

Global Agenda

# Intellectual Property System Rio Workshop Report

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# Message from the Global Agenda Council

Intellectual property (IP) is about promoting progress and innovation. The global IP system should be seen as a tool to regulate and facilitate trade, information and knowledge in innovative and creative goods and services.

While IP may seem like a foreign concept to many, the fruits of it are everywhere; consider mobile phones, cars, music, medicine and products bought in a supermarket. The knowledge and human creativity embodied by the IP in these products makes the modern world possible.

IP rights do not simply benefit creators, but rather society as a whole. In today's interconnected knowledge-centric society, the economic stakes of an appropriate IP framework are high. IP enables greater investment in products and services to improve society, including life-saving vaccines and medicines, and high-yield, drought-resistant crops that increase the world's food supply. By leveraging the IP system for social and economic growth, society will benefit from a wider base of knowledge, increased investment in Research and Development (R&D), broader support of creative arts, greater access to open markets and better consumer protection.

Given the challenges facing the global economy, the IP system is more important than ever in providing the framework to foster new products and cultivate new inventions that are instrumental in creating the next generation of jobs, investments and growth.

In this context, the World Economic Forum's Global Agenda Council on the Intellectual Property System seeks to raise awareness about the importance of IP in trade facilitation, innovation and entrepreneurship. It strives to develop its vision and make progress regarding online creative content as well as to increase access to IP and its benefits, while promoting transparency in the system.

To move the Council's work from a global to a regional perspective, the Global Agenda Council in collaboration with the Brazilian National Intellectual Property Office (INPI) organized a two-day workshop in Rio de Janeiro. Over 150 global, regional and national public and private sector leaders from the IP community gathered in Rio de Janeiro on 11 and 12 June 2013 to address critical issues, including the role of IP in the Internet-based era, the contributions of IP policies to economic growth and social development as well as the type of global governance needed to ensure the IP system operates smoothly in the global context. The discussions brought together "developing" and "developed" views, such as those from the world of sciences and mineral extraction and agricultural science as well as views from artists and consumers. If one thing in particular became clear at the workshop, it was that we are all more alike than different when it comes to innovation, and that for all of us, innovation will be our most precious asset in overcoming the challenges we face.

On behalf of the Global Agenda Council on the Intellectual Property System, we would like to thank all participants for your valuable input to the Global Agenda Councils Workshop on Intellectual Property and look forward to engaging the Intellectual Property System Council Members as well as the broader IP community in future related sessions.

We look forward to welcoming you to future events,

Tiffany Misrahi  
Senior Associate, Global Agenda Councils  
World Economic Forum

David Kappos  
Partner  
Cravath, Swaine & Moore, USA

James Moody  
Co-Chair, Global Access in Action, Australia

Jorge Avila  
President, Brazilian National Industrial  
Property Office



**01:** David Kappos, Partner, Cravath, Swaine & Moore, USA; Chair of the Global Agenda Council on the Intellectual Property System  
José Luis Londono Fernandez, Director, Industrial Property Office of Colombia  
Naldo Medeiros Dantas, Executive Secretary, ANPEI, Brazil  
Kerstin Jorna, Director, Intellectual Property, European Commission, Brussels; Global Agenda Council on the Intellectual Property System  
Corey Salsberg, Senior Legal Counsel, IP Litigation & Policy, Novartis International AG, Switzerland

# Introduction

Science, technology, knowledge and creativity are critical to human progress. For the past 200 years, the global IP system has worked to encourage creativity, ensure quality and reward invention. The global IP system is a long-term investment engine that requires long-term thinking to deliver long-term value and despite its complexity, is fundamental to propel human progress.

However, while the successful application and transfer of IP has created great benefits and opportunities for many of the world's citizens, a number of megatrends are significantly reshaping the IP landscape.

These trends include the increasingly global nature of IP, where systems are largely country-based. National and regional IP have not yet caught up with the full range of cross-border content movement enabled by today's technologies.

