

**CONFERENCE ON IMPLICATIONS OF NEW IPR REGIME UNDER THE TRIPS IN
THE GATT AGREEMENT FOR DEVELOPING COUNTRIES, NEW DELHI
(INDIA), MAY 19-21, 1999**

PARTICIPATING COUNTRIES: 14 (INCLUDING 12 MEMBER COUNTRIES OF THE CENTRE)

NUMBER OF PARTICIPANTS: 25 (INCLUDING 23 FROM THE MEMBER COUNTRIES OF THE CENTRE)

In pursuance of the decision of the Governing Council of the Centre and the offer by the Government of India to provide the host facilities, NAM S&T Centre organised a Conference on Implications of New IPR Regime under the TRIPS for Developing Countries during May 19-21, 1999 at India Habitat Centre, New Delhi, India. The Conference was co-sponsored by the Department of Science and Technology, Government of India and the Commonwealth Science Council (CSC). The objective of the Conference was to discuss issues, which are causing concern to developing countries including product patents and its implications for national R&D programmes especially in the area of pharmaceuticals and implications of granting protection for biological products, living and microorganisms. The issues relating to the protection of and the economics relating to traditional knowledge and community-based knowledge and bio-diversity were also discussed.

The Conference was attended by 25 participants from 14 countries viz. Bangladesh (Dr. Khaliqzaman of Bangladesh Atomic Energy Commission, Prof. M. Moshihuzzaman of Bangladesh Council of Scientific & Industrial Research and Mr. M. Fazlur Rahman, Secretary to the Government of Bangladesh in the Ministry of Science & Technology and Vice-President of the NAM S&T Centre), Egypt (Eng. Fattouch A Hamed of the Academy of Research and Technology of Egypt), India (Dr. Rajiv Sharma, Dr. Sulbha Gupta and Mr. R. Saha of the Department of Science and Technology, Government of India, Dr. S. Padmaja and Mr. C.H. Ramesh of Dr. Reddy's Laboratories in Hyderabad, Dr. Manu Jaggi and Dr. C.K. Katiyar of Dabur Research Foundation in Ghaziabad and Mr. Bimal K. Raizada of RANBAXY Laboratories Ltd. in New Delhi), Indonesia (Dr. Sulaiman Kamil of the Ministry of Scientific Research and Technology), Malawi (Mr. Frade K. Nyondo of the National Research Council of Malawi in Lilongwe), Malaysia (Dr. Heng Jee Heng of the Ministry of Science, Technology and Environment), Mauritius (Mr. D. Pursem of the Attorney General's Office in Port Louis), Nepal (Dr. Fanindra Prasad Neupane of the Royal Nepal Academy of Science & Technology, Mr. Raju M.S. Malla of the

Ministry of Law and Justice and Mr. Kala Nidhi Poudyal of the Ministry of Science and Technology), Pakistan (Mr. Syed Ali Tallae of the Ministry of Science and Technology), Sri Lanka (Dr. Thamara F. Dias of the National Science Foundation in Colombo), Trinidad (Dr. Mrs. Judith Gobin of the National Institute of Higher Education in Port-of-Spain), Tanzania (Dr. Y.M. Kohi of the Tanzania Commission for Science & Technology), Zambia (Dr. Joseph Simbaya of the National Institute for Scientific and Industrial Research in Chicanga) and Zimbabwe (Dr. Joseph M. Gopo of the Scientific & Industrial Research and Development Centre).

The faculty for the technical sessions included Dr. G. Thyagarajan, Scientific Secretary, COSTED, Dr. M.D. Nair, former Vice-President, SPIC India, Dr P. Pushpangadan, Director, National Botanical Research Institute (NBRI), Lucknow India, Messrs. Jeff Kushan, Powell, Goldstein, Frazer and Murphy, Patent Attorneys of Washington DC, Mr. Praveen Anand of Anand & Anand Patent Attorney of New Delhi; Mr. Shahid Alikhan, Former DDG of WIPO, Prof. Anil Gupta of the Centre for Management in Agriculture, Institute of Management, Ahmedabad, Mr. J.P. Mishra, Asst. Director General of Indian Council of Agricultural Research (ICAR), New Delhi, Mr. N.R. Subbaram, IP Consultant and Dr. Prabodh Ganguli of Hindustan Lever Limited, Mumbai.

Prof. V.S. Ramamurthy, Secretary to the Government of India in the Department of Science & Technology and Vice-President of the NAM S&T Centre in his inaugural address called for proper harnessing of human resources by developing countries for creation of knowledge. He remarked that it was our fault if we cannot use our human resources to generate intellectual property. He briefly mentioned about the efforts being made by the Government of India for creating IPR awareness and the setting up of the Patent Facilitating Cell in India, which also extends monetary support to inventors for patenting.

Dr. R.A. Mashelkar, Director General, Council of Scientific & Industrial Research of India and Secretary to the Government of India in his Keynote address dealt with the importance of knowledge and technology for rapid development of Third World. It is well known that while wisdom is in the South, the technology comes from the North. This imbalance has to be rectified. Also whereas earlier labour, land and capital had pre-dominating role for industrial development, it is now the generation of knowledge and technology, which matters. There is going to be less emphasis on physical and tangible assets and more on intangible knowledge assets. The value of intellectual capital of an industry will determine its rank and competitiveness. Medicinal plants from developing countries are responsible for \$60 billion worth of business, but the share of large developing countries like India in this business is only 2.5%. Referring to bio-piracy, which is causing concern to developing countries, Dr.

