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Team of Specialists on Intellectual Property

First meeting
Geneva, 23-24 November 2006

REPORT OF THE TEAM OF SPECIALISTS
ON INTELLECTUAL PROPERTY
ON ITS FIRST MEETING

Summary

At its first meeting, the Team of Specialists on Intellectual Property: elected Mr. Slobodan Markovic as Chairman, and Ms. Marianne Helledi-Knudsen and Mr. John Anderson as Vice-Chairpersons (para. 5); discussed the challenges countries in the UNECE region face with the commercialization of IP assets (para. 8-14), and with the protection and enforcement of IPRs (para. 15-24); adopted its programme of work for 2007 which specifies how the Team envisages to address some of the challenges that emerged in the debate, and how work is to be distributed among participants (para. 26 and 28); and agreed on the date of its next meeting, and the meeting on IPR protection and transforming R&D outputs into intangible assets in economies in transition (para. 25).

The next Annual Meeting of the Team will be held in the week of 23-27 July 2007.

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I. ATTENDANCE

1. The Team held its first meeting on 23 and 24 November 2006. Experts representing government agencies, academic institutions and the private sector from twenty-six UNECE member States participated in the meeting. The meeting was also attended by representatives of inter-governmental organisations active in the field of Intellectual Property Rights (World Intellectual Property Organization, World Trade Organization, UNCTAD, European Patent Office, OECD) as well as by the European Commission.

II. OPENING OF THE MEETING

2. Mr. Marek Belka, Executive Secretary of UNECE opened the meeting and welcomed participants from governments, academia, the private sector and inter-governmental organisations. This, he added, attested to the significance and importance of intellectual property issues for the UNECE region. He remarked that the Secretariat would have hoped for a stronger participation from the private sector, but he added that this was a challenge for the Secretariat and that it will keep working to reach out to the business community.

3. The Executive Secretary expressed his satisfaction that a number of the participants were key members of the former UNECE Advisory Group on Intellectual Property Rights, which showed their continued commitment to UNECE's work in this area, and which will give the Team the opportunity to take advantage of the previous group's expertise and networks.

4. The Executive Secretary then went through the programme of work, and pointed out that although the question of *what* needs to be delivered was broadly mandated to the Team by the UNECE Committee on Economic Cooperation and Integration (CECI), the meeting was extremely important for deciding on the *how*, *who* and *when* of the Team's work programme. He concluded by saying that indeed, one of the key desired outcomes of the meeting was a clear work plan and a clear division of labour among participants for the work to be carried out in the course of 2007.

III. ELECTION OF OFFICERS (Agenda item 1)

5. The Team elected Mr. Slobodan Markovic (Serbia) as its Chairman, and Ms. Marianne Helledi-Knudsen (Denmark) and Mr. John Anderson (United Kingdom) as Vice-Chairpersons.

6. The Chairman welcomed participants and outlined the major tasks ahead. He invited participants to share their views on the substantive agenda items, including the implementation of the programme of work for 2007. He also welcomed the participation of interested inter-governmental organisations in the work of the Team.

IV. ADOPTION OF THE AGENDA (Agenda item 2)

7. The Team adopted its agenda dated 6 November 2006.

V. COMMERCIALIZATION OF IP ASSETS (Agenda item 3)

8. The Chairman invited participants to share recent experiences on commercialization of intellectual property (IP) assets in their respective countries and field of expertise.

