



Asia-Pacific  
Economic Cooperation

---

**2007/SOM3/CTI/022**

Agenda Item: 8

## **Intellectual Property Rights: Convenor's Summary Reports to CTI**

Purpose: Consideration  
Submitted by: IPEG Convenor



**Committee on Trade and Investment Meeting  
Cairns, Australia  
29-30 June 2007**

## OAA ISSUE AREA:

### CONVENOR'S SUMMARY REPORT TO CTI

#### 1. INTRODUCTION

The Intellectual Property Experts Group (IPEG) is a subforum under the CTI. Its role is to deal with all aspects of intellectual property rights within APEC.

#### 2. WORKPLANS FOR 2007 IN CTI PRIORITY AREAS

##### A) Support for the WTO

1. Geographical Indications. The IPEG considered the various methods of protection of geographical indications based on papers submitted by economies. The exercise helped to share experiences in relation to this area.

2. Traditional Knowledge and Other Emerging Fields in IPR. The issue of registration of trademarks that were offensive to the customs and practices of indigenous peoples was considered.

##### B) RTAs/FTAs

3. Update on FTA/RTA IPR matrix. Further work was done on this matter at this meeting. The contributions of other economies to the matrix were discussed. The different experiences in relation to FTA/RTA negotiations proved useful to all economies, particularly those which had not been involved in such negotiations.

##### C) Trade Facilitation

4. A proposal on "International Cooperation on Border Enforcement of IPR among Enforcement Agencies of APEC economies" was approved by the IPEG. The IPEG also agreed that Japan could present this proposal to the SCCP on behalf of the Chair.

##### D) Digital Economy and Strengthening Intellectual Property Rights

5. Best Practices Paper on Innovative Techniques for IPR Border Enforcement. Three economies shared various innovative techniques that they were utilizing to overcome the challenges in IPR border enforcement. Other member economies were encouraged to contribute to the paper so as to expand the sharing in this area.

6. Proposed Text in Leaders' Declaration on Markets Selling Counterfeit and Pirated Goods. The IPEG discussed the issue at length and arrived at the following consensus text, except for one word objected to by one economy, which has been placed within square brackets. The text is forwarded for further consideration by CTI.

“While underscoring that counterfeiting and piracy must be addressed broadly, Leaders acknowledged the challenge to intellectual property rights protection represented by the sale of counterfeit and pirated goods, in particular, at markets that are [regular] sources of infringing goods, and welcomed continued efforts by APEC economies to combat the sale of infringing goods at these places. Leaders welcomed increased capacity building measures where appropriate to assist in this objective.”

The economy indicated that it may revert inter-sessionally on its position on the text. If this occurs, the result would be communicated to the CTI.

7. Proposed Text in the AMM Statement on Signal Theft. During the discussion of the text on this issue, concerns were raised over which Ministry dealt with the issue in specific member economies. It was also pointed out that there was on-going work at other fora on this issue. One economy stated that signal theft was not a problem domestically and felt that this issue should not be raised to Ministers.

8. The IPEG worked intensively, in plenary and in a small negotiating group, on the following formulation for the proposed text. However, it was not possible to arrive at a consensus text despite the extensive effort. The following text is submitted for further consideration by the CTI.

*Chair’s Text as amended by the IPEG*

“Ministers welcomed APEC’s attention to the problem of satellite and cable signal theft and supported further work on this subject within APEC to strengthen efforts to address this growing problem, which harms copyright owners and the broadcasting and cable industries.”

9. An earlier formulation proposed by the Chair and considered by the IPEG is as follows:

“Ministers welcomed APEC’s attention to the problem of satellite and cable signal theft and supported discussions on this subject within APEC to strengthen efforts to deal with this issue.”

*[For information] Text originally proposed by the US*

“Ministers recognized that satellite and cable signal piracy is an increasing problem in the APEC region and around the globe, harming copyright owners and the broadcasting and cable industries. Accordingly, Ministers welcomed APEC’s growing attention to the matter and called on APEC economies to strengthen efforts to eradicate signal piracy. Ministers instructed APEC economies to undertake further work on this issue, including exchanges of information on requirements for cable licenses, with a view to identifying possible regulatory approaches to deterring signal piracy. Ministers also expressed

the need to increase capacity building measures to assist in combating signal piracy.”