The share of global IP ownership and application is also changing, with low- to middle-income countries exhibiting a larger share of all IP activity. For example, between 1993 and 2009, the share of major R&D expenditure from the US, Canada and all European countries declined, while the share of Brazil, China, the Republic of Korea and countries such as the Russian Federation increased (source: World Intellectual Property Organization, WIPO).

The world is also witnessing an increase in the complexity of both technology and its applications. New technologies, big data and the growth of virtual content are reshaping the creative economy landscape. Content distribution models are shifting towards instantaneous, ubiquitous access, often using social networks.

Furthermore, the traditional lines between content creators and content consumers are blurring, with consumers playing an increasingly important role in collaborative content creation. Business models for digital content distribution are changing, with licensing and service-based delivery models replacing traditional sales-based distribution.

These megatrends have the potential to affect the global IP system's level of performance as the custodian of stable, secure, affordable and transparent generation, protection and sharing of innovation and knowledge. In response, global IP rules and practices need to adapt to new expectations and demands arising, among others, from the digital environment and the intensification of innovation.

No place in the world offers a better insight into the challenges and opportunities of the future IP system than Latin America. As home to many middle-income countries, it is witnessing significant growth in IP activity. For example, in 2010 Brazil changed places with the United Kingdom to become the 11th top IP office in terms of patent applications (source: WIPO).

Latin America is also witnessing significant gains from the commercialization and application of its IP. Brazil, Chile and Mexico were all in the top 10 countries witnessing growth in high- and medium-technology exports, witnessing growth rates over 10% per annum (source: WIPO).

With this in mind, the World Economic Forum through its Global Agenda Council on the Intellectual Property System and the Brazilian National Institute of Industrial Property (INPI) with the support of the WIPO decided to host the Global Agenda Council Workshop on Intellectual Property in Rio de Janeiro.

This workshop was attended by high-level policy-makers, business people, researchers and IP professionals from both the Latin America region and internationally. The agenda was grouped into six streams, each discussing an issue vital to the future of the IP system:

- Session 1, **The Globalized Open Innovation Paradigm**, looked at the issues of how complex dynamic industries organize and engage into R&D or creation networks, and how they manage interactions with the many different complementary assets.
- Session 2 focused on a **Territorial IP System in a Globalized World**. It looked at the challenges and opportunities present and the main features of an integrated and collaborative IP System.

- The third session, **IP in the New Internet Era**, discussed the role of IP in the new Internet-based creative economy. In particular it asked the question of how it should be best operated and governed.
- Session 4, **IP and Economic Growth**, focussed on the linkages between IP and progress, and how IP policies can be used to contribute to economic development.
- **IP for Social Innovation and Humanity**, the fifth session, looked at the role of the IP system in improving access to the benefits of IP for the poor and marginalized.
- The final session, **Governance of the IP System**, asked what kind of global governance is needed to make the IP system operate smoothly in the global context. In particular it expanded on the role of regional and multilateral institutions.

Together, these six sessions provide deep and strategic insights into the key challenges and opportunities that lie ahead. This report provides a summary of these discussions and will hopefully become a useful reference for both regional and global decision-makers.

# Session 1: The Globalized Open Innovation Paradigm

## Key Points

- “Open innovation” means *collaboration* between inventive entities to achieve common or mutually beneficial goals, using IP as a tool.
- In open innovation, the *innovators* choose the model that works best to achieve interoperability for a given case, ultimately letting consumers be the drivers.
- While consumers and innovators are in the driver’s seat, governments and other intermediaries nevertheless play a critical role in enabling and supporting open innovation. This role includes championing, convening, policing and setting ground rules.

## Synopsis

To understand the globalized open innovation paradigm, it is essential to understand the meaning of “open innovation”. It was agreed that *open innovation* is about *collaboration* between various inventive entities to achieve common or mutually beneficial goals, using IP as a tool to achieve them. *Open innovation* and *Open source* were clearly differentiated – while IP needs to be accessible in an open innovation paradigm, “accessibility” does not mean “royalty-free”. Essentially, open innovation means that the innovators choose the model or models that work best for a particular collaborative effort, ultimately driven by the demands of the consumer.

