

**Intellectual Property: Making a Case in Developing Countries**

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In recent years, the governments of developed countries and the multinational corporations (MNCs) headquartered in the developed world have encountered resistance in the developing and least developed world regarding the importance of protecting intellectual property. Government and industry representatives have engaged in hundreds and, perhaps, thousands of programs to deliver the message regarding the importance of intellectual property to all national economies.

The message, however, seems to lack resonance and acceptance in many places. While it may be argued that there is a growing recognition of the importance of intellectual property in many of these developing and least developed countries, one has to wonder if industry needs to fine tune its message. In this brief article, it is impossible to explore many of the possible ways in which industry might fine tune its message, but a few thoughts are put forth.

**Intellectual Property and Economic Growth:**

**1. Enlist the “Bureaucrats”**

MNCs have the equivalent of armies of people around the world competing in national markets. These industry representatives may be internal staff or outside legal counsel or others providing services to the MNC. Within the realm of intellectual property, MNCs may want to reassess how their personnel are themselves characterizing some of the most basic aspects of the intellectual property system.

First, do MNC executives view applications for trademarks and patents as simply “applications” or as something more important? Does an application become more important for the MNC if it is characterized as a “commercial instrument”? Because the various forms of intellectual property (copyrights, trademarks, patents, trade secrets, etc.) are assets, one might consider how much more important that application becomes when thought of as a commercial instrument. Sometimes, it is necessary to be reminded of the fact that when one submits that application, it represents the MNC’s intent to engage in commercial activity in a particular national economy, if it isn’t already active.

The second point flows from the first. These applications, which we will hereinafter refer to as commercial instruments, need to be important to the people who must process them in the relevant national government offices that will ultimately decide the fate of this commercial instrument.

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The patent and trademark examiners in the industrial property offices around the world are often lifetime government employees. Industry's challenge, especially the MNCs seeking patents and trademarks in developing and least developed countries, is to make these examiners see themselves as much more important than simply examiners. Because these commercial instruments are important to industry, they must become more important to the examiners and their superiors before industry can benefit from any new perspective that government officials have of their role in economic growth and the role of IP.

Beyond the collection of patent and trademark fees to operate industrial property offices, the government employees who process these commercial instruments must be enlisted as part of the system of a nation's economic growth. To the extent possible, patent and trademark examiners must be persuaded to see themselves as part of the economic growth package of a country. Each business enterprise submitting a commercial instrument for a new trademark and patent needs to underscore the importance of the document and how that document reflects present day or future economic activity to improve the economic circumstances of not just the enterprise, but of the economy as a whole.

A spotlight needs to be placed on the important role examiners play in the economy. If examiners come to understand why these commercial instruments need to be processed in a timely and efficient manner, it may make more industrial property offices responsive and efficient in issuing patents and trademarks. Examiners who view themselves as direct contributors to their nation's economic growth potential may become much more efficient in working on these commercial instruments. Thus, emphasizing the important role of each examiner and each commercial instrument that the examiner will process may also raise the level of respect these officials receive and thereby bring a new level of professionalism to the task of the industrial property offices and their functions.

Simply, the operations of the industrial property offices and the tasks of examiners should be seen as not some bureaucratic and administrative function, but as tasks and functions that have a direct bearing on commercial activity and economic growth within a national economy. As new examiners are hired and trained, their new perspective of the role of examiners and their importance to commercial activity and economic growth should be emphasized and become an integral part of their training and remit. Indeed, more economic activity in an economy usually leads to filings for trademarks and patents, which means increased revenues for the industrial property offices and, hopefully, higher wages.

## **2. Local Allies**

One of the beliefs held by MNCs and developed country government officials is that IP protection and enforcement will improve when there are local enterprises whose IP become the target of counterfeiters and pirates. Another side of this may be to assist in accelerating the pace of local enterprises understanding the potential of IP within their

businesses. Before local enterprises become potential targets of pirates and counterfeiters, they must understand that they own IP that has value, which can be commercially exploited.

MNCs might reconsider the approach of their IP enforcement training programs. While it is a given that those in the enforcement agencies need to be enlisted to help, it is also important to have the local business community involved as an ally and this may be a challenge. While MNCs already recognize the importance of their IP portfolios and the need for effective enforcement of IP rights, this may not be the case in developing and least developed countries.