10. APEC Cooperation Initiative on Patent Acquisition Procedures. Work on this was done inter-sessionally. Further work continued at this meeting. The majority of IPEG members supported the proposal. However, three economies expressed reservations. The revised Initiative (see **Annex A**) is submitted to the CTI for further consideration.

11. Proposed Text in the Leaders' Declaration on IP Utilization. The IPEG worked on a text focusing on creation and utilization of IP. The text supports the need for a comprehensive and balanced IP system and for an environment supportive of creation and innovation to encourage greater IP utilization. The consensus text on this is submitted to CTI for consideration.

*IPEG Consensus Text*

“Leaders recognized that a strong knowledge-based economy requires a comprehensive and balanced IP system, as well as an environment that encourages creation and innovation and provides the tools for successful management and exploitation of intellectual property rights. We call on the APEC economies to work towards this objective.”

12. Proposed Guidelines to Strengthen Capacity Building. The IPEG supported the objectives of the paper. Further work was done to revise it, taking into account contributions from several economies. The revised paper (see **Annex B**), as endorsed by the IPEG, is submitted for the consideration of the CTI.

**E) Transparency**

13. A paper by a Member economy was considered.

**F) Investment**

-

**G) Other areas, including APEC-wide initiatives on APEC Reform, Security, Structural Reform and Gender**

-

**3. ANTICIPATED ACTIVITIES WITH ABAC AND / OR OTHER EXTERNAL STAKEHOLDERS**

There was a dialogue with the European Patent Office-European Commission-ASEAN Intellectual Property Rights Cooperation Programme (ECAP II) representative on mutual areas of interest with a view to future cooperation with the IPEG.

**4. DECISION POINTS NEEDED FROM CTI**

CTI is requested to endorse the following projects (ranked in order of priority) – approved by the IPEG – for submission to the 2<sup>nd</sup> BMC for funding in 2008:

- (i) Title: “Raising Awareness and Providing Policy Insights on Promoting Appropriate Access to Genetic Resources and Protection of Traditional Knowledge in APEC Economies” project  
*Requested Funding: USD\$78,310*
- (ii) Title: “APEC IPR Public Education and Awareness Program for SMEs” project  
*Requested Funding: USD\$182,340*
- (iii) Title: “Plant Variety Protection System” project  
*Requested Funding: USD\$107,000*

**5. IPEG’s Capacity Building Deliverables For 2007**

<b>Deliverable</b>	<b>Outcomes / Progress</b>
“Trading Ideas” Symposium	<ul style="list-style-type: none"> <li>• A symposium on IP in the Asia-Pacific was organized by Australia in Sydney from 28 – 30 January 2007.</li> </ul>
APEC Disseminating E-Learning Contents on IPR Information (Phase I) Project	<ul style="list-style-type: none"> <li>• The set of IP education and awareness resource materials developed in Phase I of the project was made available to all economies.</li> </ul>
IPEG-SMEWG Project: APEC Seminar for SMEs	<ul style="list-style-type: none"> <li>• The seminar was held in Bangkok in May 2007.</li> <li>• It was well-attended.</li> </ul>
APEC Workshop on Capacity Building for APEC Member Economies to Implement APEC Anti-counterfeiting & Piracy Initiative	<ul style="list-style-type: none"> <li>• The workshop was organized in Hanoi, Vietnam from 31 May – 1 June 2007.</li> <li>• It focused particularly on issues relating to the Supply Chain Guidelines.</li> <li>• The workshop was well-attended by government officials, IP experts, private-sector representatives, etc.</li> </ul>
APEC IPEG Symposium on Internet Infringement Prevention Strategies & Enforcement Measures	<ul style="list-style-type: none"> <li>• The symposium was organized in Chinese Taipei on 15 June 2007.</li> <li>• There was excellent response to the symposium with participants from IPEG economies, businesses, international bodies and academia.</li> </ul>

