

Intellectual property v green technology

Do you believe the climate is changing? And if you so believe, why? Certainly, scientists have revealed that ever so often, some parts of the world get warmer and other parts get colder.

And if you do believe in climate change, what does technology have to do with it? This question is of critical importance for insufficient knowledge of the intellectual property system leads to the two-edged sword conclusion that the intellectual property system benefits only developed countries while developing countries fail to equally benefit under the intellectual property system.

Indeed, knowledge of the intellectual property system, in and of itself, could reasonably lead to that conclusion, unless that knowledge is critically analysed and dissected.

Technology as it applies to climate change more specifically applies to patents, which as known, is a state-granted monopoly. And therefore patent holders can exclude all persons from obtaining access and indeed, further development of these patents.

But it is also known that patents are not granted for the purpose of keeping them in a cupboard. Hence the United Nations International Covenant on Economic, Social and Cultural Rights of 1976 recognises at Article 15 the right of everyone to “enjoy the benefits of scientific progress and its applications”. And therefore, before a patent can be granted, States require inventors to disclose their invention thus allowing other inventors to use the invention, albeit through joint venture agreement or otherwise, for the benefit of society as a whole.

Article 15 of the International Covenant is of significance for developing countries to grasp the intellectual property system by the horn and to take a not negligible bite of the cherry for ensuring the benefits of the scientific progress and application in their societies.

Indeed for years, developed countries have been relocating their manufacturing and industrial base to developing countries and ensuring provision of services and infrastructure as required in support of the various industries. This economic transition has been seen to lead to social, economic and indeed, carbon-emission growth.

But while developing countries have been accepting the generosity of developed countries, they ought focus not just on receiving technologies, but ensuring that the technology being proposed is green, clean technology which will play its role in preserving their environment and reducing their carbon-emission.

Moreover, with the availability of Eco-Patent Commons, a technology-sharing initiative, by the World Business Council for Sustainable Development (WBCSD), in Geneva, both patent holders (pledgers) and potential users may be merged in a collaborative effort to build technology which provide “environmental benefits”.

Climate change and intellectual property are intertwined. The focus on green technology and access thereto for developing countries is apt and Article 15 of the International Convention states clearly that intellectual property and technology have everything to do with it!

Marcia B. Moulon, Esq. Copyright 2010
Tuesday, 16 March 2010