While consumers and innovators must be in the driver’s seat, governments and other intermediaries still can, and must, play a critical role in facilitating open innovation. This role has at least four dimensions:

1. **Championing:** Recognizing and rewarding collaborative efforts that achieve beneficial goals for the consumer and/or country
2. **Convening:** Bringing innovators together to collaborate and work towards common goals
3. **Policing:** Ensuring transparency. All potential participants in an open innovation paradigm must get the same access to high-quality information
4. **Rulemaking:** Setting clear guidelines and ground rules on collaborative efforts and the role of IP. Through national IP offices, government entities can play a key role in leveraging the relationship they have with innovators and their knowledge of the state of the art, to actively facilitate collaborations and information exchange

The importance of operating cross-nationally with a *common language* was emphasized in order to improve communication and create better harmony of such critical concepts as the scope of patentable subject matter.

From a Brazilian perspective, it was noted that only a few years earlier, IP carried a negative connotation when discussed at the national level. Today, there has been a change in perception and the private sector has a voice in the future of the Brazilian IP system – a major step towards adopting a positive open innovation paradigm.

## Discussion Leaders:

- **David Kappos**, Partner, Cravath, Swaine & Moore, USA; Chair of the Global Agenda Council on the Intellectual Property System
- **José Luis Londono Fernandez**, Director, Industrial Property Office of Colombia
- **Naldo Medeiros Dantas**, Executive Secretary, ANPEI, Brazil

## Moderated by:

- **Kerstin Jorna**, Director, Intellectual Property, European Commission, Brussels; Global Agenda Council on the Intellectual Property System

## Rapporteur:

- **Corey Salsberg**, Senior Legal Counsel, IP Litigation & Policy, Novartis International AG, Switzerland



“Open innovation is about collaboration between various inventive entities to achieve common or mutually beneficial goals, using IP as a tool to achieve them. It means that the innovators choose the model or models that work best for a particular collaborative effort, ultimately driven by the demands of the consumer.”

David Kappos, Partner, Cravath, Swaine & Moore, USA; Chair of the Global Agenda Council on the Intellectual Property System

# Session 2: A Territorial IP System in a Globalized World

## Key Points

- International trade cannot function optimally without a harmonized IP system. Yet, IP systems are still largely territorial, leading to a host of inconsistencies and challenges which interfere with global innovation.
- A harmonized global IP system needs to achieve two principal goals. Firstly, it needs to incentivize innovators to make the choice to engage in the types of risky R&D necessary to invent and commercialize new technologies. It also needs to provide for transparency of the rules and predictability of outcomes, to ensure innovators will receive a fair return on investment if they follow the rules.
- The solution is not to choose one system over the other (national vs. global), but to ensure that, like the wheels of a bicycle, they are sufficiently “oiled” and linked to move forward together.

## Synopsis

Although international trade cannot function optimally without a globally harmonized IP system, at present, IP systems remain largely territorial. It is thus necessary for countries to work together towards a harmonized IP system that balances the needs of all stakeholders.

The key features and requirements of a successful harmonized global IP system are:

1. It must provide a sufficient incentive for innovators to make the choice to engage in the types of risky and costly R&D necessary to invent and commercialize the types of technologies that benefit all of society.
2. It needs to provide for transparency of the rules, and sufficient predictability of outcomes to assure innovators that they will realize a fair return on investment if they follow those rules and if their R&D proves successful.

To achieve a globally harmonized IP system, there is a clear need for more transparency in legislation, policy and among the judiciaries of different jurisdictions.

The creation of regional patent and trademark regimes would be one solution to improve and facilitate regional trade, even if a truly global regime is not immediately achievable.

Ideally, the IP system could be illustrated as a bicycle with two wheels – one national and one global – both of which would be moving forward in sync. The key is not to replace one with the other, but to ensure that the two can operate smoothly together, by focusing on the “chains” and other parts that connect them.

