

PRO HUMANO GENERE

Invitation for an open forum of discussion:

Proposal: A global solution for the protection of inventions

WHERE: NGO CENTER, WTO 9TH MINISTERIAL CONFERENCE BALI 2013.

WHEN: DECEMBER 4TH, 2013. 11H30

PROGRAM: A BRIEF INTRODUCTION OF THE PROPOSAL MADE BY ITS AUTHOR, FOLLOWED BY A GENERAL AND INFORMAL DISCUSSION

TOPIC:

For PRO HUMANO GENERE is an honor to present to the world the idea contained in Esteban Donoso Crespo's legal/political production. PRO HUMANO GENERE is an NGO created with the goal of achieving the political decision of WTO members to generate a reform in the TRIPS Agreement, as proposed by Donoso Crespo.

"A Global Solution for the Protection of Inventions" is Donoso Crespo's first book in English. In it, as well as in his previous books in Spanish, he propose a corrective which is the insertion of proportionality regarding the contribution of each country or region to the world's technological development, measured in years of exclusivity. There are certain elements of the rules of the TRIPS Agreement (the Global Agreement regarding the matter, which is one of the main agreements of the Worlds Trade Organization) that may be questionable from an axiological analysis (its justice), which are also identified in this proposal. But basically any shortcomings in this regard are subsumed in one aspect: a uniform duration of the protection bestowed by all countries regardless of their economic status. There is no proportionality. Currently the term of protection granted to inventions worldwide is of 20 years from the filing date of the application, for all countries.

It is a contradiction that people from Canada, just to take the example of a developed country with citizens and governments with deep social conscience, with an annual income per capita of U.S. \$ 30,000 "suffers" the existence of a "legal monopoly" of 20 years, the same as will the people of Sierra Leone (when the waver ends), a country with an income per capita of just U.S. \$ 530. Just by stating the above, the inadequate treatment about the regulation is revealed. By applying the obvious corrective to this situation (proportionality), other aspects for the protection of inventions may be analyzed with an axiological perspective (its justice). All previous analysis regarding the justice of the regulation will be insufficient.

As Esteban explains in his book, all the objectives and principles that this study identifies as global principles worth promoting (except the principle of proportionality), are recognized in the objectives and principles of the TRIPS Agreement (mainly in Articles 7 and 8), which encourage the possibility, if the principle of proportionality is introduced, to achieve within the TRIPS Agreement itself, an adequate system of protection.

More reward towards investment in research and development of all technologies, including obviously new and better drugs, could be achieved. This proposal in the short term will favor in a direct way developing countries, which populations will see the terms of protections for inventions reduced. Also in the short term multinational enterprises will earn more if the global retribution is higher, thus indirectly benefiting developed countries of where these enterprises are form. In the long term humanity will benefit as a whole of more investment in research and development of new technologies.

In this hypothetical system any holder of a patent shall have the same term of protection worldwide than any other holder of a patent in a subscriber country, regardless of their nationalities or the field of technology of the invention, in strict compliance with the principles of national treatment and most favored nation treatment. But, the duration of their rights will vary from country to country, according to the economic capacity of each country.

To structure the proportional system in terms of the duration of the rights granted to a patent a single amendment in the text of the TRIPS Agreement is required: Article 33. While this amendment will not be as easy to crystallize, is plausible.

The practical implementation of the proposed amendment will require careful analysis, primarily an economical one. Due to the originality of this proposal and that the economic issue is beyond the scope of analysis of Esteban Donoso's study (he is a lawyer), this issue has not yet been unraveled. Economic parameters as gross domestic product of a country and the size of its market are suitable indicators that reflect the extent to which a country and its population is able to contribute to the technological development of humanity. Each state, country or economic region, will grant a certain number of years of exclusivity to patent holders within its territory, regardless to the nationality of the holder. An appropriate economic technical determination should be established.

PRO HUMANO GENERE is seeking allies to undertake this analysis. The optimum (as Esteban Donsos's study argues) will be granting a period of protection as longer as possible. If each country contributes according to its capability, it will not be necessary to spare in the incentives that the global community wants to give to those who by investing in research and development have encounter a useful invention for mankind.

This could result in that the human race as a whole could even be more generous with inventors and their investors, bearing the burden that this generosity would mean in a proportional way. Esteban's proposal does not seek to establish *a priori* the equilibrium or the optimal period of extension for a patent. Proportionality will take care of this, he argues. It will be easier to obtain objective economic conclusions and consensus if the "patent monopoly" is beard proportionally by the different countries or trade regions.

In the hypothetical system that Esteban Donoso Crespo has envisioned, which is equitable in the way the humanity as a whole compensate the inventors, the interest in finding the right balance of protection will be higher, as the effects that a disproportionate protection potentially carries will be felt equally in all Countries regardless of their condition of development.

Although the corrective results absolutely logical, no proposals worldwide in this regard had been identified in the doctrine so far. There is still a lot to be done and discussed about it. Please, join PRO HUMANO GENERE in this effort.