<b>Deliverable</b>	<b>Outcomes / Progress</b>
APEC Workshop on the Protection and Enforcement of IPR in the Digital Era	<ul style="list-style-type: none"> <li>• A workshop on protecting and enforcing IPR in the digital era will be organized by Vietnam from 4-6 July 2007, in Nha Trang.</li> </ul>
APEC Seminar on Enforcement of IPR	<ul style="list-style-type: none"> <li>• A seminar on IPR enforcement will be organized by Papua New Guinea in Port Moresby in August 2007.</li> </ul>
APEC-USPTO Workshop on Effective Practices in the Border Enforcement of Intellectual Property Rights	<ul style="list-style-type: none"> <li>• This is a self-funded project proposal by the US which the IPEG has endorsed.</li> <li>• The workshop will address border measure obligations under TRIPS, risk assessment model and other important issues.</li> </ul>
APEC-USPTO Workshop on Developing A Successful Intellectual Property Enforcement Regime for Judges and Prosecutors	<ul style="list-style-type: none"> <li>• This is a self-funded project proposal by the US which the IPEG has endorsed.</li> <li>• The workshop will provide knowledge and experience sharing among judges on critical IPR enforcement issues such as deterrent sentencing, prosecution of organized crime.</li> </ul>
APEC IPR Market Research and Best Practices Workshop	<ul style="list-style-type: none"> <li>• This is a joint project between Australia, Singapore and Hong Kong, China.</li> <li>• The workshop, to be held in Singapore during 12-14 December 2007, will focus on providing economies with in-depth training on the use of market research guidelines and the survey tools developed under this project.</li> </ul>

## 6. New Collective Actions Agreed/Planned for 2008

- **RTAs/FTAs:** On-going work to contribute to the matrix to capture economies' knowledge on negotiating and implementing IP provisions.
- **APEC Anti-Counterfeiting and Piracy Initiative:** The IPEG will:
  - i. Continue its work on streamlining patent procedures and processes.
  - ii. Continue obtaining inputs for the best practices paper on innovative IPR border enforcement techniques.
  - iii. Complete gathering inputs for the various templates on the IPR Guidelines, enforcement POCs and IPR websites
- **Projects:** The IPEG will be submitting three project proposals for funding in 2008 for the consideration of the CTI.
- **Continuing cooperation with other fora:**
  - i. SCCP – Cooperation on international border enforcement for IPR protection.

- ii. HRDWG – Member economies considered a paper on “IPR Strategies for Emerging Enterprises” project, and were encouraged to submit their comments, if any, to the HRDWG.
- iii. ATCWG – Cooperation on “Workshop on Laws, Policies & Agreements Governing Plant Genetic Resources for Food & Agriculture for APEC Member Economies”.

## **7. Chairmanship**

Singapore would be completing its term as Chair at the end of 2007, after a two-year term. Accordingly, the IPEG approved the offer by Hong Kong, China to assume the Chairmanship of the group for the next term, i.e. 2008 – 2009.

**S Tiwari**  
APEC IPEG Chair

16 June 2007

## **APEC Cooperation Initiative on Patent Acquisition Procedures**

(Rev 4.2 – as of June 14, 2007)

### **Background**

(1) In the Ha Noi Declaration adopted at the 14th APEC Economic Leaders' Meeting, the APEC member economies affirmed their commitment to making every effort for realizing APEC's goals of free and open trade and investment in the region. They also affirmed that strong protection and enforcement of intellectual property rights (IPR) is important in order to advance free trade and investment. They called on economies to continue their work to address IPR protection and enforcement challenges in the region.

