

## Intellectual Property in Latin America: A Look to the South

By Ricardo Claps<sup>1</sup>

In recent years much credit has been given, and deservedly so, to the emergence of new players in the global IP market. Some of these newcomers include businesses based in places like China, India and Southeast Asia. One region of the globe seems to have been mostly overlooked, however, as if it had fallen off the landscape of Intellectual Property (IP) developers and consumers: Latin America. This article is an introduction to Intellectual Property in Latin America. While the scope of the present article is limited to patents, the issues of trade-marks, copyrights, trade secret protection, and other legal issues should also be considered as they may present peculiarities leading to a different picture from that obtained in the patent arena.

First we must define more precisely the meaning of the expression "Latin America." Here, we use this term to refer to every country in the Americas aside from the USA and Canada. As we will see, this broad definition leads to some surprising findings; however, this is a reasonable scope for the term, and convenient for the purpose at hand. Second, it is important to establish a few facts before expressing any opinions or lofty ideas about what the future holds for Latin America. And in terms of cold numbers, the facts paint a grim picture from the outset for the IP landscape in the region.

We focus on data related to Patent Cooperation Treaty (PCT) applications, rather than looking at national office patent filings, because this is a simpler approach and offers a uniform standard of measure. It may be argued that PCT filings offer a different profile with respect to national patent filings because of differences between internal markets and external markets for each country. While true, this difference has become less accentuated in the past few years given the globalization trends in the economy.<sup>2</sup>

According to the 2009 WIPO report<sup>3</sup> [1], none of the top 15 countries of origin where applicants filed most PCT applications were in Latin America. Of the top 50 filing countries, Brazil is the first to appear (24), followed by Mexico (28), Colombia (39), and Cuba (49). Moreover, among developing countries, of the top 20 PCT filing countries in 2008, Brazil is the leader in Latin America with a showing at a distant 5<sup>th</sup> place, after Korea, China, India and Singapore (in that order). Other countries that make it to the developing country list are Mexico (8), Colombia (13), Argentina (16), and Chile (17). Even countries that are not party to the PCT appear on this list, because it tracks PCT filings based on country of priority filing. Figure 1 shows a plot of the PCT applications per capita for Latin America in 2009, in comparison with the GPP per capita<sup>4</sup>. The data in Figure 1 was collected based on the country of origin of the first inventor, regardless of the office where the international filing took place [3]. This reveals some interesting surprises: Barbados is the country with the highest number of PCT filings per capita. Other countries that have a remarkable showing are the Bahamas, Belize, Uruguay, Chile, and Panama. Note that inventors in non-PCT countries may file PCT applications in the receiving office of a different country

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<sup>2</sup> Of important note is that Chile, Argentina, Peru, and Venezuela, among others, have not joined the Patent Cooperation Treaty, to date. Thus, the PCT approach addresses patent activity in these countries in an indirect way.

<sup>3</sup> Note that, while the report was published in 2009, the data refers to the previous year: 2008.

<sup>4</sup> GPP is a measure of GDP ('Global Domestic Product') that takes into account the 'true' value of a 'dollar' in the country in question. It is therefore a more accurate evaluation of the 'level of life' in the country in question.

Typically, it deviates by about 15% from GDP values commonly reported. The data in FIGS. 1-2a-2c is taken from WIPO statistics database [1] and [2].

(e.g., Chilean, Peruvian, and Venezuelan inventors). Other than that, we see the proverbial correlation between GPP per capita and IP activity in a country. Nonetheless, the numbers are dismally small when compared with other regions of the world.