9. The following points emerged from the discussion:

- (a) commercialization of IP assets is a challenge for countries, especially those that depend on the export of innovative products;
- (b) there is a lot of research and development (R&D) that not always leads to successful commercialization;
- (c) the importance of involving the private sector in publicly funded research;
- (d) in order to involve the private sector, one has to create research projects, and science and technoparks in the vicinity of universities, and therefore, geographical proximity is an ingredient to success;
- (e) public-private partnerships are of fundamental importance, especially when linking universities (that are usually public institutions) and the private sector;
- (f) a number of universities in the UNECE region have passed IP regulations covering all sorts of intellectual property rights (IPRs);
- (g) the importance of Transfer of Technology Offices (TTOs) in universities, and the fact that transition economies could draw on the experience of others in this regards, even though TTOs might be a recent development in some developed economies (an example was also provided of government initiatives in one country aimed at the creation of TTOs which could not be implemented due to lack of expertise in this field);
- (h) the presence of TTOs increases the probability of local technology transfers and job creation, independently of the revenue generated through royalties, and this in itself is a powerful motivation for the setting up of TTOs;
- (i) the need to train people in practical issues, such as the drafting of licensing agreements, and the importance of training centres for IP specialists;
- (j) a gap exists in certain countries between legislation and practice, and that experience shows that small and medium-sized enterprises (SMEs) do not always fully understand the importance of IP;
- (k) the usefulness of exchanging experiences on best practices;
- (l) certain countries have had problems in devising means for businesses to calculate the value of their IP, and examples were provided in this regard;
- (m) linked to the above are the issues of IPR strategies and management, which mainly include IP audits, accounting, valuation, strategic patenting, human resources policies and taxation;
- (n) the role and importance of IPR auctions and IPR intermediaries to inventors, especially the SMEs;
- (o) R&D in certain countries has been underfinanced; and
- (p) even though a number of programmes to put in contact inventors and investors are in place at the national level, more should be done in this regard.

10. On the process to be adopted by the Team, it was argued that the Team should focus on the methods of its work, and that an option was to look at the various components present in the commercialization of IP assets. Another approach was to go through the process from the

moment an invention is created to its profitable use. Another argument that was put forward called for a more focused approach, using patents as an example, in the sense that the core issue should be how to assist the patent holder to get the maximum benefit from the invention once a patent was obtained. It was argued that this approach was wide enough without losing the focus, and that the Team should not adopt an approach that is aimed at covering the entire innovation system. It was also argued that the Team should adopt a practical approach in its work rather than a purely academic one.

11. Representatives from international organisations (World Intellectual Property Organization, World Trade Organization, OECD, and the European Patent Office) shared their experiences in this field and elaborated on their respective activities aimed at the commercialization of IP assets, ranging from organising seminars to publishing materials aimed at the various stakeholders. They all expressed their willingness to collaborate in their respective field of expertise. The representative of the European Patent Office in particular suggested the possibility of organising a joint seminar on new patent valuation tools.

12. The Team heard presentations on the various facets of commercialization of IP assets from two experts invited by the Secretariat: Dr. Gail E. Evans, Professor at Queen Mary IP Institute, University of London, and Dr. Ludmila Sterbova, Professor at the University of Economics in Prague.¹

13. In summing-up the discussion, the Chairman highlighted the need to combine private and public resources for the successful commercialisation of IP assets. He pointed out the three main players: businesses, universities, and governments. He added that there needs to be clear rules on the distribution of rights and sharing of benefits under these partnerships. He referred to interventions on TTOs and the interest which this has generated among members, while highlighted the importance of these Offices, and the need for countries in transition to learn from experiences in more developed economies. He also stressed the importance of training and teaching. He also referred to the concept of technology transfer intermediaries, and stated that this was something that the Team should explore and understand better. He concluded by pointing out that the Team should set a number of goals in this area and as such, there was a clear need to identify the goals that need to be achieved by the Team in 2007 and beyond.

14. Linking to the Chairman's summing-up, the Secretariat reiterated that the goals of the Team were determined by CECI, and that the Team's recommendations would be considered by CECI. Once the recommendations were adopted, it would be possible to move into more focused technical assistance activities with the participation of the Team's members. The Secretariat referred to the discussion on commercialization of IP assets and to the fact that a number of participants have stated that they had case studies, legislation and other material relevant to the topic. This material may be assessed in peer-review within the Team, before it is submitted for consideration by CECI. The Secretariat also stressed that the Team should not duplicate the work carried out elsewhere, should build on the result achieved by other organisations, and that the process needed to be demand-driven.

