

COMMENTS ON CLIMATE & INTELLECTUAL PROPERTY (IP)

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Cefic is the Brussels-based organisation representing national chemical federations and chemical companies in Europe. Cefic represents, directly or indirectly, around 29,000 large, medium and small companies in Europe, which employ about 1.2 million people and account for about 20% of world chemicals production.

The chemical industry strongly believes that IPRs (Intellectual Property Rights) such as patents and trade secrets are indispensable in promoting technology supporting actions against climate change. Therefore, we also believe that the UNFCCCⁱ negotiations should not include recommendations that undercut or put into question the current existing IP systems as this would be counter-productive to the shared goal to reduce the threat of climate change.

IP systems are established international framework to support technological innovation and play a key role in

- supporting chemical companies in their efforts to meet the new challenges of sustainability. To go from research to bringing new sustainable products on markets is often a risky business involving the expenditure of significant costs and resources to achieve a business outcome which at early stages is far from certain;
- encouraging new products, process, technologies to be developed by bringing a commercial return to companies investing in those developments;
- sustaining innovation and thus stimulating economic growth and employment;
- offering a vast and freely accessible source of technology information on which other may build (in the case of patents for example). Therefore, enriching the pool of public knowledge and culture;
- having a supporting role in technology transfer via partnership and licensing arrangements with local private partners or governments since IPRs' protect the licensor's and licensee's investments in the technology.

It is fair to say that if IPRs and trade secrets did not exist, the conversion of new ideas into useful products for everyone would be significantly deferred and inhibited.

By contributing to the development and diffusion of new and existing technologies IPRs and trade secrets help to meeting the challenges of climate change.

In addition, several studiesⁱⁱ have showed that IP is not hampering implementation of climate-change related technologies in developing countries, while very high tariff and non tariff barriers, imposed by developing countries to imported technologies, climate-change related technologies included, do hamper them. IP is particularly important for the chemical industry, a sector for which research costs are high and significant, and the high fixed cost of production start up needs to be recovered over a long timescale.



Besides, in certain fields of climate-change related technologies China (and to a lesser extent India) is frontrunner in technology developments rather than at the receiving end.

The current idea implying that all developing countries (and only developing ones) would obtain benefits from the weakening or disappearing of IPRs or trade secrets is simply wrong. In addition, inclusion of technologically advanced countries such as China and India in this beneficial treatment will strongly distort the competition globally in favour of the latter and will additionally put European and American companies at a disadvantage.

Therefore, measures to be envisaged to prevent climate change should avoid creating additional burdens or legal uncertainty for IPRs and trade secrets owners and should not undermine their essential role.

Furthermore, we believe that any proposal which tend to change IPRs or trade secrets should be dealt with by WIPO (the World Trade Intellectual Property Organization) and in the context of the TRIPs Agreement (WTO Agreement on Trade Related Aspects of Intellectual Property Rights) and not by UNFCCC in isolation.

Last but not least, the adoption of regulations for compulsory licensing would result in deterring developments and deterring investments in those countries which would enforce such instruments. Long term experiences with countries providing compulsory licensing instruments have shown that such instruments are not helpful in promoting technology transfer.

Instead of trying to force the technology owner to license its IPRs and trade secrets it would be more helpful to facilitate investments and/or provide other incentives which facilitate free flow of technology -such providing tax benefits - and provide systems which secure the freedom of the technology owner to select its technology/license partner.

Moreover in that debate it is important to note that technology transfer involves besides IPRs the transfer of sensible know how/trade secrets and technical assistance to the licensee including training of people in order to properly implement and guarantee efficient and safe use of such technology. The technology owner will be encouraged to share its know how with others once the owner is sure that its know how is properly protected as a trade secret by the laws of the country to which the technology is transferred; the owner will select the countries also in that respect so that the owner is not threatened that the know how may be copied beyond his control.

To illustrate this, the International Council of Chemical Associations (ICCA) commissioned a report in 2009 entitled "*Innovations for Greenhouse Gas Emission Reductions*"ⁱⁱⁱ and which used a life cycle quantification of carbon abatement solutions enabled by the chemical industry. The report findings highlighted the contribution of the chemical industry by concluding that for every tonne of GHG emitted by the global chemical industry its products and technologies enable a saving of over 2 tonnes of GHG emissions in their use phase. Many of the products that enable this saving would not have been developed without associated intellectual property rights, especially given the high cost of taking many of these products to market. In work to follow up their report, the ICCA identified 8 principles for reducing worldwide GHG emissions.

One of these principles (the principle N° 4)^{iv} is the need for a framework for effective protection of intellectual property rights that allows fast sharing of technology breakthroughs.

Summarizing the above we state that the technology owner will be less reluctant to hold back its technology and will be more inclined to license it to others if the following conditions are met: strong protection of its technology by using IP including of its trade secrets.

Contact :
Nicole L Maréchal
Cefic Senior Legal Counsellor & Governance Officer
nma@cefic.be tel ++ 32 2 676 72 18

ⁱ United Nations Framework Convention on Climate Change

ⁱⁱ DG Trade Study *Are IPR a barrier to the transfer of climate technology*, published in 2009 available at http://trade.ec.europa.eu/doclib/docs/2009/february/tradoc_142371.pdf and the European Patent Office Final Report *Patents and clean energy: bridging the gap between evidence and policy*, published in 2010 available at <http://www.epo.org/topics/issues/clean-energy/study.html>.

ⁱⁱⁱ For the executive Summary of the Report, see <http://www.icca-chem.org/ICCADocs/LCA-executive-summary-english1.pdf>

^{iv} ICCA leaflet “Principles for Global Policies to Reduce Greenhouse Gas Emissions, available at the following address:
<http://www.icca-chem.org/ICCADocs/flyer-princi-global-%20policies-to-reduce-greenhouse-G-E.pdf>