Discussion Leaders:

- **Sean Murphy**, Vice-President and Legal Counsel, International Government Affairs, Qualcomm, USA; Global Agenda Council on the Intellectual Property System
- **Cristina Dartayete**, Coordinator, IP Network, Ministry of Industry, Energy and Mining of Uruguay
- **Claudio Lins de Vasconcelos**, Senior Partner, Lins de Vasconcelos Associates, Brazil

Moderated by:

- **Jorge Avila**, President, Brazilian National Industrial Property Office; Global Agenda Council on the Intellectual Property System

Rapporteur:

- **Corey Salsberg**, Senior Legal Counsel, IP Litigation & Policy, Novartis International AG, Switzerland



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The goal of a harmonized IP system is to create a global environment where risky R&D can happen, an innovator can earn a return on investment, and technology can cross territorial borders.

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Sean Murphy, Vice-President and Legal Counsel, International Government Affairs, Qualcomm, USA; Global Agenda Council on the Intellectual Property System



# Session 3: IP in the New Internet Era

## Key Points

- Financing is a key challenge when dealing with the territoriality of the Internet.
- Social media has brought on new challenges in terms of IP protection given the need to balance the rights of consumers and IP holders.
- It is critical for nations to develop comprehensive strategies to combat piracy.

## Synopsis

The role of IP in the new Internet era starts in culture, with copyrights playing a critical role. For instance, in the European Union the music industry accounts for US\$ 6 billion in revenues and generates thousands of jobs.

The opportunities associated with this *new Internet era* must not only benefit citizens but also enable society to share its cultural heritage and reward the authors and creators. It is important to encourage licensing but also orphan works legislation. In terms of enforcement, the objective in Europe is to ensure illegal content will be off the Internet, before it reaches the consumer.

It is important to consider whether the objective of the Internet is to make a profit, and specifically examine who created the content and how to reward these creators. The issue of ownership of protected content on the internet and the creation of new works could be tackled through global negotiation. Financing is the new challenge when dealing with territoriality with the Internet. Indeed, territoriality is a transaction cost.

For organizations that broadcast, stream, use trademarks and copyright licensing, IP rights play a critical role in revenue generation. For instance, FIFA, which owns over 17,000 trademarks globally, has to deal with issues related to infringements of broadcasting rights and counterfeit products. Social media is a critical factor in examining IP infringements. Indeed, social media balances the rights of consumer communication with the protection of IP owners.

At a national level, Brazil must deal with the territorial dimension when tackling IP and piracy issues. There are challenges related to the implementation of public policies in a country with the size of Brazil and articulating such policies at the federal, state and municipal level. To combat piracy and protect IP, Brazil's plans will take a three-pronged approach: enforcement, education and innovation.



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## Discussion Leaders:

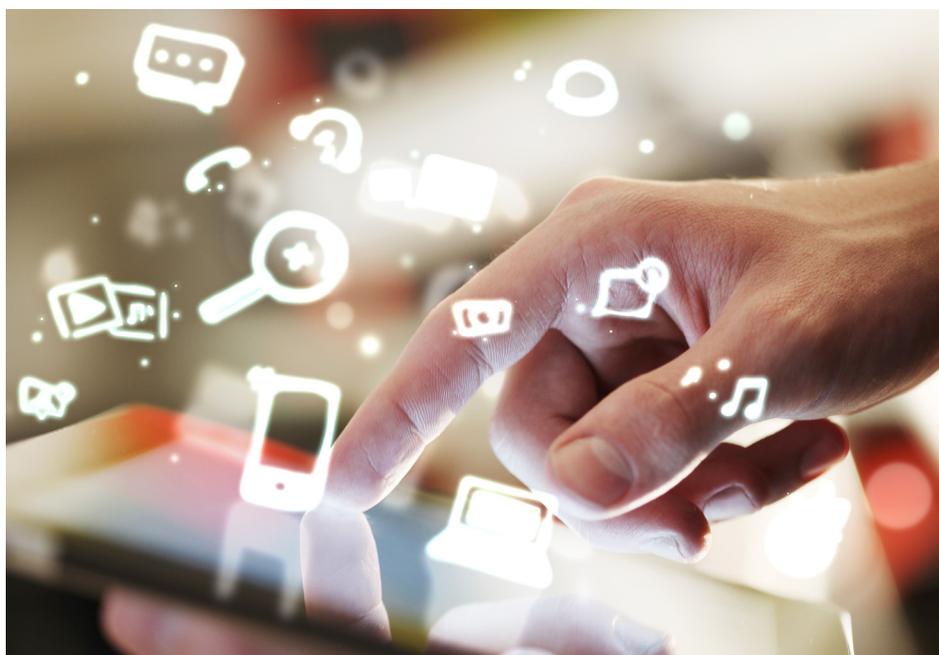
- **Kerstin Jorna**, Director, Intellectual Property, European Commission, Brussels; Global Agenda Council on the Intellectual Property System
- **Jorg Von Muller**, Head of Commercial Legal Department, Fédération Internationale de Football Association (FIFA), Zurich
- **Rodolfo Tamanaha**, Executive Secretary, National Council to Combat Piracy, Brazil