¹ All presentations and submissions by participants could be found in UNECE website: <http://www.unece.org/ceci/presentation/presentationIP06.html>

VI. INTELLECTUAL PROPERTY RIGHTS PROTECTION AND ENFORCEMENT (Agenda item 4)

15. Participants shared information and views on recent experience gained, existing legal frameworks, policies and business practices in the field of intellectual property protection and enforcement, including assessments of the effectiveness of national systems, good practices and good policies.

16. The discussion centred on the following issues:

- (a) the links between IPR protection and enforcement and the enforcement of public health and safety standards as well as fair competition.
- (b) how best to organise enforcement activities to maximise their overall effectiveness in view of resource constraints,
- (c) how best to organise the court system to ensure a consistent interpretation of the law and hence reduce legal uncertainty surrounding IPRs,
- (d) the need to make protection and enforcement more consistent across borders,
- (e) how best to organise the policy making on IP in order to avoid inconsistencies

17. Participants shared the experiences of their countries in these matters. They recognised that effective protection and enforcement of intellectual property rights is crucial for such rights to have economic value and hence for these rights to be able to serve as a basis for commercializing innovations. Beyond that, it was noted that counterfeit goods often violate public health and safety standards, that their production and distribution is often in the hands of organised crime, and that counterfeiting undermines fair competition. In fact, it was suggested that where enforcement resources are limited, priority might usefully be given to sectors such as drugs, cosmetics, foods, or car or aircraft parts, where counterfeit goods most often also present safety or health hazards. There was a common perception that counterfeiting and piracy are increasing. It was pointed out that the OECD is working on a study to quantify the economic impact of IPR infringements which could be useful for the work of the Team.

18. To address the above issues, it was suggested among other things to broaden the scope of market surveillance and border controls (including on goods in transit), so that the respective authorities can search simultaneously for goods that may infringe on IPRs and that may violate safety or health standards. Some countries are already doing this. The UNECE "MARS" Group (UNECE Advisory Group on **MAR**rket **SUR**veillance) has a project on the use of market surveillance infrastructure as a complementary means to protect consumers and users against counterfeit goods. Positive results have already been achieved with this approach in some CIS countries. It was agreed that opportunities for cooperation between the UNECE MARS Group and the Team should be explored.

19. There was unanimity on the need for the various enforcement agencies (police, customs, market surveillance, prosecutors, courts) to coordinate their activities and to work closely with each other, but also with the business sector and consumer advocates for IPR enforcement to be effective. Several participants expressed their interest in further exchanges of experience on these issues. It was also noted that counterfeiters often operate across borders, and that therefore the fight against counterfeiting also required international cooperation. In this regard, the

European Commission presented its initiatives to strengthen IPR enforcement at the multilateral level (TRIPS) as well as in bilateral trade and economic cooperation agreements (TRIPS plus).

20. Several participants further stressed that for IPR protection and enforcement to be effective, the law has to be applied in a transparent and consistent fashion. This appears to be a common problem within jurisdictions, but can be particularly serious for companies operating in many different national markets. One cause of inconsistency can be a lack of awareness and expertise on the part of courts and judges. To overcome this problem, some countries have created or are considering creating specialised IP courts, or to provide for more judges specialised in this area. However, whether specialisation is advisable may depend on the circumstances of the country in question.

21. In many countries, policy making continues to be fragmented, with different ministries or agencies taking the lead on different aspects of IPR protection. Several countries reported on efforts to coordinate policy making between these different entities, sometimes in response to the need to implement the EU Enforcement Directive. By contrast, centralisation of responsibility for IPR policy under a single ministry still seems to be rare. However, participants expressed interest in learning more about experiences with policy centralisation in the field of IPRs.

