



International Centre for Trade
and Sustainable Development

CONCERNS OVER THE PATENT SYSTEM AND STANDARDS IN THE INTERNATIONAL ARENA



*WTO: Intellectual Property Rights Issues and
in Standardization International Seminar*

Beijing, April 2007

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OVERVIEW OF THE PRESENTATION

- **Brief historical and political appraisal of the patent system**
- **IP and Development: restating the relevance**
- **Concerns, causes and solutions over the patent system crises**
- **Discussions in the WTO: The China Proposal for the TBT**
- **The Debate in WIPO and links to the Development Agenda and the SCP**
- **Some conclusions**

Brief Historical Appraisal of International Patent law

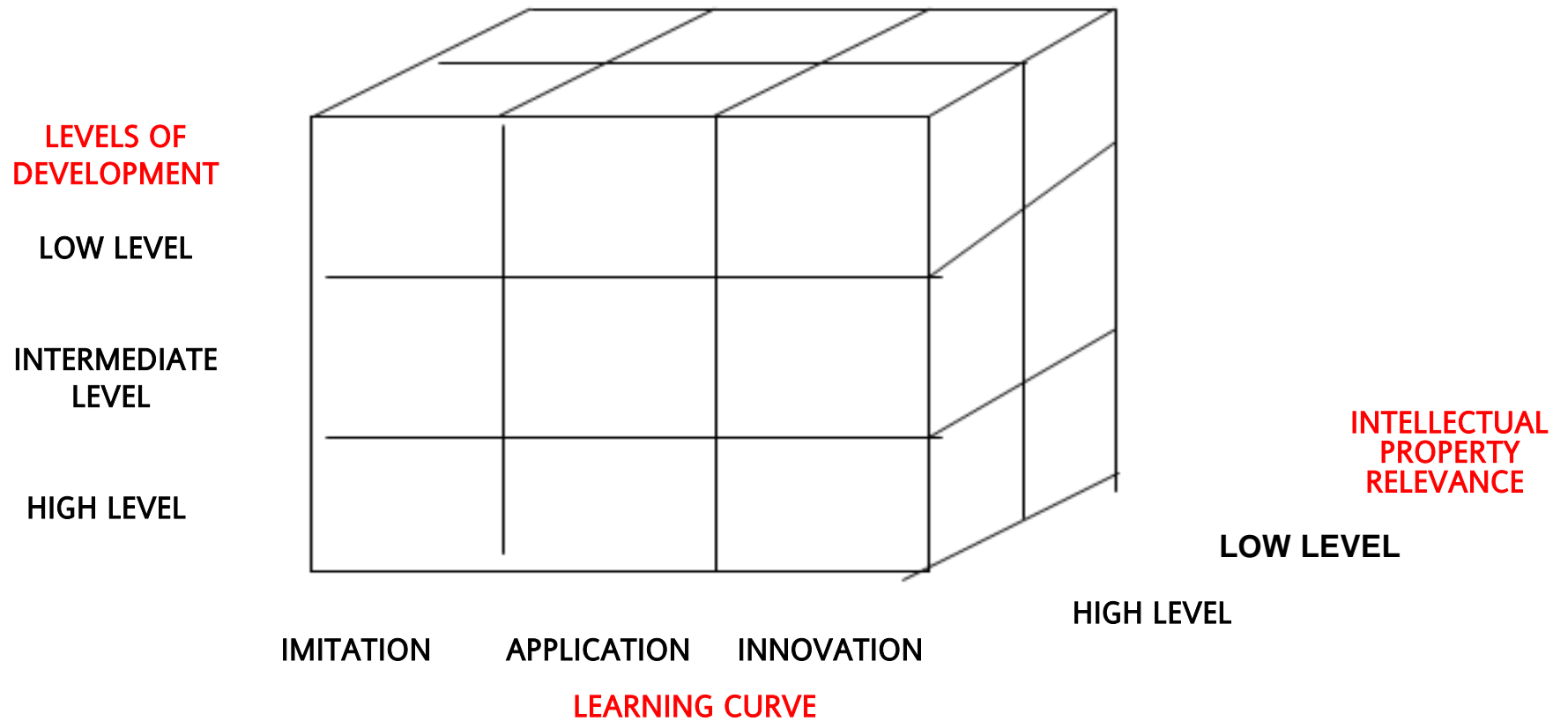
- **The Paris Convention (1883)**
 - **The free traders vs the industrial developers**
 - **Patents was seen as form of industrial policy**

- **The creation of WIPO and The Patent Cooperation (1970)**
 - **UN IP organization / Global Technical cooperation**
 - **International application and pre-examination services**

- **The TRIPS Agreement (1996)**
 - **The globalization of IP**
 - **Minimum IP standards**
 - **Enforcement obligations**