## Moderated by:

- **José Graça Aranha**, Regional Director, World Intellectual Property Organization (WIPO), Brazil

## Rapporteur:

- **Gabriela Muniz Pinto**, Senior IP Counsel, Transactions and Policy for GGO (Global Growth and Operations) LATAM, General Electric, Brazil



# Session 4: IP and Economic Growth

## Key Points

- Innovation is essential to improve the competitiveness of local enterprises in the global markets.
- IP is of paramount importance to help increase local innovation.
- A more rigorous analysis of the impact of IP on the economy is required in different jurisdictions, particularly on employment and GDP.

## Synopsis

Economic growth is strongly linked to industrialization and, more particularly, to moving up the technological ladder. Every country that aims to achieve economic growth should aim to improve innovation, and IP is key for protecting innovation.

As the world becomes increasingly interconnected through international trade, particularly through the lowering of trade barriers and the use of global supply chains in production processes, Brazilian enterprises need to be more competitive. To be a part of such global value chains, and to improve sales in local markets, enterprises need to collaborate to improve their ability to compete in terms of both quality and price. Innovation is a necessary means to achieve continuous improvement of the quality and competitiveness of locally produced goods and services, including those destined for global markets. Brazilian enterprises are aware that IP is of paramount importance in protecting such innovation, and are making increasing use of it.

Despite the introduction of international rules in IP, there is not yet a common understanding and application of these rules. There is an urgent need to have common rules on both the substantive and procedural aspects of IP to ensure a level playing field. It would help if there was more transparency about how IP systems work in some jurisdictions.



To gain a better understanding of how IP affects economies, there is also an urgent need to conduct more rigorous studies about the impact of IP, particularly on employment and GDP. The European Union (EU) is currently carrying out such studies, using the methodology of previous studies carried out by the United States Patent and Trademark Office. The results of these studies would help policy-makers in the EU create better IP policies that would help increase innovation and creativity, and thus improve productivity and growth.

## Discussion Leaders:

- **Kerstin Jorna**, Director, Intellectual Property, European Commission, Brussels; Global Agenda Council on the Intellectual Property System
- **Jorge Avila**, President, Brazilian National Industrial Property Office; Global Agenda Council on the Intellectual Property System
- **Mauro Borges**, President, Brazilian Industrial Development Agency

## Moderated by:

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## Rapporteur:

- **Jayashree Watal**, Counsellor, Intellectual Property Division, World Trade Organization, Geneva

**01:** Mauro Borges, President, Brazilian Industrial Development Agency

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**Intellectual property is paramount to help increase innovation in Brazil.**

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Jorge Avila, President, Brazilian National Industrial Property Office; Global Agenda Council on the Intellectual Property System

# Session 5: IP for Social Innovation and Humanity

## Key Points

- Innovation is necessary to fight poverty and some of the problems facing humanity. IP can and does foster innovation in various fields.
- The IP system should always be managed in a way that ensures it will foster socially relevant innovation.

## Synopsis

IP rights are not inherently good or bad. They will be good if adequately managed, thus generating income and jobs and helping fight poverty.

Nonetheless, the impact of IP needs to be understood by regulators, as there may be a trade-off between the incentives strong IP generates and the restrictions to access arising from the higher prices of IP-protected goods. Careful calibration is essential.

