# One global patent system? WIPO's Substantive Patent Law Treaty

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*For three years, a new international patent treaty has been under negotiation at the World Intellectual Property Organisation (WIPO) in Geneva. This Substantive Patent Law Treaty (SPLT) would remove most of the remaining national flexibility in patent systems and pave the way for a future world patent granted directly by WIPO.[1] This is an appealing prospect for transnational corporations and large powers like the US and the EU, who see patents as as the primary means to control a globalised economy. But a world patent system is bad news for developing countries and their citizens, who would lose even the limited freedom left by the WTO's TRIPS Agreement to adjust patent systems to national development goals. However, it is not too late for the developing world to say 'no thanks' and stop the negotiating process.*

A truly global patent system, with one central office issuing patents valid in any country in the world, has long been a dream among transnational corporations and patent system strategists. Before the World Trade Organisation's Trade-Related Intellectual Property Rights Agreement (TRIPS), it was regarded as an impossible dream, because the complete harmonisation necessary did not appear politically achievable. WIPO had repeatedly tried and failed, most recently during the 1980s. This was why industry persuaded governments to move the patent issues to the WTO negotiations, where political pressure could be organised on a much higher level than at WIPO, which is a technical body with limited political clout or savvy.[2]

Moving patent issues to WTO was a roaring success from the point of view of transnational corporations, the primary users and beneficiaries of patents. By establishing a new, much higher harmonisation floor, enforced through the WTO's trade sanction system, TRIPS imposed developed-country patenting standards on the whole developing world in one blow. Patents on pharmaceuticals and living organisms became mandatory, while the possibility of adding on development incentives, such as a requirement for local working of the patent[3], were radically curtailed.

This far-reaching harmonisation was 'sold' to reluctant developing countries on the grounds that a multilateral agreement on patents would mean an end to bilateral pressure from rich countries to further strengthen their domestic patent systems. In practice, quite the opposite has happened. TRIPS has sparked a new wave of more extreme bilateral demands from the US, the EU and other developed countries. Today, as soon as a trade, investment or development cooperation agreement is negotiated between a rich country and a poor one, clauses demanding "TRIPS-plus" patent protection are brought forward as a condition for market access, direct investment or even development assistance.[4]

This merciless offensive against the defenseless reflects the rapidly growing importance of patents and other intellectual property rights (IPRs) as the primary means of control over a globalised economy. When production of tangible goods is increasingly moved to poorer countries, strong IPR protection becomes absolutely crucial for the rich. In many cases, they no longer sell the goods as such, only their IPR component. Without the strongest possible legal rights, they might have to share their riches a little more equitably with those who produce them. Consequently, patents are now more valuable than factories, and the strength

of companies is increasingly measured not by their productive capacity, but by the value of their patent portfolios.

Paradoxically, TRIPS gave WIPO a new and much stronger role, despite its previous failures to satisfy industry's demands for harmonisation. In close cooperation with the WTO secretariat, WIPO has been instrumental in the implementation of TRIPS standards in developing countries, often taking the opportunity to draft and recommend TRIPS-plus legislation. In this role, WIPO has pushed its own pro-patent agenda rather than serving the best interests of its clients. West African countries were advised to implement TRIPS well ahead of their commitment as Least Developed Countries (LDCs), and against using the flexibility TRIPS allows in compulsory licensing or parallel imports. In Cambodia, WIPO somehow failed to inform the government that, as an LDC, it was not obliged to grant patents on pharmaceuticals before 2016.[5]

TRIPS created the conditions for reviving the dream of the world patent. WIPO quickly recognised that TRIPS provided a stepping stone to the next level of harmonisation. Since TRIPS came into force in 1995, WIPO has been working hard on three key pieces of a strategy to create a world patent system with WIPO at the helm (see box). WIPO is quite open about this. Director-General Kamal Idris has even made available an unusually candid institutional wish list, known as the Patent Agenda, to this end (see box).

## SPLT - THE HEART OF THE MATTER

The SPLT is the political core of the Patent Agenda. It deals with the substance of patents, with what can and cannot be patented, under what conditions and with what effect. If such matters are not harmonised, there can never be a world patent, no matter how uniform and streamlined the formalities and procedures become.