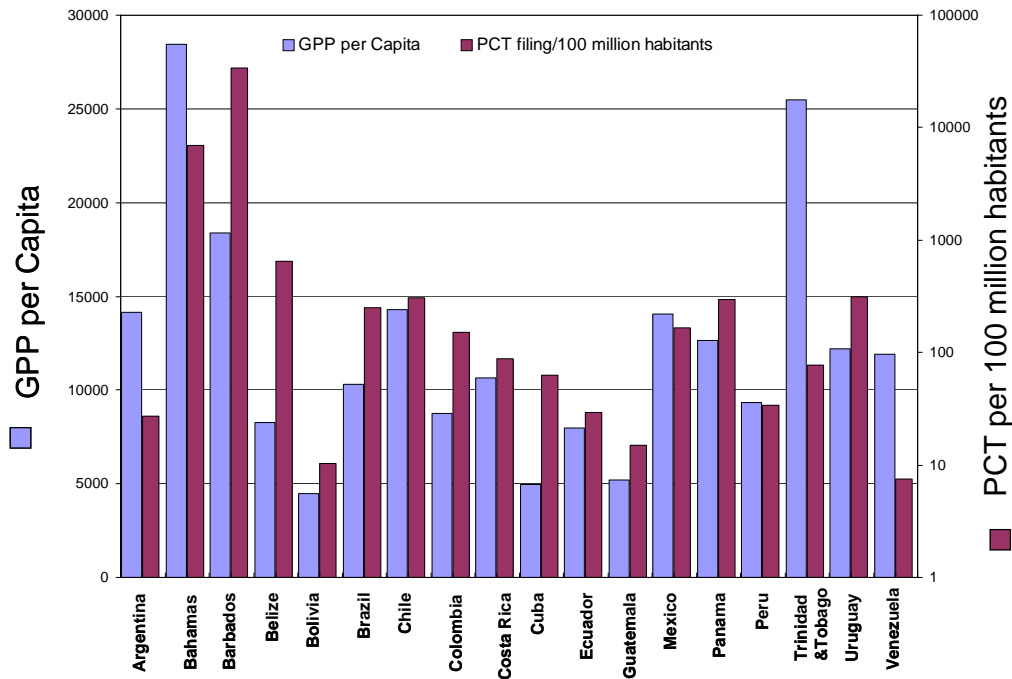


Figure 1

To get a broader perspective, we compare these numbers with the rest of the world using very simple tools. In Figure 2a, we see that the number of PCT filings per capita in Latin America is about 0.6% of the world's total. Figure 2b shows that the GPP contribution of Latin American (totals, not 'per capita') to the world's economy is quite sizeable: 14%. Also shown in Figure 2c is the population proportion: Latin America has about 8% of the world's total population. So, the region has a better-than-expected performance in terms of economic revenue and its share of the world's population, yet a less-than-satisfactory performance in terms of 'expected' IP activity. By 'less-than-satisfactory' we mean a gap of a factor of more than 20 between the actual PCT filings and what would be expected based on the economics data. That is, while the participation of Latin America in the world's GPP is 14%, its participation in PCT filing activity is more than 20 times lower: 0.6%. Moreover, the numbers shown in Figure 1 for PCT applications per capita have been steady for the last 4-5 years (although no exhaustive data collection has been made in the period prior to that).

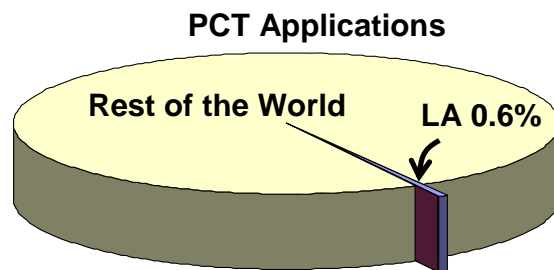
The next question we might ask is, how can this data be good news? This author sees a silver lining behind Latin America's "ground zero" IP landscape, as discussed below. We know that there are emerging economies in the region, Brazil being the paradigmatic example. We know also that there are pockets of highly educated populations in places like Brazil, Cuba, Mexico, Argentina, Uruguay, Chile, Panama, and others. Brazil has become a world leader in commercialization of renewable energy sources, hybrid vehicles, and the aeronautic industry, among other fields. Cuba, on the other hand,

possesses advanced centers for biotechnology and vaccine development, and a well-trained medical workforce. Chile is a country that has accumulated large capital resources, growing at a steady pace in the last decades (5% annual growth in the last 25 years), and is in urgent need of non-fossil energy solutions. In a note that may be more than anecdotal, Peru's economy expanded 9.2% during the "global recession" of 2008[4].