(2) Reflecting the dynamic economic developments in the Asia-Pacific, the number of patent applications filed within the region has now reached a peak of about 1.25 million. This accounts for as much as 78 % of the total 1.6 million patent applications filed the world over.<sup>1</sup> In order to facilitate trade and investment within the Asia-Pacific and develop the economy of the region, it is indispensable for patent granting procedures to be adequately implemented in each of the economies so as to satisfy the enormous amount of demand for patent protection. On the other hand, the conditions for examining patent applications, such as human resources and IT infrastructure, vary greatly from economy to economy. Therefore, a large difference in the examination capability exists among economies at present. Considering such an enormous amount of demand for patent protection in the region, it is the appropriate time for the APEC member economies to discuss the effective measures to be taken.

(3) As recognized in the Ha Noi Declaration, unprecedented economic developments in the Asia-Pacific region are drawing our economies closer together. With the increase in the economic activities across national borders in the region, the need is becoming stronger for an invention as the fruit of the innovation to be patented in more than one economy. On the other hand, patent protection in member economies must be based on the individual patent law of each of the member economies. Therefore, an applicant desiring to obtain patent protection for one invention in more than one economy must file a separate patent application with each of the economies, have the application examined in each of the economies, and obtain a patent right in each of the economies. Reflecting this situation, of the approximately 1.25 million patent applications filed in the region, about 300,000 (i.e., about 24 %) patent applications are duplicative applications (i.e., applications for the same invention) filed in two or more economies.<sup>2</sup> Such separate filing and examination of patent applications in each of the economies in which protection is sought places a heavy procedural and financial burden on applicants. Separate examinations of one invention conducted by IP Offices in the economies concerned are inefficient and a drain on limited examination resources. Considering the fact that more and more duplicative patent applications are expected to be filed in two or more

---

<sup>1</sup> Estimation by JPO based on WIPO Patent Report 2006

<sup>2</sup> Estimation by JPO based on WIPO Patent Report 2006

economies, as the economical relationships between the economies in this region grow stronger, it is an appropriate time for the APEC member economies to discuss effective measures to cope with this challenge.

### **Objectives**

The objectives of this APEC Cooperation Initiative are to enable applicants to obtain higher quality patents more easily and quickly in the APEC region and to assist patent offices of APEC member economies in managing ever-increasing examination workloads, by means of introducing more simplified procedures, implementing regional cooperation in the sphere of patent examination, and improving patent examination capability of economies.

### **Specific Actions**

In order to enable applicants to obtain higher quality patents more easily and quickly in the region and to assist patent offices in managing workloads, APEC member economies may take the following collective actions.

#### (1) Simplification of patent application filing procedure

APEC member economies may take the following collective actions to reduce procedural/financial burdens on applicants wishing to file a patent application with more than one member economy.

*[Comment: Some economies were concerned that they are required to revise their laws should a standard format be adopted. They stated that this kind of work should not lead to any amendments of any economy's legislation.]*

- Introduce a patent application format which is acceptable at patent offices of all APEC member economies in common, taking full account of existing ongoing efforts to establish a standard patent application format. APEC economies will be consulted in the development and approval of the format.
- Taking into account efforts underway in other fora such as WIPO promote the use of electronic media for issuing or receiving the priority documents required under the Paris Convention when a patent application is filed with other economies,

#### (2) Patent examination cooperation

APEC member economies may take the following collective actions, taking account of the patent examination capability and available resources of each economy.

*[Comment: Same as above.]*

- Establish a procedure where an economy with sufficient examination capability provides another economy with its examination results, and the former makes appropriate use of

examination results provided by another economy with sufficient examination capability, so that patent granting processes may be conducted more promptly and appropriately by the IP Office of both of the economies.

- Establish a procedure where an economy without sufficient examination capability can make appropriate use of the examination results provided by another economy with sufficient examination capability, so that patent granting processes may be conducted more promptly and appropriately by the IP Offices of the former economy.
- Establish a regional system / platform, in addition to the two procedures mentioned above, where economies collaborate with each other to provide search reports and/or examination results, and to conduct necessary human resource development.

*[Comment: One economy suggested that the term “system” above should be replaced by “platform”. Accordingly, the text above includes a reference to platform for further work at the IPEG.]*

- Discuss specific measures for appropriately implementing the work-sharing or burden-sharing cooperation described above.