Not surprisingly, the SPLT is the most difficult piece of the puzzle for WIPO. Patent laws have historically always been national territory, and individual governments are very reluctant to give up their freedom to decide on the rules of patentability. Although a number of treaties, beginning as far back as the Paris Convention in 1883, have created a regime of mutual recognition between national patent systems, there has been very little substantive harmonisation at a global level. TRIPS was the first international treaty to prescribe minimum standards for central issues like the subject matter of patents, the term of protection, or the mechanisms of enforcement.

The SPLT is intended to go one important step further. TRIPS defines a harmonisation floor (the minimum standard), but SPLT will raise the floor and add a ceiling. The floor will be raised well above that set by TRIPS. But there will also be a maximum standard, an outright ban on additional patentability criteria. While today countries are free to make any additional requirements to grant a patent unless the matter is explicitly regulated by TRIPS, in the future they would only have such options if the SPLT explicitly specifies them.

This is a truly revolutionary change, but a necessary one if a world patent is to become reality. In order for patents to be centrally granted with global validity, governments across the world must agree to drop national differences and adopt a common patent law.

## DIFFERENT FROM TRIPS

The SPLT is a direct sequel to TRIPS. But there are some important differences in terms of process and politics. One major reason for the success of TRIPS was that it encompassed only "the standards of protection on which developed countries could agree among themselves"[6]. The basis for the strong alliance between EU-US-Japan – known in the patent world as the “Trilateral” – was that none of them had to add or change anything of importance in their patent laws to comply with the TRIPS agreement. It was all about changing the rules for developing countries. Everything which could have divided developed countries was carefully kept outside the scope of TRIPS.

The SPLT, in contrast, is primarily about ironing out the remaining differences among the Trilateral countries themselves. This would seem like a much easier task. The changes involved are quite limited compared to the wholesale reshuffle that TRIPS involved for developing countries. Nevertheless, harmonising between the Trilateral powers will probably be much more difficult politically than it was to harmonise the rest of the world to their consensus level in TRIPS.

Another important difference is that TRIPS could be forced through by attaching it to the whole WTO package. Developing countries were faced with the choice of accepting TRIPS as a part of the package or not being part of WTO at all. Most of them accepted TRIPS as a necessary evil in order to secure expected trade benefits in other areas, in particular better access to developed country markets for their agricultural and textile exports. The SPLT is being negotiated in a very different context. There are no external bargaining chips available, no opportunity to trade apples for pears. Any compromise must be struck within the bounds of the patent system itself.

Formally speaking, signing on to the SPLT will be optional. Countries can accept WIPO treaties on a case-by-case basis, in contrast to the package deal principle ("single undertaking") governing the WTO. But in practice there would be considerable pressure on all WIPO members to join. Unlike some of the more specialised WIPO treaties, the SPLT will be so central to the future of the patent system – indeed, the power structures in the global economy – that it will be difficult to opt out.

## CORE ISSUES

What are the core issues in the SPLT negotiation? What would likely change if countries eventually agree on a treaty text?

### *1. Concentration of power*

The SPLT would inevitably lead to a further concentration of power over the patent system in the hands of WIPO and the large patent offices. The winners would be mainly the Trilateral, but also other developed countries and possibly some of the larger developing countries. This is partly because harmonisation would largely take place on the terms of the dominant countries and reflect their political priorities. The rich countries increasingly regard the patent system as their primary tool of global economic control. There is no reason to believe they would voluntarily agree to make that tool any blunter

Power concentration would also be the inevitable result of the practical realities of day-to-day life in the patent offices. Patent examination is a very complex business both technically and legally. There is already a strong tendency for smaller patent offices to rely extensively on WIPO and larger offices in a number of different respects, from policy development and staff training to the actual examination and grant of patents.

