; Intellectual Asset Management Magazine* December/January 2007 Nr. 21, p.28-40

<sup>3</sup> Example given by the FASB (Financial Accounting Standards Board) at the United Nations Department of Economic and Social Affairs Conference, July 12-13 2006

current business environment challenges without waiting for a quick fix or overnight reform.

An alternative reporting system may be a valuable compass helping companies to navigate through troubled waters. While most influential financial standard setting institutions (such as the FASB) continue to explore various options to better reflect the value of internally generated intangible assets, there is a clear need for further research on how to overcome the existing intangible/tangible reporting asymmetry through reporting systems that are not bound to the current logic of accounting.

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## Book Review

***The Economics of the European Patent System- IP Policy for Innovation and Competition – by Dominique Guellec and Bruno van Pottelsberghe de la Potterie (Oxford University Press, 2007)***

Why does society allow, or even encourage, private appropriation of inventions? When do patents encourage competition, when do they hamper it? How should society design the compromise between the interest of the inventor and the interest of the users of the patented inventions? How should the patent system adapt to new technological areas? What is the design of a good patent system?

These questions and many more are addressed by the authors in this groundbreaking analysis of the economics behind the European patent system.

The book begins with the history (Chapter 2) and principles of patent systems in general. It then examines the economic effects of patenting on innovation and the diffusion of technology and growth (chapter 3). The fourth chapter focuses on the new uses of patents. They gradually became a market instrument and are increasingly used for strategies that do not fit with the main purpose of a patent system. New valuation techniques and financial tools based on patents,

however, require a high quality patent system. This quality can partly be assessed through the design of the patent system, which is thoroughly analysed in the fifth chapter. The following chapters concern more the European patent system and its specificities.

In Chapter 6 the most recent filing strategies and patent drafting practices are described through a new typology. Four main filing strategies are identified, from good will and fast track to bad will and slow track or even deliberate abuse of the system.

Other important 'patent issues' are tackled in chapter 7. They concern i) the recent boom in academic patenting and its implication for society; ii) the cost of patenting in Europe (as compared with the US and Japan); iii) a comparative analysis of operations; iv) the potential benefits of a more integrated market for technology in Europe; and v) the origin and consequences of the explosion in the volume of patent filings at the EPO.

The last chapter provides a snapshot of the current challenges facing the European patent system: the implicit choice that needs to be made between quantity and quality. The authors investigate this dilemma through the 'policy' challenge, the challenge of integrating the European patent system, and the challenge of reinforcing the economic dimension.

Throughout the book the theory and the reality are discussed alongside real world examples and comparisons are made between the European, USA and Japanese patent systems.

Overall this book provides a valuable contribution to those dealing with the different aspects of IP policy-making, as well as to practitioners that seek to obtain a more comprehensive knowledge and data on contemporary trends challenges of the IP system.

Dominique Guellec is Chief Economist of the OECD.

Bruno Pottelsberghe is the Chief Economist of the European Patent Office

## New Publication

### ***Healthy IPRs – A Forward Look at Pharmaceutical Intellectual Property* by Dr Meir P Pugatch and Anne Jensen**

Available from the Stockholm Network, as of  
May 2007

The Stockholm Network is delighted to  
announce the release of *Healthy IPRs*, edited by  
Dr Meir P Pugatch and Anne Jensen.

It is no secret that the IP field in general, and  
pharmaceutical IPRs in particular, have been the  
subject of many heated discussions. These  
discussions can often be as emotional as they are  
rational. Indeed, the field of pharmaceutical IPRs  
is complex and multidimensional. It encompasses  
significant challenges, including the issue of access  
to medicines. Indeed, the debate over IPRs and  
access to medicines in developing and least  
developed countries is one of the most sensitive  
and complicated issues to be discussed under the  
auspices of the World Trade Organisation.

Yet without denigrating the importance of the  
pharmaceutical IPR debate in general, and the  
issue of access to medicines in particular, it is  
essential to keep the big picture in mind.  
Pharmaceutical IPRs work. They are part of the  
solution and not part of the problem.

By providing a comprehensive and realistic  
overview of the many aspects of pharmaceutical  
IPRs this compendium seeks to underline this  
message.

Healthy IPRs includes concise and informative  
contributions from seventeen distinguished  
experts, including academics, policy makers and  
practitioners. It is a useful tool for anyone  
seeking to understand the complex issues at the  
heart of global IP policymaking.

The publication is divided into three sections:

#### **Economic Aspects of pharmaceutical IPRS**

1 – Douglas Lippoldt, international economist at  
the OECD analyses the impact of IP regimes on

foreign direct investment. He finds a “positive  
relationship between IPRs and FDI in the sector”.

2 – Stefan Szymanski and Tommaso Valletti of the  
Tanaka Business School at Imperial College  
London discuss the economics of pharmaceutical  
parallel trade.

3 – Cathy Garner, chief executive of Manchester:  
Knowledge Capital, assesses the strategic use of  
IPRs by pharmaceutical SMEs in developing  
countries, finding considerable advantages for  
SMEs who are able to embrace the TRIPS system.

4 – Joseph Cook and David Monk of NERA  
Economic Consulting observe the clash between  
antitrust and IP legislation, particularly its impact  
on patent settlement investigations.

5 – Eskil Ullberg of George Mason University  
highlights a new approach to trading  
pharmaceutical IPRs between rights owners.