Mashelkar felt that there is instead a need for bio-partnership between the developing and developed countries for equitable sharing of wealth accruing from it and for sustainable development of bio-diversity. He stressed the importance of modernisation of the patent offices in developing countries and their role to disseminate knowledge in digital form to users. Dr. Mashelkar felt that data collection and maintenance of traditional knowledge gained by developing countries over centuries and generations was extremely important to successfully contest the unlawful use of such knowledge by multi-nationals as attempted in case of Turmeric and Basmati. But to avoid such situation, the developing countries should have specific geographical indication laws. When we revise TRIPS, we need to push for *TRIPS plus* - with equity and ethics.

Prof. M.Y. Saada, President, Governing Council of the NAM S&T Centre, in his Presidential address gave an overview of the activities of the Centre. He highlighted the active implementation by the Centre of the scientific programmes approved at the last Governing Council of the Centre in Dhaka in November 1997. The Centre has since organised as many as 11 workshops, training programmes, courses and project meeting etc. during the last 16 months. Dr. Saada thanked CSC and Gol for their support to the Conference and remarked that the natural resources and biological diversity contribute a unique wealth which the developing countries possess and which they must learn to exploit themselves for their benefit and to protect it from exploitation by MNCs.

Mr. M. Fazlur Rahman, Secretary, Science & Technology, Bangladesh and Vice-President of the Governing Council of the NAM S&T Centre, in his address emphasized the growing importance of awareness building of IPR, as the next century will be knowledge-based century. The clandestine bio-piracy will continue to be the source of tension between the developed and developing world. The developing countries need to also protect the traditional knowledge of their farmers. He lauded the efforts of China in this direction with 45,000 patents filed in 1998 and setting up of IP Cells in all R&D institutions.

Prof. J.H. Seyani, Chief Project Officer, speaking on behalf of Commonwealth Science Council (CSC) referred to the CSC activities and the setting up of an information exchange mechanism called Commonwealth Knowledge Network (CKN) and invited members to join the CKN for cooperation and exchange of IPR information. He emphasised the need for proper understanding of the provisions of the TRIPS Agreement at the national level by developing countries to safeguard their interests and their rich national resources and traditional knowledge. He expressed the hope that the conference would help in catalysing this process.

Mr. Shahid Alikhan, former Deputy Director General of WIPO, stressing on the importance of IPR awareness suggested setting up of an Institute of

Intellectual Property at regional and sub-regional levels for study of policy matters in the area of intellectual property rights. He also suggested setting up of National Inventors Association to help in creating this awareness. Mr. Shahid Alikhan urged the member countries to join the Paris Convention at the earliest. He also urged upon developing countries to enact national legislation similar to TRIPS.

Apart from the inaugural session, the deliberations at the Conference comprised of six technical sessions, covering 'International Conventions and Treaties' chaired by Dr. M.D. Nair, Former Vice-President of SPIC and Dr. G Thyagarajan, Scientific Secretary, COSTED, 'Intellectual Property Rights in the Area of biotechnology' chaired by Dr. Y.M. Kohi, Director General, NCST, Tanzania, 'Intellectual Property Rights including Case-Studies in the Areas of Chemicals and Pharmaceuticals' chaired by Eng. Fattouh A. Hamed, President, Patent Office, ARST, Cairo, 'IPR at National Level' chaired by Mr. M. Fazlur Rahman, Secretary S&T, Government of Bangladesh, and 'IPR and Traditional Community Knowledge' chaired by Dr. Sulaiman Kamil, Asst. Minister (Research & Technology) of Indonesia. Some of the specific topics covered under the technical sessions were on TRIPS provision in the GATT agreement, Paris Convention and Patent Cooperation Treaty (PCT), Plant Variety Protection including DPOV Convention and Bio-diversity, case-studies on relevant plant based patents e.g. on Neem, Turmeric and Basmati, IPR and small entrepreneurs and farmers, traditional / community knowledge, importance of maintaining R&D records and mechanisms therefor and importance of information contained in patent documents for stimulating R&D and how to analyse techno-legal and business information contained in IP documents and training programmes for IPR Personnel and contents thereof both for professional and R&D personnel.

Country Reports were presented at the concluding session chaired by Dr. Sulaiman Kamil, which was followed by group discussion in which participants shared their concern on the Article 27(3)(b) of TRIPS and the need to revise it and on article 23.4 of TRIPS on geographical indications and the need to extend it to all products (not just wines) and for creating greater awareness on IPR in developing countries. The Conference adopted a set of the following recommendations:

"With the present wave of liberalisation and free import of technology being encouraged in developing countries and the resultant problems being faced in Implications of New IPR Regime, the meeting of experts of the member countries of NAM S&T Centre and Commonwealth Science Council recommended that:

- Article 27(3)(b) of TRIPS in respect of protection of life forms has negative

implications for the developing countries. The present wording of this Article requires reconsideration and appropriate modifications during the forthcoming review of the TRIPS to safeguard the interests of the developing countries.

- The proposed/draft *sui generis* system of SADEC should be made available to the participating countries for information and appropriate action.
- IPR awareness programmes for all sections of society and especially for the scientific community should be organised and assistance may be sought for the purpose from WIPO and other international bodies like CSC, ASEAN and NAM etc.
- Setting up of national/sub-regional institutes of IP for study of IP laws and practices.
- Member states may consider inclusion of IPRs as an integral part of economic policy, S&T policy and education policy.
- Steps to be taken by WTO member countries to adhere where not already done, to Paris Convention, PCT and Berne Conventions.
- Establishment of a network of patent information service and other related services among members and to provide regular value-added and user - friendly information.
- Setting up of national steering groups for drawing up 5 years blue print for broad planning for IP Policy for the growth of science and technology and economic development.
- Establishment of an authenticated data-base on traditional knowledge of the member countries and framing guidelines for sharing of profits accruing from use of traditional knowledge”.