VII. WORK PLAN FOR 2007 (Agenda item 5)

22. Under this agenda item, the Secretariat first introduced the overall programme of work of CECI, under whose auspices the Team operates. The thematic areas to be covered are: Innovation and Competitiveness, Entrepreneurship and SMEs, Financing for Innovative Development, Public-private Partnerships, Intellectual Property Rights, International Economic Integration. CECI provides a forum for the exchange of experiences, and for the development of good practices and policy recommendations, which can then become the basis for capacity building activities.

23. The above thematic areas are closely related, and the organisation of the work will reflect this. In all areas, the Secretariat is mandated to form Teams of Specialists or networks of experts. Everyone will have access to the results of the work being done in all groups, so that synergies can be exploited and the work being done in the different thematic areas will be complementary. CECI has a clear mandate from the UNECE member States to build on the work of other organisations and to seek to cooperate with them, as well as with the private sector to achieve synergies and avoid duplication.

24. CECI's Programme of Work and the Team's Terms of Reference call for the following activities to be carried out in the field of IP in 2007:

- (a) Exchange of experience gained on IPR commercialization, protection and enforcement, possibly through regional thematic interactive seminars;
- (b) Exchange of views ('consultations') on specific requesting countries' legal framework, policies and business practices in the field of intellectual property protection, and in order to - among other things - assess the effectiveness of national systems;

- (c) Based on existing reports, analytical comparative report on the commercialization of IP assets, on transforming R&D outputs into intangible assets and on the establishment of well functioning markets for such products;
- (d) Meeting on IPR protection and transforming R&D outputs into intangible assets in economies in transition;
- (e) Collection of good practices and good policies of intellectual property commercialization and protection in the UNECE member countries with the aim to identify specific areas of action; and
- (f) Capacity-building activities based on specific requests of member States.

25. While these activities are thus mandatory for the Team to deliver, there is ample scope to shape their specific content. The challenge is to identify niches where the Team can add value, and to fit the Team's work into the overall work program of CECI. The Secretariat pointed out the possibility for some of the IP-related issues raised during the meeting to be treated by Teams of Specialists or expert groups in other thematic areas. Before entering into substantive discussions, participants agreed to hold the 2007 Annual Meeting of the Team in the week of July 23-27, 2007, and to hold the meeting back-to-back with the mandated "Meeting on IPR protection and transforming R&D outputs into intangible assets in transition economies".

26. To facilitate the discussion on the work programme, the Secretariat then distributed a consolidated table itemising the activities the Team is mandated to deliver in 2007, with a breakdown of, and time-table for work to be undertaken reflecting the particular issues raised during the substantive discussion under agenda items 3 and 4, as well as the preferences for participation in specific types of activities expressed by participants in a questionnaire which had been distributed on the first day of the meeting.

27. In the ensuing discussion, some participants argued that IPR commercialization, protection and enforcement is a very wide and complex topic, and that the Team should realistically opt for a more narrow focus on some select issues not adequately covered elsewhere. But others cautioned that in order to deliver sound practical advice to policy makers and businesses, it would be necessary to adopt a relatively broad approach, because a narrow focus would not be helpful for developing a sound IPR management strategy or IPR policy.

28. Participants adopted the Team's programme of work for 2007. Participants also called on the Secretariat to undertake further consultations with a view to further clarifying what issues to focus on and how to structure the work.

VIII. FUND RAISING (Agenda item 6)

29. The Secretariat explained that funds are available to finance the activities mandated in the Programme of Work, but that with additional extra-budgetary funds it would be possible to expand the scope of these activities and to increase their impact, for instance by bringing more participants to seminars, capacity building workshops and policy advisory meetings. Support could consist not just of financial contributions, but also in contributions in kind, such as making available conference facilities for meetings held in member countries.