- **The Patent Law Treaty (2000)**
- **WIPO's Patent Agenda: The SPLT process (2000)**
- **The Doha Declaration on TRIPS and Public Health (2002)**
- **The WIPO Development Agenda (2004)**

IP and Development an integrated model



Concerns, causes and solutions around the patent system I

MAIN CONCERNS	MAIN CAUSES	MAIN SOLUTIONS PROPOSED
Negative effects over basic research and follow up innovation	<ul style="list-style-type: none">• Wide scope of patentability• Loose patentability standards• Low quality in examination	<ul style="list-style-type: none">• Set limits on what is patentable• Improve standards of patentability• Improve patent examination• Establish a pre-grating opposition phase• Clarify the research exemption
Limited access to essential goods	<ul style="list-style-type: none">• Lack of clear exceptions and limitations in patent law• Lack of effective public interest balances	<ul style="list-style-type: none">• Ensure development of flexibilities in-built in the system• Ensure the existence of effective checks and balances

Concerns, causes and solutions around the patent system II

MAIN CONCERNS	MAIN CAUSES	MAIN SOLUTIONS PROPOSED
Negative effects over competition	<ul style="list-style-type: none">• Aggressive use of blocking and mining patents• Exclusive rights• Over broad claims	<ul style="list-style-type: none">• Pro-competitive pre examination• Compensatory liability regime• Improved patent examination• Creation of a “innovative commons” patent
Uncertainty about patent infringement	<ul style="list-style-type: none">• New patent landscape (N numbers of patents and holders)• Natural limitations of searches• Presumption of validity of the patent• Injunctive relief	<ul style="list-style-type: none">• A universal patent database with notification requirements• New private databases• Shift the burden of proof• Limit injunctive relief

Concerns, causes and solutions around the patent system III

MAIN CONCERNS	MAIN CAUSES	MAIN SOLUTIONS PROPOSED
<p style="color: red;">Chilling effect over Manufacture</p> <p style="color: red;">High transaction costs For IP licensing</p>	<ul style="list-style-type: none"> • New patent landscape • Burdensome and costly licensing procedures 	<ul style="list-style-type: none"> • Cross licensing schemes • Patent pools • Open source systems • Automatic compulsory license/cross license
<p style="color: red;">Disruption of in Standardization process</p> <p style="color: red;">Delays in launching of new products</p> <p style="color: red;">New forms of trade barriers</p>	<ul style="list-style-type: none"> • New patent landscape • Overlap between standards and patents • Abuse of rights by titleholders 	<ul style="list-style-type: none"> • Clarify the application of TBT rules to situations of overlap/conflict • Incorporate RAND principles to the code of good practices • Ex ante disclosure • Create collective societies for patents • Set non discriminatory Flat Royalties or Free Royalty systems

The WTO debate on Patents and standards

- The Chinese submissions to the TBT (G/TBT/W/251 and add1)
 - Standards which can be met primarily through the use of technologies that are protected by IP could be difficult and burdensome to fulfill.
 - New technological products and applications rely heavily on patented and IP protected technology
 - If adequate rules are not set to deal with this problem the purpose of the standards will be defeated
 - VL Bus standards and 3G band were presented as an illustrative cases
 - It is proposed an information exchange that would provide the TBT Committee with relevant practices and experience on handling IP and licenses policies in standardization processes.
 - There is a need for an increase level of transparency and exchange of experience on how to deal with patents or other IPRs that could be relevant when developing new standards

The WTO debate on Patents and standards

■ Main reactions by Members of WTO in the TBT

- China's proposal has been the most controversial issue of the TBT agenda
- Supporters: Brazil and India
- Scepticals: US, the EC,
- Difficulties in considering this issue as part of Triennial Report of the TBT

■ TRIPS Council

- China has not presented its proposal in the TRIPS Council
- The reason might be that the negotiators are different

■ WIPO Development Agenda

- WIPO has organized seminars on IP and standard setting
- Position of the industry is not homogeneous
- The precedent of the negotiation shift in the draft Broadcasting Treaty Negotiations
- In WDA many concerns have been expressed on the impact that new trends in IP and licensing are generating over competition
- There are proposals to bring this issue to the agenda of the SCP

Some conclusions

- Developing countries are quickly improving their technological and absorptive capacity
- The current nature of the patent system is raising many concerns over if it has gone too far
- Many of the systemic concerns apply directly to the debate over patents and standards
- There is a revisionist tendency to find options as well as check and balances inside and outside the patent system as to make it more responsive to research, development, and free trade
- This revisionist/reformist movement is taken place in various international organization including the WTO and WIPO
- Industry has not a homogeneous positions on all aspects of current patent law.
- There are many areas where industry and states can work together regardless of their the level of development: improve patent quality, facilitate standard setting and promote competition