(3) Human resource development to improve patent examination capability

APEC member economies may take the following collective actions, taking account of the available resources of each economy, to improve patent examination capability in the region.

- Develop the human resources necessary to raise the examination capability of the economies without sufficient examination capability.
- Develop the human resources necessary for the above-mentioned regional system where economies cooperate with each other.

(4) Promotion of computerization

APEC member economies may take the following collective actions, taking account of the available resources of each economy, to establish the information infrastructure necessary for collaboration in the region.

- Promote the computerization necessary to issue and receive through electronic media the priority documents required under the Paris Convention, simplify the patent filing process, and provide and receive patent examination results
- Establish a system / platform by which the information relevant to patent granting processes of the economies, including search and examination reports, is made accessible [in English].

*[Comment: Some economies expressed concern over the phrase “in English”, as they*

*thought each member economy's official language should be used. The text has been placed in square brackets to reflect this concern.*

*Some economies were also concerned that the scope of the information relevant to patent granting processes was obscure. One economy further suggested that the term "system" above should be replaced by "platform". Accordingly, the text above includes a reference to platform for further work by the IPEG.]*

(5) Assistance

In recognition of the fact that economies without sufficient examination capability have substantial action to undertake with limited resources, APEC member economies will establish a framework and system of assistance where economies [with sufficient examination capability] provide assistance where needed, financially as well as in kind (and taking account of the available resources of those economies), to economies without sufficient examination capability. Such assistance would include but not be limited to human resource development (in-depth training as well as continuing learning and upgrading of examination personnel), the provision of examination tools and resources, and access to databases. It is envisaged that human resources development could take place both in a centralized as well as decentralized manner.

*[Comment: Some economies expressed concern over how economies "with sufficient examination capacity" could be determined. Accordingly, the phrase has been placed in square brackets to reflect this concern and for further work by the IPEG.]*

## **APEC MODEL GUIDELINES TO STRENGTHEN IPR CAPACITY BUILDING**

APEC member economies continue to recognize that strong protection and enforcement of Intellectual Property Rights (IPR) is a critical component for economic growth and development in the Asia-Pacific region. As such, they have developed five Model Guidelines on IPR that were approved by APEC Ministers and Leaders in 2005 and 2006. Those Model Guidelines will be useful for member economies to take appropriate measures to strengthen their IPR regimes, especially with respect to reducing trade in counterfeit and pirated goods, protecting against unauthorized copies of copyright materials, preventing the sale of counterfeit and pirated goods over the Internet, securing supply chains against counterfeit and pirated goods, and informing citizens about the importance of IPR protection and enforcement.

Effective IPR protection and enforcement is a global issue and a common challenge faced by all APEC members. Although many developing economies are making efforts to provide stronger IPR protection, they sometimes lack the resources to conduct the training needed for effective enforcement, to consistently carry-out effective enforcement activities, and to undertake public awareness activities intended to convey to the general public the value of IPR and the many reasons it needs to be protected.

On November 19, 2006, APEC Economic Leaders agreed in Vietnam in their Declaration that “we recognized the need for continued efforts to increase capacity building to assist economies of different levels of development to strengthen IPR protection and enforcement.” In their November 16, 2006 Joint Statement, APEC Ministers called on economies “to increase capacity building efforts to help implement the IPR guidelines.” “Given the importance of actively pursuing strong IPR protection and enforcement in the region,” Ministers also “called on economies to take further steps in the coming year in order to build on the APEC Anti-Counterfeiting Initiative.” In addition, “Ministers stressed the importance of building effective information sharing channels to strengthen IPR border enforcement.” In this context, they “instructed officials to explore the possibilities of establishing the APEC information exchange mechanism of IPR customs protection.”

