

Book Review

Patenting Lives. Life Patents, Culture and Development Gibson, J. (ed.) Hampshire: Ashgate

MICHIEL KORTHALS¹

Intellectual property (IP) is a hot issue now, just as land as property was 400 years ago with the beginning of capitalism. Does this mean that we are indeed in a new phase of modernity, in which knowledge is becoming a commodity? The international struggles over IP started, however, with very different stakeholders, like world-dominating governments and huge (mostly pharmaceutical) companies. Where in the earlier struggle landless farmers protested, in this phase the criticism comes from scientists, NGOs, some governments and (smaller) companies, and intellectuals. In the meantime, the number of patents is increasing rapidly all over the world, as is the number of patent offices and officers.

In the last decade the number of publications on intellectual property and patent regimes have been increasing, just like the groups that are studying these phenomena. There is an urgent feeling that the current systems are fostering the gap between rich and poor, make health care unnecessarily expensive, and are blocking scientific and technological progress. Scientists, farmers and inventors are complaining about the huge number of patents that are necessary to license before one can start the work of innovation.

It is therefore a happy decision that in this book, the first in a series dedicated to 'Intellectual Property, Theory and Culture' from the publishing company Ashgate, the editor purports to record the 'cultural character of patent law and the growing relevance of users of the system' (p. 2). The book is the result of the research program Patenting Lives Project, dedicated to broadening the debate on patent law issues and considering the various publics engaged by these issues. In its nine chapters patent officers, development and evolutionary economists, law specialists and a barrister discuss the legal framework, human rights, medicine, traditional knowledge and agriculture.

The editor begins with a short introduction indicating the importance of various publics and the diversity of opinions on the subject. In the first chapter, the reader gets a fairly extended overview of the various issues and aspects of current IP rights. The International Treaty on Plant Genetic Resources for Food and Agriculture is unfortunately not thoroughly discussed, which is a significant omission from the overall perspective of the book. In the second chapter, the ethic of patenting genetically modified organisms is discussed and a philosophical framework is developed to assess the appropriateness of incorporating living organisms in a patent system. The author suggests that patenting living organisms is unethical because it reduces them to a chemical description which doesn't fit their real nature.

In chapter 3, Adejoke Oyewunmi discusses some human rights implications of current policy on IP and argues that traditional knowledge can be hampered by it. He gives an overview of the African context of patenting living organisms and traditional knowledge and explains the African Union Model law that promises to protect farmers' rights and to foster indigenous knowledge. An important chapter is that by Luigi Palombi, 'The genetic sequence right: a sui generis alternative to the patenting of biological materials'. He first shows the problems that emerge when one tries to patent recombinant proteins that merely replicate the function or performance of natural proteins, which is the current rule, then discusses his proposal to keep genetic sequences out of the regular patent system.

In the fifth chapter, Angela Stanton analyses the irregularities in the case *Moore v Regents of University of California* and discovers a series of errors and misinterpretations in statements made by the Supreme Court of California. Important documents, like the patent application, were not taken into account. Inconsistency with other cases is also scrutinised. As Stanton illustrates the case, the Supreme Court formed its judgment according to a strict utilitarian perspective, putting the need of biomedical innovation at a higher value than individual informed consent. The Court decided that Moore was not the owner of his body parts (once extracted from him). This, Stanton suggests, fails to clarify what we own in terms of our body parts. A precise and consistent definition of property would facilitate research and informed consent. In the sixth chapter, Daniel Robinson discusses the different mechanisms used to regulate access to and claim property rights on traditional knowledge in Thailand. The old system had little or no consideration for a promotion of traditional knowledge and inventiveness, a gap that the new Community Forest Act and associated community forest management plans, backed by the constitution, aims to cover. The author claims that this solution will be of more use for the local communities than previous access and benefit sharing programmes that tended to consider traditional knowledge as something static. The new programme sees that traditional knowledge is still evolving, and that its practices, including its own experiments and innovations, should be respected, protected and promoted. In the last chapters several cases are discussed, one being a report about the willingness of Nepalese farmers to pay for conservation projects and another about the economic meaning of 'plant breeders' rights'.

What about the intentions behind the book? The chapters do indeed provide studies about the various patent cultures, and some of them show that the current World Trade Organization system does not comply with national cultures (discussing the implications of this would probably require a new study). However, not all important users are discussed – for example, I miss a chapter about patent offices and officers (see Drahos² on this theme). With respect to the other ambition, to “drive developments from the public” (p. 4), I have a more negative response. Although the project has its own website and some connected weblogs, it looks as though, during the project of which this book is a result, the collaborators have lost their ambition. But maybe the ambition was not well chosen. Neither is it very helpful that the book itself is densely written.

The book offers some interesting chapters, but gives only partial insights into the patenting of living material and cultural dimensions. The chapters differ quite dramatically in local and international scope, topic, perspective and balance between descriptive and predictive tone. The editor does not provide a general discussion of the various contributions, which is a pity, because the different contributions have various implications for each other and often seem to contradict each other. In particular in the chapters of case studies from Thailand and Nepal, I miss a discussion on the wider implications of these findings for the discussion on benefit sharing and for the ethical and sociological discussion of agriculture, being such a complex, controversial and multifunctional field (see for example de Jonge, 2009³). Palombi's chapter, which discusses an alternative to current IPR and that of Oyewunmi, which presents the African Union Model Law for respecting traditional knowledge, are stimulating. I miss discussions about other alternatives to the current system, from broadening humanitarian licences, through the Health Impact Fund to the open source and open access approaches. Although the book promises to offer insights into the users of the system, many users are not or only partly discussed. In particular the chapters on agriculture are very specialized and do not discuss the current hot topics of the lack of access to innovations (upstream, middle stream and downstream) in the field of improved crops and climate change technologies.

I also miss a general discussion about the two different aims of the book, stated in the first chapter. The first organising principle of the book is the combination of the patent frameworks and the "international frameworks, including biodiversity, the environment, and human rights" (p. 4). However, the second objective looks for the "appropriateness of patent protection to specific forms of technology (...) and in how far patent protection is compatible with the facilitation of social, cultural and economic development..." What about the potential conflicts between the two? There are many nowadays, like Thomas Pogge, who argue quite strongly that the current IPR system violates global justice and only stimulates the economic development of the rich countries. Although in some chapters this problem is alluded to, it is never explicated.

My general conclusion is that some chapters of the book can function as a general introduction to the field and are recommendable, while others are destined more for specialists.

¹ Applied Philosophy, Wageningen University, The Netherlands. Michiel.Korthals@wur.nl

² Drahos, P., 2010, *The Global Governance of Knowledge: Patent Offices and Their Clients*, Cambridge: Cambridge University Press

³ Jonge, Bram de, 2009, *Plants, Genes and Justice. An Inquiry Into Fair and Equitable Benefit-sharing*, <http://edepot.wur.nl/12497>