#### **Pharmaceutical IPRs in the international arena**

6 – Jayashree Watal from the World Trade  
Organization writes about the impact of WTO  
policy on access to medicines, and concludes that  
“a balance has been sought between the interests  
of right-holders and those of users of IPRs”.

7 - Jacques Gorlin studies the possibilities for the  
future of the TRIPS agreement in relation to  
pharmaceutical IPRs.

8 – Patrick Ravillard, of the European  
Commission’s Directorate General for Trade  
explains the WTO decision of December 2005 to  
amend the TRIPS agreement in regards to the use  
of compulsory licences for the purpose of  
exporting generic substitutes (of patented  
pharmaceutical products) for countries with  
insufficient or not manufacturing capacity.

9 – James Killick argues that the WHO  
Commission’s report on IPRs, Innovation and  
Public Health constitutes a missed opportunity,  
having failed to address issues of importance,  
such as counterfeit medicines, and instead having  
focused on competition law, generic entry, and  
other issues “of limited (if any) relevance”.

10 – Pedro Velasco Martins, of the European Commission's Directorate General for Trade, studies different perspectives of the EU's approach to pharmaceutical IPR enforcement.

11 – Peter Pitts of the Centre for Medicines in the Public Interest demonstrates the threat of counterfeit medicines, and offers tough new policy approaches to tackle this growing problem.

### Contemporary topical issues

12 – Hiroko Yamane of the National Graduate Institute for Policy Studies (Japan) outlines controversies surrounding The Convention on Biodiversity and IPRs.

13 – Nikolaus Thumm, senior economic counsellor at the Swiss Federal Institute of Intellectual Property, makes the case for a statutory research exemption for patents.

14 – Trevor Cook, partner, Bird & Bird, ponders the ethical and policy dimensions of patenting biotechnology.

15 – Emily Bishko Radel, Matthew Lowe, and Richard Rozek of NERA Economic Consulting assess the issues surrounding 'patent wars' and the authorised generics market in the USA.

16 – Manuel Campolini highlights the problems of IP policy making related to so-called 'combination products'.

17 – Conal Clynn, legal advisor at the European Commission, outlines the history and development of supplementary protection certificates, and asks what's next for this branch of IP law.

We hope you will enjoy it, as well as finding it of use.

[www.stockholm-network.org/publications/list.php](http://www.stockholm-network.org/publications/list.php)

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## Upcoming Event

### Defining the Public Interest in Intellectual Property - A Joint UNCTAD-Stockholm Network-PIIPA Event

Date: Friday, 22 June 2007

Time: 9:00 -13:00

Venue: UNCTAD, Palais des Nations, Old Building, Room VII (Door 11)

The United Nations Conference on Trade and Development's International Arrangements Section, the Stockholm Network Intellectual Property & Competition Programme, and Public Interest Intellectual Property Advisors are delighted to invite you to a forum and debate on "defining the public interest in intellectual property".

The emerging area of public interest IP has an increasing impact on both developed and developing countries in areas as diverse as patenting, traditional knowledge, access to knowledge in the digital environment, and culture and arts.

Important issues to be discussed and debated include: What is the public interest in the IP area? How can the IP system accommodate opposing interests? How do you define Public Interest in IP when technologies advance far ahead of policy and legislation? To what extent can the limited rights bestowed by patents serve the public interest in rich and poor countries? Does the western concept of copyright protection serve the interests of countries with traditions of collective ownership? These and other probing questions will be addressed.

To RSVP please contact Ms. Susie Squire, Stockholm Network  
Email: [susie@stockholm-network.org](mailto:susie@stockholm-network.org)

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## News Flashes

### Top Stories in the World of IP and Competition

1) The battle for supremacy in the European Union's complex approach to intellectual property rights took a further twist on April 25. The European Parliament has adopted legislation making breaches of intellectual property a Europe-wide criminal offence. It adopted amendments granting exemptions for "unauthorised copying" by private individuals on a non-commercial or non-profit-making scale. Incitement to IP infringement was also made an offence. Whether the Directorate General for Competition's constant attempts to undermine intellectual property regimes falls under the latter category remains to be seen.

The proposed measures will now be sent to the Council of Europe for approval by the member states.

<http://www.iht.com/articles/2007/04/25/business/piracy.php>

2) The European Commission has relaunched its proposals for a Europe-wide patent. The main aim of the new paper is integration of patent jurisdiction. The paper reiterates hope that progress on various aspects of patent framework will be made. However, it is clearly cautious about the possible pace and scope of any progress. No deadline is given for agreement on common jurisdiction or the community patent proposal. Can this initiative avoid the ignominious fate of its predecessors? There seems little reason for optimism yet.

<http://eur-lex.europa.eu/LexUriServ/LexUriServ.do?uri=CELEX:52007DC0165:EN:NOT>

3) The European trade commissioner has announced plans to "toughen up" its approach to gaining market access with trading partners across the world. One of the key parts of the proposal is increased focus on the levels of IP protection in partner countries, as this has been a major concern highlighted by EU exporters.

<http://www.ft.com/cms/s/88f827e8-ed49-11db-9520-000b5df10621.html>

4) A belated happy Intellectual Property Rights Day. For anyone who missed the festivities of April 26, WIPO has gathered a sample of events that took place across the world

[http://www.wipo.int/about-ip/en/world\\_ip/2007](http://www.wipo.int/about-ip/en/world_ip/2007)

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