In addition to continuing efforts to strengthen IPR protection and enforcement, a strong knowledge-based economy requires a comprehensive and balanced IP system as well as an environment that encourages creation and innovation and provides the tools for successful management and exploitation of IPR. Capacity building is important for supporting member economies to work towards achieving this objective. Strengthening capacity building cooperation would also complement the five IPR Model Guidelines already developed. IPR capacity building could be undertaken plurilaterally and/or bilaterally among economies and relevant stakeholders. The following general guidelines serve to aid APEC member economies in the design and implementation of capacity building activities and programs.

## **MODEL GUIDELINES**

### **1. CAPACITY BUILDING APPROACHES**

It is very important to raise public awareness of IP, to strengthen the education and training of staff in IP offices and to equip various stakeholders, both IP owners and users, with appropriate skills and resources to fully appreciate and utilize their IPR. There is also a need to facilitate information exchange for efficient administration and effective enforcement. APEC economies should endeavor to take a strategic and structured approach to designing, implementing and evaluating capacity building programs. A checklist detailing the different stages of this process is listed in the attached Annex to these guidelines for economies' reference. Some of the approaches to capacity building could include the following:

- Designing capacity building programs that identify and prioritize IPR development goals, and set objectives and measurement criteria for success;
- Implementing capacity building activities in support of these IPR development goals, and where appropriate, in cooperation with suitable partners and stakeholders; and
- Evaluating the effectiveness of capacity building activities to ensure they meet clear objectives and work towards achieving defined IPR development goals.

Capacity building activities could include:

- Training and education cooperation between member economies of APEC, among APEC fora and with key stakeholders, to jointly organize quality training courses and educational seminars utilizing available sources of funding;
- Encouraging more effective dialogue between government agencies and the private sector on IP protection, enforcement, management and exploitation;
- Cooperating with the private sector to co-sponsor IPR training courses and seminars; and
- Encouraging right holders to cooperate more closely with relevant government agencies by providing information and assistance where appropriate.

### **2. INFORMATION EXCHANGE AND TRAINING ON IP SYSTEM**

With the enormous increase in international trade, IPR protection has become a global challenge for all APEC members. It is therefore necessary to build more effective international cooperation mechanisms between APEC member economies. IPR information exchange and

training are vital to improving the IP system, including IP protection, enforcement, management and utilization. To support this effort, member economies could consider the following:

- Exchanging relevant information about infringed and infringing goods where appropriate and possible;
- Exchanging relevant information about IP management and utilization and providing training to concerned parties where appropriate; and
- Assisting member economies that require help in improving their IP system by conducting training activities on IP issues needed.

### **3. MUTUAL COOPERATION**

It is important to recognize that considerable resources are required in implementing effective capacity building programs to strengthen IPR regimes. It will be very helpful for member economies to cooperate in identifying, designing and implementing appropriate measures to address gaps in capacity building and involve relevant stakeholders, where appropriate.

**ANNEX:  
CHECKLIST FOR DESIGNING AND IMPLEMENTING IP CAPACITY BUILDING  
PROGRAMS**

**1. Designing Capacity Building Programs**

- Determine economy's IP development goals
- Identify gaps in capacities
- Consult and validate needs with key stakeholders
- Undertake a stocktake of available resources
- Prioritize needs and areas of focus
- Set objectives and measures for success
- Identify and involve stakeholders and partners
- Determine approach and tactics

**2. Implementing Capacity Building Programs**

- Establish a capacity building roadmap in support of economy's IP development agenda
- Identify suitable partners and stakeholders for implementation
- Facilitate information exchange between IP agencies (both intra and inter government) for better execution of IP development agenda
- Ensure effective succession planning and skills and knowledge transfer processes
- Capitalize on opportunities for resource/cost sharing, learning, collaboration whether bilaterally or multi-laterally e.g. secondment of experts or frequent exchange of personnel between economy's IP Offices and even with the private sector, jointly organized seminars, etc.

**3. Evaluating Capability Building Programs and Next Steps**

- Ensure feedback capture processes to measure the level of success and effectiveness of capacity building activities, and to help inform next steps
- Review outputs and outcomes against economy's IP development agenda and goals
- Fine tune and improve execution at the next cycle