The SPLT would not only leave little legal space for national adaptation. It would also remove most of the incentive for smaller or poorer countries to maintain the capacity to examine patents nationally. Even short of an actual world patent, it is likely that over time the bulk of patent examination activity would be concentrated to a handful of large offices, effectively achieving global harmonisation without any need for a formal agreement.

*2. Fewer exceptions from patentability*

The only substantive issue that divides the Trilateral countries is the question of limits of patentability. The US allows patents on virtually anything, while Japan and especially the EU have stricter limits.

There are two main aspects of the issue. One is which *national exceptions* from patentability should be allowed. The US wants none. The EU has so far defended the exceptions allowed under TRIPS: for morality and public order, and for plants and animals.

The other aspect is whether a patented invention must have a *technical character*. Under TRIPS, patents must be available "in all fields of technology", but not for non-technological subject matter. In US law there is no such limitation, which means that things like computer programs and "business methods" can also be patented.

Even though the US is quite isolated in its insistence on removing present exceptions from patentability, it is very likely that it would have some success in a final compromise, simply because the EU and Japan have little else to offer in exchange for US concessions (see below).The EU is most likely to give in on the life patenting exception. In practice, the EU already grants patents on plants and animals to almost exactly the same extent as the US. This is possible because there is a small but crucial difference between the text of TRIPS and that of the European Patent Convention (EPC). Where TRIPS allows exclusion of "plants and animals", the EPC only excludes "plant and animal varieties". This is (deviously) interpreted by European patent offices to mean that patents on plants and animals are OK, as long as the application is not for a "variety" but for some other category like a "species", a "breeding line" or whatever else.

Because of this, the EU could easily accept a similar change of wording in SPLT without any consequence to its own patent practice. Neither would it be a problem for Japan or other developed countries. The change would only have an impact on developing countries, many of which still exclude plants and animals.

*3. Cultural and language compromises*

The remaining major issues are more about culture and language than substance. This is not to say that they will be easily solved. Governments tend to be extremely reluctant to give up their ingrained habits and practices. But the changes involved will not make any substantial difference to the way the patent system works.

The most important of the cultural issues is the divide between the *first-to-invent* and the *first-to-file* principles. The US is alone in its insistence to grant patents on the basis of invention date rather than filing date. It is obvious to all those involved that there will be no SPLT unless the US agrees to change its system. But the issue is so sensitive that it is not even mentioned in the draft SPLT text. Within the US, large corporations are generally prepared to accept the change in exchange for the advantages that worldwide harmonisation would bring them. But the vocal minority of smaller inventors, with considerable political support, hotly defend the first-to-invent principle as the only fair basis for patents.

A closely related issue is the grace period, which is a necessary component of a first-to-invent system. It means that an inventor is allowed a certain period between invention and filing date, when information about the invention can be circulated without invalidating the patent claim. Even if eventually giving up on first-to-invent, the US wants to keep the grace period and also make it mandatory under the SPLT, something which most other countries seem prepared to accept, at least with some conditions.

Another cultural issue that has occupied much negotiation time is whether a patent should require "industrial applicability" (EU and most others) or "utility" (US and some others). In TRIPS, the problem was avoided by using both terms in parallel. While there are some analogies with the discussion about "technical character", it appears from WIPO documents that there are in fact no consistent differences in practice between countries that use one or the other.

## TECHNICAL ISSUES

In addition to the major political issues there are a large number of minor, more technical ones, a few of which may have some practical consequences. There is for example a tendency for US practice to be more favourable to applicants and take less account of third parties' interests. This is the case regarding the rules for changes and amendments to patents after filing. But there are also instances where the EU is more lax, as regarding the description requirements for deposited microorganisms. The resolution of such issues will influence how strongly the patent system will promote technology monopolies

There is also one technical provision which would be important in counteracting biopiracy and the misappropriation of traditional knowledge. This is the article on prior art, which simply states that prior art shall be "all information which has been made available to the public anywhere in the world in any form". This may appear self-evident, but it would imply a major change to present US practice, which only fully takes into account information made available within US borders. Outside the US, information is only considered prior art if it exists in written form. This has been an important factor in many of the well-known biopiracy cases, for example in the neem case, where neem was patented in the US despite a history of use going back hundreds of years in South Asia. Since the prior art was mainly orally-transmitted knowledge, as traditional knowledge usually is, it did not count until an ancient Sanskrit text was found to prove the case.

