

REDISCOVERING THE VALUE OF INTELLECTUAL PROPERTY RIGHTS

ABSTRACT

The industrializing economy of Brazil possesses many favorable competencies and capabilities owing to its cultural diversity, its growing technological know-how, and its expanding entrepreneurial class. It also boasts a number of intellectual property-rich companies in the life sciences and information and communication technology sectors whose capacity for innovation has yet to be exploited. Brazil, however, suffers from a deficit in core human capital and lacks a market-friendly enabling environment that incorporates strong intellectual property right protections. These deficiencies have largely prevented Brazil from developing the cutting-edge indigenous know-how and commercial innovations that could dramatically improve Brazil's future scientific, technological and economic growth prospects.

Unable to resolve its national dilemma itself, the Government of Brazil, has worked alongside numerous developing countries and activist civil society organizations within multiple international fora to promote a new global knowledge paradigm. Such paradigm discounts the value of private intellectual property rights in promoting innovation, and calls for scientific and technology-based knowledge and information, and the commercialized products and processes derived from it, to become, as a matter of international law, 'universally accessible, 'open source', and essentially 'free of charge' to emerging and developing economies, i.e., 'public international goods'.

The following article documents Brazil's efforts and then disputes the various rationales advanced by proponents of this new anti-private intellectual property paradigm. It emphasizes how patents and trade secrets are forms of exclusive private property which are entitled to legal protection as inalienable constitutional, civil and human rights. It also shows how patents and trade secrets are economically valuable assets that are important to both foreign and domestic investors, especially, knowledge and technology-rich internationally-focused companies, and explains why the Government of Brazil should aggressively seek to protect them. This article, furthermore, analyzes numerous studies that collectively describe how the establishment of a market-friendly enabling environment that includes strong enforcement of intellectual property rights will enable Brazil to attract the research and development-related foreign direct investment and technology transfers, and to realize numerous other incidental spillover benefits, that will dramatically improve its domestic industries, enhance its educational and health systems and satisfy its national innovation needs.