It may be necessary to spend time engaging local commercial enterprises in training programs and workshops and explain in the most basic terms that practically every commercial venture, regardless of size and product or service, does involve IP and thereby leads to an IP portfolio that should be recognized as corporate assets. Local enterprises need to become more aware of their own IP portfolio and this may require assistance of MNCs who are more sophisticated and aware of the importance of IP. MNCs engaging in this type of training and education need not limit this type of training and education to local enterprises in the same industry, but to focus on raising awareness that local entrepreneurs have IP to commercially exploit. This should avoid concerns that MNCs are creating local competitors, but simply assisting in a broader education effort to create potential local allies to combat piracy and counterfeiting.

MNCs should also consider the current practice of segmentation of the training and education. Often, IP related training and education divide target audiences. If the theme of a seminar or workshop is commercialization or exploitation of IP, one would not expect to see enforcement officials at such sessions. In addition, in an IP enforcement training or workshop session, the issue of commercialization or exploitation of IP is not addressed. This segmentation of training, while understandable, may be contributing to some of the problems in the pace of improving the situation in developing and least developed countries.

How can we “sell” the importance of enforcement—raids, seizures, arrests, etc., if the enforcers do not see how important IP is to their local enterprises? Due to the segmentation of training, we do not know if things might change if the local IP owners and enforcement officials actually attended and participated in seminars that covered the broad continuum of recognizing the existence of IP in local business, the value of the IP to the local business and, therefore, the need for enforcement authorities to take the steps necessary to protect IP and promote economic growth.

At present, most training simply tells enforcement authorities that, yes, it’s important and so it must be done. This is, however, done in a vacuum without these same enforcement authorities seeing and hearing how important it is to the economy and the local business community that owns IP.

As more local enterprises see themselves as IP asset owners and possible victims, they may be more willing to engage their governments and to ask their government to take more aggressive steps to protect locally owned IP. This should have the side benefit of raising awareness and respect for IP in general that results in better protection afforded MNCs.

### **Overcoming a Myth?**

The battle in recent years to convince governments to dedicate more resources to the protection and enforcement of intellectual property has been a difficult challenge. Some governments have viewed this as enriching MNCs to the exclusion of real benefits to local national economies of developing and least developing countries.

Overcoming the resistance of some governments to provide effective IP protection because of these beliefs may require MNCs to engage in data collection of a sort that is a derivative of data already being collected and reported to the highest levels of the enterprise. The difference may be that reports may need to be customized for the national government officials where the MNC is operating.

While common sense tells us that MNCs have to invest locally in the economies where they are commercially active in order to provide product and distribute it, governments are not so easily convinced. In countries where governments continue to be reluctant partners in providing effective protection and enforcement, MNCs should consider making the economic case of their contributions to the local economy. MNCs may have to demonstrate, with statistics, that they employ locals and the economic contribution as a result through the amount of wages and taxes paid, the “benefits” to those employees if insurance of any type is provided, investment in systems and processes toward conservation and other steps taken to make a positive contribution to the economy.

It is also important to point out the indirect employment resulting from the commercial activity in an economy. The reliance on local companies to store product in warehouses and to move product via rail, truck or otherwise also contribute to employment and the fees paid are vital investments in the economy. This presence also makes goods available in retail locations that also employ people. Thus, the MNC’s active commercial presence in an economy has the potential of a great economic impact on a national economy. It is important to rebut the notion by some governments that MNCs are not making a serious contribution to the economies of less affluent countries. But, a rebuttal does require MNCs to gather the basic data needed and to arm its corporate team with the information that can be used to refute assertions that companies are simply taking money out of national economies with very little investment locally.

### **Conclusion**

Many MNCs continue to view the counterfeiting and piracy problem as worsening. The perceived worsening of the global situation is occurring in the face of constant training by industry, intergovernmental organizations and developed country governments. It may

be time to explore new formats, new ways of information delivery and a “back to basics” approach that attempts to highlight how important IP is to the smallest enterprises and ensure the fact that enforcers see and hear for themselves why their functions are important to the economy.