## COMPLICATED POLITICS

Unlike the TRIPS negotiation, which was strictly a matter of developed countries against developing, the politics of the SPLT have become quite complicated.

There is only one objective that appears to be shared among all actors: to reduce the workload in patent offices. Faced with an ever-increasing number of applications and similarly increasing technical complexity, large and small offices alike have difficulty in keeping up with the work.[7] The more similar the rules of patentability become, the more different offices can rely on the work of others. The advantages would be even greater on the applicant side. With less difference between national legislations, applications could be reused from country to country, translating into substantial savings for the applicants – primarily transnational corporations.

But apart from the workload issue, the motivating forces driving the various actors are very different. WIPO itself is the only party to exhibit unambiguous enthusiasm for the harmonisation project.[8] This is not surprising. The success of the PCT system has made WIPO rich and powerful. Every further step toward global patents is likely to strengthen it even more, and there is little doubt that many of the top brass dream of WIPO's eventual transformation into the World Patent Office.

WIPO's closest allies are what are known as the 'user groups', the representatives of *corporations and the patent trade* who are traditionally the only NGO observers in WIPO meetings. They often take very active part in the discussions, coming very close to the role of negotiating parties[9]. While 'user groups' are often divided on individual issues along regional lines, their commitment to harmonisation is typically stronger than that of governments.

Among governments, *the US* is the only one on some kind of offensive. The US government realises that some of the idiosyncrasies of its patent law, in particular first-to-invent, will not survive in the long run. Opinion is slowly turning within the US itself. US-based transnational corporations especially see the disadvantages of having to deal with a US-specific system. In this light, the US is testing what kind of concessions may be possible to wring from the rest of the world in return for giving up first-to-invent sooner rather than later. What it is especially interested in is expanding the scope and power of the patent system, for example by reducing the exceptions to patentability or removing the 'technical character' requirement.

*The EU* takes a very defensive position. Its goal appears to be that if there is further harmonisation, it must be based on the European legal tradition, with as few concessions as possible to the US. But the EU absolutely does not want to be seen as blocking the SPLT. Under pressure, it would certainly compromise with the US in order to save the SPLT from failure.

*Japan*, the third Trilateral member, takes a similar defensive stance to the EU, and is often supported by Korea. *Australia and New Zealand* are closer to the US in terms of legal traditions. *Canada and Switzerland* also take an intermediate position, although more for political than historical reasons.

## DEVELOPING COUNTRY INITIATIVES

Despite representing the majority of WIPO members, developing countries initially stuck to their traditional, mostly passive role in the negotiations. But since 2002, they have taken a more active role and have tabled a number of important amendments to the SPLT text. Most of these deal with the core issues of how far harmonisation should go and what national exceptions to patentability should be allowed.

Latin American countries have tabled amendments which would:

- allow a country to make exceptions from the treaty in order to fulfil its international obligations to protect genetic resources, traditional knowledge or the environment, or to protect public health or the public interest in socio-economic, scientific and technological development.
- allow the refusal of patent applications if they do not comply with applicable laws regarding public health, access to genetic resources, traditional knowledge or other areas of public interest.

Other developing countries have tabled amendments which would:

- add a requirement to declare the origin of biological materials used in the claimed inventions and compliance with prior informed consent (PIC) requirements in regulations on access to genetic resources;
- entirely delete the prohibition against additional national requirements on patent applications.

All but one of these amendments would give governments more freedom to tailour their patent systems to national policy objectives and would *reduce* the level of harmonisation in the SPLT.

Predictably, developed countries and WIPO responded with alarm. The amendments were interpreted as a threat to the whole negotiation. WIPO went so far as to refuse to put the first amendments into the draft treaty at all, in total disregard of established practice. Developing countries of course insisted, and WIPO had to accept.