30. Participants noted that in order to raise funds, it will be necessary to clarify further what exactly the Team will be able to offer. To encourage fund raising from private sources for capacity building it was suggested that the best practices or policy recommendations developed by the Team should retain sufficient flexibility to be adapted to the individual circumstances of recipient countries. Also, in order to elicit demand from member countries for capacity building, it will be necessary to publicise what kind of capacity building the Team will be offering.

IX. OTHER BUSINESS (Agenda item 7)

31. Participants agreed that the Secretariat prepare the meeting's report no later than 15 days following the meeting and that it be reviewed and adopted by the Chair and Vice-Chair on behalf of the Team.

ANNEX I

UNECE TEAM OF SPECIALISTS ON INTELLECTUAL PROPERTY: WORK PLAN FOR 2007

Type of Activity/Outputs	Timeline	Themes determined in the Team's Terms of Reference • <i>sub-themes emerging from the discussion</i>
<p>Collection and exchange of information on experiences, lessons learned and challenges faced, including such on:</p> <ul style="list-style-type: none"> - legislation - regulations - policies (existing and being developed) - implementation practices - case studies 	<p>December 2006 – January 2007</p>	<p>Commercialization of IP</p> <ul style="list-style-type: none"> • <i>Cooperation between research organisations and business</i> <ul style="list-style-type: none"> ▪ <i>Ownership of IPRs</i> ▪ <i>Technology transfer offices</i> • <i>Fostering commercialization of IP in SMEs</i> <ul style="list-style-type: none"> ▪ <i>Awareness raising</i> ▪ <i>Technology transfer intermediaries</i> • <i>IPR strategies and management</i> <ul style="list-style-type: none"> ▪ <i>Audits</i> ▪ <i>Accounting</i> ▪ <i>Valuation</i> ▪ <i>Strategic patenting</i> ▪ <i>Human Resources policies</i> ▪ <i>Taxation</i> • <i>Creation of technology markets</i> <ul style="list-style-type: none"> ▪ <i>IPR auctions</i> ▪ <i>IPR intermediaries</i>

Type of Activity/Outputs	Timeline	Themes determined in the Team's Terms of Reference <ul style="list-style-type: none"> • <i>sub-themes emerging from the discussion</i>
<p>Collection and exchange of information on experiences, lessons learned and challenges faced, including such on:</p> <ul style="list-style-type: none"> - legislation - regulations - policies (existing and being developed) - implementation practices - case studies 	<p>December 2006 – January 2007</p>	<p>Protection and enforcement of IP rights</p> <ul style="list-style-type: none"> • <i>institutional models and methods of protection and enforcement (civil enforcement – border controls – criminal procedures)</i> • <i>coordination of policy making in the area of IPR protection and enforcement: importance and benefit</i> • <i>coordination and cooperation between different institutions and government bodies (IP offices, courts/tribunals, customs, police, prosecutors offices) in implementation practices;</i> • <i>practical measures to harmonise implementation practices in courts, tribunals and across borders</i> • <i>consumer protection (health and safety) and unfair business practices</i>
<p>Preparation of comparative reviews</p>	<p>End of June 2007</p>	<p>Comparative review of commercialization of IP assets, transforming R&D outputs into intangible assets and establishment of well functioning markets for such products</p>

Type of Activity/Outputs	Timeline	Themes determined in the Team's Terms of Reference • <i>sub-themes emerging from the discussion</i>
Identification of good practices	15 June 2007	Good practices in the commercialization of IP
	15 June 2007	Good practices in the protection and enforcement of IP rights
Meeting, workshops and seminars	July 2007 (in conjunction with the second meeting of the Team)	Meeting on IPR protection and transforming R&D outputs into intangible assets in economies in transition
Menu of policy options and recommendations to be presented to the second session of CECI	September 2007	Collection of good practices and policies on IP commercialization and protection with a view to identifying areas for action
Consultations, including to assess the effectiveness of national systems, and capacity-building activities	N/A	On demand of countries and subject to availability of extra budgetary and in-kind contributions