Revisiting the patent system : legal concepts and practices in need of review

M. Carlos CORREA

Professor at the University of Buenos Aires (Argentina)

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67046 Strasbourg

The conference will be held in English

Abstract :

The patent system -as any other incentives system- is strongly context-dependent. In order to expand the 'freedom to operate' of local companies and research institutions , countries need to adapt their patent regimes to their own conditions –within the limits permitted by the TRIPS Agreement. However, this has not often been the case. Many patent offices and courts have implemented standards and criteria that may hinder rather than promote local innovation and other national public interests. Some of the questions to be addressed are the following:

What level of inventive step would be the most suitable for countries that do not possess a strong innovative capacity? Is it justified to apply a low level of inventive step on the argument that it would help local companies and institutions to effectively use the patent system?

To what extent the proliferation of patents as a result of offensive and defensive practices (patent thickets, evergreening, etc.) may harm the development of a local innovative capacity? How can national policies avoid the negative effects of strategic patenting?

How can patent policies be effectively integrated with other national policies regarding, for instance, public health and access to environmentally sound technologies ? What's the room for patent offices to design their policies consistently with other national policies?

What is the role of the judiciary in defining patent policies? Are judges in emerging economies well prepared to deal with complex technical issues and provide guidance on the scope of and limitations to patent protection?

What is the room for reviewing practices received from developed countries based on questionable assumptions or legal fictions, such as the number of documents that may be combined to establish inventive step, novelty in the case of selection patents, analogue processes, Markush and Swiss claims?

How can 'inventions' and 'discoveries' be properly differentiated, for instance, with regard to genes? If patentable, should the protection of genes be strictly limited to the function/s disclosed in the patent application?

Should patent offices differentiate between sectors in applying patentability standards? Should they, for instance, apply rigorous standards to examine pharmaceutical patents (given their impact on access to drugs) while being more flexible in other sectors?

How can opposition systems be implemented/improved in order to enhance the so-called 'patent quality'?

How can the transparency of the system be improved on the basis of the information provided in the specifications, abstract and title of granted patents?

Bio :

Dr. Carlos Maria Correa is Director of the Center for Interdisciplinary Studies on Industrial Property and Economics and of the Post-graduate Course on Intellectual Property at the Law Faculty, University of Buenos Aires and professor of the Master Program on Science and Technology Policy and Management of the same university. He is Special Advisor on Trade and Intellectual Property of the South Centre and has been a visiting professor in post-graduate courses of several universities and consultant to UNCTAD, UNIDO, UNDP, WHO, FAO, IDB, INTAL, World Bank, SELA, ECLA, UNDP, and other regional and international organizations. He has advised several governments on intellectual property, innovation policy and public health. He was a member of the UK Commission on Intellectual Property, of the Commission on Intellectual Property, Innovation and Public Health established by the World Health Assembly and of the FAO Panel of Eminent Experts on Ethics in Food and Agriculture. He is the author of several books and numerous articles.