One of the amendments is, however, perfectly compatible with the harmonisation objective. The amendment about declaration of origin and PIC aims to improve compliance with the UN Convention on Biological Diversity, and there is no reason why patent law could not be harmonised with this rule included, rather than without it. Nevertheless this amendment also met with resistance from developed countries, showing that the harmonisation is only interesting to them as long as it is on their own terms.

## WHY HARMONISE AT ALL?

Developing countries have exhibited a remarkably united front on the core issues addressed by these amendments. From Argentina across Africa to China, the message has been clear that they are not willing to give up their right to use patent systems as a tool for wider national policy objectives. Developing countries realise that they have much more to lose than to gain from further patent law harmonisation. The reduced workload and any practical

advantages of harmonisation cannot outweigh the loss of political control over crucial development and public interest factors.

But then why negotiate further harmonisation at all? Developing countries have already committed themselves to an excessive level of harmonisation with TRIPS. Few would have freely chosen to introduce patents on food, pharmaceuticals and living organisms to the extent that TRIPS requires. The limited derogations and longer implementation periods granted them under TRIPS have not softened – only delayed – the negative effects. What developing countries need is not further patent harmonisation, but a rollback of the TRIPS provisions. They need to regain their freedom to choose in what fields and under what conditions they want to provide patents.

By cooperating on a TRIPS-plus treaty aimed at even higher levels of harmonisation, developing countries will achieve quite the opposite. Amendments creating wider exceptions or loopholes may make the SPLT less harmful than it would otherwise be, but it will still be much more harmful than no treaty at all. The net effect will still be increased harmonisation, meaning less and not more policy space to pursue national development and public interest objectives.

Developing countries do have the power to make or break this negotiation. In contrast to developed countries, they have a common agenda. They have the necessary technical capacity and the political leadership to follow through on the initiatives they have taken. If they seriously want the policy space for development and public interest pursuits, they need to:

*1) Simply say no to further patent law harmonisation through WIPO.*

Without developing countries, there will be no Substantive Patent Law Treaty and no mutation of WIPO into a World Patent Organisation.

*2) Bring the whole discussion back to the WTO and much more forcefully move their demands for greater flexibility into action.*

This will no doubt be difficult, but only at the WTO is there any possibility of *reducing* patent harmonisation. By making amendments at WIPO, developing countries will at best only limit the *increase* in harmonisation, on top of an unchanged TRIPS. Most of the issues raised by developing countries as amendments to SPLT properly belong in TRIPS and should be marched back there. For example:

a) The right to general exceptions for the protection of various public interest and development concerns.
b) The right to refuse individual patents on similar grounds.
c) The requirement to declare the origin of biological resources and give proof of PIC. (This is already under discussion in TRIPS).

Simultaneously, developing countries should renew the demand that the whole backlog of proposed amendments finally be addressed, such as the widely supported proposal to entirely prohibit patents on life forms. This proposal has been repeatedly advanced since 1999 by both the African Group and the Least Developed Countries at the WTO, but is still awaiting action.

The one positive harmonisation item from the SPLT draft – the equal treatment of all forms of prior art – could also be brought back to TRIPS. In contrast to the other issues, this has not been controversial at WIPO, so there is no good reason why the same countries could not just as well agree the principle at WTO instead.

## THERE IS NO WIN-WIN SCENARIO

This is an ambitious agenda, but not impossible, especially after Cancún where developing countries finally assumed their legitimate role as equal members of the WTO. Yet even stopping the SPLT and reforming TRIPS will not solve the underlying problems for at least two crucial reasons:

- No amount of reforming TRIPS will change the fact that is is an agreement designed to subordinate national IPR policy to the free trade agenda. Repeal remains the only real solution to that problem.

- If the multilateral patent harmonisation game is stopped at WIPO and flexibility demands are brought back to WTO, we will no doubt see more intensified efforts by industrialised countries to achieve progressive global harmonisation of TRIPS-plus standards through bilateral and regional treaties hammered out behind closed doors. These are already the key mechanism by which all countries are presently converging towards higher international standards for intellectual property protection.