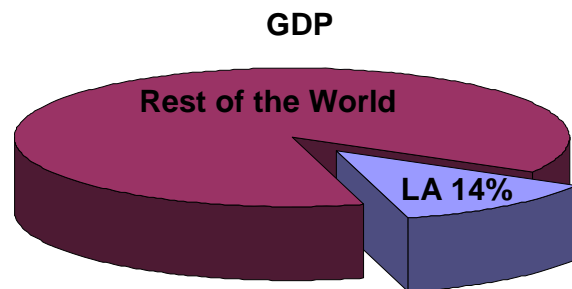
One might conclude that the overall lack of IP filings in Latin America is related to a cultural issue, especially in a region where tradition and status-quo are highly-appreciated societal traits. If this is so, then forging a change of cultural trends may be a difficult but rewarding endeavor, given the fact that the raw materials of creativity and growth needed for IP development are abundant in the region. Of course, other key ingredients for IP development are a suitable regulatory regime through legislation and enforcement of IP rights. These elements have a highly localized flavor, so a more focused discussion is required to draw any conclusions. For an in-depth analysis of IP legislation and adherence to international treaties in Latin America, reference [5] provides a good starting point. However, this discussion lies outside of the scope of this article.

In subsequent articles, specific examples of countries and fields of expertise and technology that may be of interest to evaluating these issues in the Latin American context will be analyzed. Issues that call for more in-depth attention from the perspective of IP development include: medical and biotechnology development in Cuba, alternative energy resources in Brazil and Chile, and the role of Brazil in general as a technological powerhouse in South America. As a practice tip for now, it might be advisable to carefully consider making patent filings in select Latin American countries based on the economic importance of the region, particularly when coupled with the significant economic growth expected in the future. Of course, we cannot leave the reader without an intriguing question: What's going on in Barbados and the Bahamas?

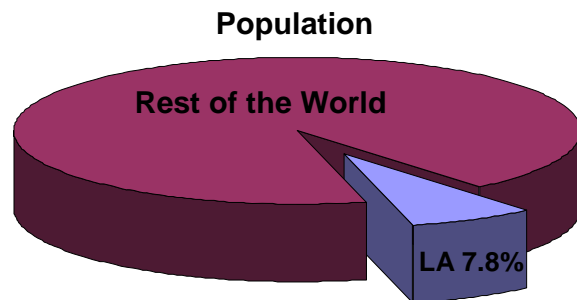
**To be continued...**



**Figure 2a**



**Figure 2b**



**Figure 2c**

## References

[1] WIPO; "PCT, The International Patent System, Yearly Review. Developments and Performance in 2008" available at [http://www.wipo.int/export/sites/www/ipstats/en/statistics/pct/pdf/yearly\\_review\\_09.pdf](http://www.wipo.int/export/sites/www/ipstats/en/statistics/pct/pdf/yearly_review_09.pdf).

[2] Wikipedia; search by country name.

[3] WIPO; "International Patent Filings Dip in 2009 amid Global Economic Downturn," news conference in Geneva, Switzerland, February 8, 2010, available at [http://www.wipo.int/pressroom/en/articles/2010/article\\_0003.html](http://www.wipo.int/pressroom/en/articles/2010/article_0003.html)

[4] See the very interesting article by Daniel Gross in *Newsweek* Magazine, July 29, 2009.

[5] B. Escobar; Ch. 2, Ph.D. Dissertation, U. Cambridge (2010).