Stakeholders contributing to social innovation should understand the intricacies of the IP system to ensure it achieves the biggest possible incentives and value. Patents and other forms of IP should be extensively used to generate incentives for socially relevant inventions, such as medicines for neglected diseases.

Social innovation is particularly important in terms of open innovation, which is innovation generated by associating capabilities and knowledge generated by distinct actors. As such, it is strongly dependent on well-built contracts, which, in turn, are dependent on well-built IP rights. Social innovation, as with any kind of open innovation, is thus dependent on IP quality.

With regard to the impact of IP on social innovation, it is important to consider collective IP rights, such as Geographical Indication, Certification Trademarks and Collective Trademarks. Granting access to the IP system for small and medium enterprises as well as providing services and education on IP, can have a considerable impact both in terms of the generation of traditional IP rights by these segments as well as for fostering the use of collective IP tools.

The Global Agenda Council on the Intellectual Property System is in the process of developing an initiative that provides pro-bono support for small enterprises to generate IP.



## Discussion Leaders:

- **Gabriela Muniz Pinto**, Senior IP Counsel, Transactions and Policy for GGO (Global Growth and Operations) LATAM, General Electric, Brazil
- **Jayashree Watal**, Counsellor, Intellectual Property Division, World Trade Organization, Geneva
- **José Luis Londoño Fernández**, Director, Industrial Property Office of Colombia

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- **Jorge Avila**, President, Brazilian National Industrial Property Office; Global Agenda Council on the Intellectual Property System

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**IP rights are not inherently good or bad. They must be managed in a way that fosters social innovation and helps fight poverty.**

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Jayashree Watal, Counsellor, Intellectual Property Division, World Trade Organization, Geneva

**01:** José Luis Londoño Fernández, Director, Industrial Property Office of Colombia

# Session 6: Governance of the IP System

## Key Points

- It is essential for national IP officers to collaborate to ensure consistency in the handling of IP matters.
- There is a clear link between IP matters and international trade agreements.
- National IP offices need to have the necessary financial and human resources to actively contribute to innovation, economic development and job creation.

## Synopsis

Cooperation and dialogue among national IP offices is not new. However, the extent and frequency of collaboration is accelerating, and contributes positively to the global IP system.

Cooperation between national IP offices is happening through a growing number of avenues, including various forums (e.g. Vancouver Group, IP5, Prosur, BRICS IP), in the context of the Patent Cooperation Treaty and “patent prosecution highways” agreements, and direct bilateral engagements.

Consistent with the nature of today’s global economy, IP matters are increasingly included within the scope of international trade agreement negotiations such as the Doha Development Agenda under the auspices of the World Trade Organization (WTO) and the Trans-Pacific Partnership (TPP). Taken together, these interactions among national IP offices are contributing to formal harmonization, less formal convergence of IP regimes and the emergence of international best practices.

The proliferation of these interactions among national IP offices, however, presents a tension between multilateralism and regional/bilateral norm-setting. This could result in fragmentation and thereby complicate the environment in which IP rights holders and other stakeholders operate.

Given the important role of IP for innovation, economic development, industrial competitiveness and job creation, it is imperative that national IP offices have adequate financial, work force and other necessary resources. Without adequate resources, national authorities cannot process in a timely and high-quality manner the large volume of IP applications received, resulting in delays and backlogs. Relevant authorities also require adequate resources to engage in IP-related educational and enforcement activities.

Generally speaking, whether national or international, IP-related rules or procedures do not keep pace with the private sector’s innovative and creative endeavors that result in IP rights. One commentator made the case for an enhanced and formal role for the private sector in inter-government dialogues, specifically the ability to participate in WIPO General Assembly meetings.

Discussion Leaders:

- **José Graça Aranha**, Regional Director, World Intellectual Property Organization (WIPO), Brazil
- **Luiz Henrique do Amaral**, President, Brazilian IP Association
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Rapporteur:

- **Sean Murphy**, Vice-President and Legal Counsel, International Government Affairs, Qualcomm, USA; Global Agenda Council on the Intellectual Property System

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**Innovation without protection does not result in economic growth.**

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Miguel Angel Margain, Director General, Mexican Industrial Property Office

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