Developing countries need to control the international agenda of patent law harmonisation on their own terms, be it at WIPO or WTO. But even more urgently they need to stop the train which is moving faster and more quietly towards the same endpoint in their home capitals. Paradoxical though it may seem, bilateral treaties are also tools of global agendas to achieve global standards – to ensure security, predictability and freedom for transnational corporations.

There is no win-win solution to this conflict, because at the roots it is about the control over the world economy and the distribution of its benefits. Rich countries will continue to use any means at their disposal to persuade, pressure and downright force poorer countries to grant and enforce ever stronger monopoly privileges over knowledge and technology. Transnational corporations constantly move more and more of their production facilities to developing countries, to take advantage of low cost labour and infrastructure. Patents and other IPRs are the primary mechanism for ensuring that this sea change in the global economy does not also lead to a more equal distribution of wealth and power. By continuing to control the rights to produce, the rich and powerful can remain so without even having to dirty their hands with production anymore. Patents are the key to this neo-colonial world order, or even to what has been termed an 'information feudalism'[10], based not on free competition but on monopoly privileges granted to global corporations by the princes of the major military powers.

**Box: The building blocks of the world patent system**

*Patent Cooperation Treaty (PCT)*

The Patent Cooperation Treaty provides a possibility to file a single patent application for any or all countries that are PCT members (122 to date). Patents are not granted through the PCT system, but it conducts a preliminary search to assess if there is reasonable likelihood of patentability. Applicants must still submit individual applications to each patent office separately. The great advantage of the PCT for the patent applicant is that it establishes a "priority date" which is valid in all member states and automatically becomes the national filing date. In addition, the PCT allows a very generous delay (20-30 months) before national filing procedures have to be initiated. The PCT also makes life easier for national and regional patent offices, because the examination is partly done by the PCT system.

The PCT system has grown rapidly over the years. It is now WIPO's main activity and a very profitable business. In 2002, some 115,000 international applications were filed, generating fees of more than $120 million. PCT fees provide 80 % of WIPO's total income and WIPO projections foresee continued rapid growth.

The PCT is currently under reform. The short-term objective is to simplify procedures and adjust them to the requirements of the new Patent Law Treaty (see below). But many developed countries, in particular the US, also have a more ambitious reform agenda, and want to make PCT decisions binding on member states, so that there would no longer be complete freedom for national patent offices to assess the merits of international patent applications independently.

For more information about the PCT system, see http://www.wipo.int/pct/en/index.html

*Patent Law Treaty (PLT)*

The Patent Law Treaty is a new agreement which was negotiated in the late 1990s, concluded in 2000, but has so far only been ratified by seven of the 54 signatories. It needs ten ratifications to come into force.
The PLT harmonises many of the formal and procedural requirements involved in patent applications.

The PLT favours patent applicants to a much greater extent than most national patent laws. The requirements on the form of an application are so low that it will often be possible to submit it long before an actual invention is completed. The PLT requires only something which seems "intended to be an application" and contains "a part which on the face of it appears to be a description". Rudimentary applications can be kept pending almost indefinitely, and the burden is on the patent office to collect further information from the applicant. Should the applicant fail to comply with some formal requirements, this will still not invalidate the patent, unless it can be proved that there was "fraudulent intention".

The PLT text and other documents about the Treaty can be accessed at
http://www.wipo.int/treaties/ip/plt/index.html

*Substantive Patent Law Treaty (SPLT)*

The current negotiation of a Substantive Patent Law Treaty picks up where the PLT finished, and aims to harmonise as much as possible of the substantive content of patent laws, the rules about what can and cannot be patented and what is sufficient proof of patentability. The issues being discussed are at the core of the whole patent system, so a successful negotiation will mean that all the most important rules for what can and cannot be patented will be harmonised:

- *Prior art* How to establish what already is part of the existing body of knowledge and thus cannot be patented.
- *Novelty* How to prove that an invention is really new.
- *Inventive step / Non-obviousness* How to show that the invention is sufficiently different from the "prior art" to merit a patent.
- *Industrial applicability / Utility* How to assess the usefulness of an invention.
- *Enabling disclosure* How well the invention must be described in order to qualify for a patent.
- *Structure and interpretation of claims* How the extent of protection is defined. Usually an application contains a number of different claims covering different aspects of the invention, at least several dozen and sometimes thousands.

