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978-0-521-14436-0 - The Global Governance of Knowledge: Patent Offices and their Clients

Peter Drahos

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## THE GLOBAL GOVERNANCE OF KNOWLEDGE

Patent offices around the world have granted millions of patents to multinational companies. Patent offices are rarely studied and yet they are crucial agents in the global knowledge economy. Based on a study of forty-five rich and poor countries that takes in the world's largest and smallest offices, Peter Drahos argues that patent offices have become part of a globally integrated private governance network that serves the interests of multinational companies. He shows that the Trilateral Offices of Europe, the USA and Japan make developing-country patent offices part of the network through the strategic fostering of technocratic trust. By analysing the obligations of patent offices under the patent social contract and drawing on a theory of nodal governance, the author proposes innovative approaches to patent office administration that would allow developed and developing countries to recapture the public spirit of the patent social contract.

PETER DRAHOS is a professor at the Regulatory Institutions Network in the Australian National University and holds a Chair in Intellectual Property at Queen Mary, University of London.

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## LIST OF ABBREVIATIONS

AIPN	Asian Industrial Property Network
ANVISA	National Sanitary Surveillance Agency of Brazil
APEC	Asia-Pacific Economic Cooperation
ARIPO	African Regional Intellectual Property Organization
ASEAN	Association of Southeast Asian Nations
Asian Trilaterals	Chinese PO, Japanese PO, Korean Intellectual Property Office
CIS	Commonwealth of Independent States
EAPC	Eurasian Patent Convention
EAPO	Eurasian Patent Organization
ECAP	European Community-ASEAN Intellectual Property Rights Co-operation Programme
EEC	European Economic Community
EPC	European Patent Convention
EPO	European Patent Office
EU	European Union
EPAC	External Patent Audit Committee
FDI	Foreign Direct Investment
FTA	Free Trade Agreement
GATT	General Agreement on Tariffs and Trade
GCC	Gulf Cooperation Council
ICC	International Chamber of Commerce
IP	Intellectual Property
IPEA	International Preliminary Examining Authority
ISA	International Searching Authority
ISO	International Standards Organization
JPO	Japanese Patent Office
KIPO	Korean Intellectual Property Office
NGO	Non-government Organization
MFN	Most Favoured Nation
NIIP	National Institute of Industrial Property
OAPI	Organisation Africaine de la Propriété Intellectuelle
OECD	Organisation for Economic Co-operation and Development

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Paris Convention	Paris Convention for the Protection of Industrial Property, 1883 as revised
PATCOM	Patent Committee
PCT	Patent Cooperation Treaty, 1970 as revised
PLT	Patent Law Treaty, 2000
PO	Patent Office
PPH	Patent Prosecution Highway
SIPO	State Intellectual Property Office of China
SMEs	Small to medium enterprises
TNCs	Transnational corporations
Trilateral Offices (or Trilaterals)	European PO, Japanese PO, US Patent and Trademark Office
TRIPS	Agreement on Trade-Related Aspects of Intellectual Property Rights, 1994
UNCTAD	United Nations Conference on Trade And Development
USPTO	United States Patent and Trademark Office
USTR	United States Trade Representative
WIPO	World Intellectual Property Organization
WTO	World Trade Organization

## P R E F A C E

Patent office administration would strike many a person as a dull topic. In fact this is wrong, for it is an excruciatingly dull topic. Yet like many such technical topics it explains why our world is the way that it is. States need tax bureaucracies to collect taxes, otherwise they would not last long as states. Multinationals need patent offices to grant patents, otherwise they could not raise private taxes. They would have to find other ways in which to gain monopolies over medicines, chemicals, seeds and software.

The importance of the topic, along with the realization that patent offices had largely been neglected in the regulatory literature, led me to undertake the study. My focus was not on one office in particular but rather on the interaction amongst patent offices and in particular between developed and developing-country patent offices. The development effects of intellectual property rights have become a major area of study, but we do not know much about how developing-country patent offices administer the standards of patentability that arrive in their countries through various treaty processes.

Administering a patent system is one of the few areas of intellectual property over which developing countries have considerable sovereign discretion. Patent offices might be one place in which one might find developing-country resistance to the hegemony that the US, EU and Japan exercise over patent standard-setting processes. Instead, I found that developing-country patent offices were being deeply integrated into a system of patent office administration that was being led by the patent offices of the US, EU and Japan. So while developing-country negotiators would contest the standard-setting games of the US, EU and Japan in places like the World Trade Organization (WTO) and the World Intellectual Property Organization, their patent offices were closely and quietly cooperating with the patent offices of these three countries. Much of the practical impact of the patent system is better understood by looking at what happens in patent offices than in a WTO negotiating room or the language of a patent statute. The world's patent offices are participating in what one of my interviewees described as an 'invisible' process of

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harmonization. Driving this process are pressures and demands coming from the multinational users of the system. They will benefit from this emerging system of global patent governance.

My home base, the Regulatory Institutions Network at the Australian National University, was an ideal place in which to undertake the study. With colleagues like John Braithwaite, Valerie Braithwaite, Neil Gunningham, Peter Grabosky and Hilary Charlesworth, one never has to wander too far for insightful comment on an issue. The work of Chris Arup and William van Caenegem, as well as their friendship and support, are continuing sources of help for me. My conversations with Michael Blakeney about intellectual property, as always, gave me insights and helped me to understand the dynamics of patent administration. Luigi Palombi and Hazel Moir were always prepared to give up their time to listen to my attempts to articulate an argument. Their suggestions improved this book. My thanks also go to Dr Ian Heath, the Director General of IP Australia until his retirement in 2007. His office was a research partner in this project under the Australian Research Council's Linkage scheme. Dr Heath and the members of IP Australia were of great support to me. They helped to arrange for access to other patent offices and always met my requests for assistance and data with polite and unfailing cooperation. They will probably not agree with my analysis, but Ian Heath's view was that independent long-term research was needed. If only universities understood the research process so well. I would also like to thank the patent examiners I spoke to who helped me to understand the job. It is a very important one, for which they do not receive sufficient recognition.

My Research Associate for most of this project was Ms Cecily Stewart. She was simply the best assistant that anyone could ask for, helping to track down material, organizing data, creating wonderful PowerPoint slides and generally bringing structure to chaos.

I have dedicated this book to my wife Julie Ayling. She had to listen to too many monologues from me concerning patent office administration. Somehow she was able to feign interest. Acting beyond the call of duty she read sections of the book. Her patient and loving support enabled me to start and finish the project.