All documents concerning the negotiation, including a good deal of electronic discussion between governments and lobby groups, can be accessed at http://www.wipo.int/scp/en/

*The Patent Agenda*

The Patent Agenda is not a separate process in WIPO, but a policy document with the stated objective of facilitating the discussion about the future development of international patent cooperation. Its real intention is to pave the way for the development of a world patent under WIPO auspices. It is cleverly drafted and never explicitly says so, but the reader is led to that conclusion step by step.

The document has caused considerable controversy at WIPO meetings, because it was not initiated by the member states through formal channels, but independently by the WIPO Director-General. Nevertheless, it has served its purpose and no doubt informed many of the individual decisions paving the way for the world patent.

The latest version of the Patent Agenda is found at:
http://www.wipo.int/patent/agenda/en/welcome.html

*Read more*

Little has been written on the harmonisation processes at WIPO outside very technical journals, but there is one recent report which give both a more in-depth overview than this briefing, and a critical view from the developing country side:

Carlos M. Correa and Sisule F. Musungu, *The WIPO Patent Agenda: The Risks For Developing Countries*, South Centre, Geneva, November 2002, 42 pp. Available at http://www.southcentre.org/publications/wipopatent/toc.htm

[1] See GRAIN, "WIPO moves towards 'world patent' system", July 2002, http://www.grain.org/publications/wipo-patent-2002-en.cfm

[2] For a full account of the background to TRIPS, see Peter Drahos and John Braithwaite, *Information Feudalism. Who Owns the Knowledge Economy,* Earthscan, London 2002.

[3] Local working means that the patent is only valid if used in the country of grant. E.g. a patent held by a foreign company will be invalidated if that company only imports the product and consequently uses the patent exclusively to stop local competition

[4] GRAIN, "TRIPS-plus through the back door", July 2001, http://www.grain.org/publications/trips-plus-en.cfm; Peter Drahos, "The New Bilateralism in Intellectual Property", December 2001, http://www.maketradefair.org/assets/english/bilateralism.pdf; OECD, "Regionalism and the Multilateral Trade System", July 2003, http://oecdpublications.gfi-nb.com/cgi-bin/OECDBookShop.storefront/693653542/Product/View/222003031E1; GRAIN, "TRIPS-plus: where are we now?", August 2003, http://www.grain.org/docs/trips-plus-where-2003-en.pdf

[5] For examples see Commission on Intellectual Property Rights, *Integrating Intellectual Property Rights and Development Policy,* London, September 2002. Available at http://www.iprcommission.org;Médécins sans frontières, *Doha Derailed. A Progress Report on TRIPS and Access to Medicines,* Briefing for the 5th WTO Ministerial Conference, Cancún 2003. Available at http://www.accessmed-msf.org/documents/cancunbriefing.pdf; Peter Drahos and John Braithwaite, *Information Feudalism. Who Owns the Knowledge Economy,* Earthscan, London 2002.

[6] Reichman, Jerome H. 1998. "Securing Compliance with the TRIPS Agreement After US v India". *Journal of International Economic Law.* Vol 1 No 4, December 1998. Oxford University Press, Oxford.

[7] Some recent examples show how extreme the situation can get. In early 2000, the US Patent and Trademark Office received a patent application of 400,000 pages. Not much later, the European Patent Office received one of 500,000 pages. Since May of this year, USPTO has on its hands a patent application from Shell Oil bearing no less than 7,200 individual claims.

[8] Formally, WIPO is not a party to the negotiation but the neutral arbiter and servant of governments. In reality it has assumed the role of a party, pursuing very definitely an agenda of its own.

[9] The patent trade organisations are by far the majority in this group, while industry groups such as UNICE (Union of Industrial and Employers' Confederations of Europe) and BIO (the US Biotechnology Industry Organisation) participate irregularly.

[10] Drahos and Braithwaite, *op cit.*