

Intellectual Property Rights Patent Protection in TRIPS: Enforcing Intellectual Property Rights and/or Applying a Setting of Standards over WTO Members

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Abstract

A patent is the lawful right of an inventor to exclude others from making or using a specific invention. This paper discusses and analyses the legal process for obtaining a patent within international jurisdictions. In order to accept an internationally cooperative patent classification system. Developing states could strengthen institutions in many dimensions. For instance, The World Trade Organization's Contract has controller on Trade-Related Aspects of Intellectual Property Rights (TRIPS); they could also plan strategically to operate all international trade policy obligations. The TRIPS established to facilitate the application rules of international patent law. Intellectual property has improved dramatically in the amount of goods and services contained in international commerce. Some states have insufficient protection in the extension and implementation of the intellectual property rights and they cannot guarantee that they are adequately effective. The practical evidence suggests that the TRIPS Agreement has been successful in coercing WTO member states to reinforce national protection of IPR.

Keywords: *Patent law, Intellectual property rights, World Trade Organization (WTO), Cooperative Patent Classification System.*

List of Acronyms

Intellectual Property Rights	IPRs
World Trade Organization's Contract	WTO's
World Trade Organization	WTO
Trade-Related Aspects of Intellectual Property Rights	TRIPS

Traditional Knowledge	TK
General Agreement on Tariffs and Trade	GATT
Least Developed Countries	LDCs
World Intellectual Property Organization	WIPO
Least Developed Country	LDC

1. Introduction:

The aim of this article is to explain what protection exists including patents under the TRIPS system. It will specifically focus on the circumstance where a patent is required for an invention. The TRIPS patent system is regarded as significant for the protection of modern biotechnology and traditional knowledge (TK).¹ There are several kinds of intellectual property protection such as copyright, patent, trademark, etc.²

Intellectual property rights (IPRs) are linked to issues such as: biodiversity, human rights, culture food and agriculture, trade, biotechnology and economic development.³ There are several formal abilities for specific types of intellectual attempt through IPRs that are protected by particular laws.⁴ For instance, rights by approach of patents are awarded to persons for unique inventions, constructions and design.⁵ Furthermore, rights contain control of trademarks for symbols used for particular services and products.⁶ Copyright is an aspect of protection for a spacious area of work which emerges in a perceptible form.⁷

Generally, developed countries have the primary beneficiaries of a TRIPS agreement and they have been purported to be democratic.⁸ However, developing countries have resisted the establishment of an intellectual property protection system such as: developing countries reluctantly negotiated increased standards of protection for IPRs in General Agreement on Tariffs and Trade (GATT)⁹. Hence, this agreement contains some of the benefits of a protective system in developing countries, which consist of innovators, economies and entrepreneurs.¹⁰

¹ Daniel J. Gervais, 'Traditional Knowledge & Intellectual Property: A TRIPS-Compatible Approach', (2005) Michigan State Law Review

http://works.bepress.com/cgi/viewcontent.cgi?article=1002&context=daniel_gervais Accessed 20 August 2018

² Ibid

³ WIPO, 'Matters Concerning Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore', (2001) WO/GA/26/6, p1

⁴ Carlos Alberto Primo Braga, Carsten Fink, Claudia Paz Sepulveda, *Intellectual Property Rights and Economic Development* (1st edn, USA, 2000) p6

⁵ Kieff, F. Scott, 'Property Rights and Property Rules for Commercializing Inventions', (2001) Minnesota Law Review, Vol. 85, Pp. 697-754

⁶ Jerald Silverman, Mark A. Suckow, Sreekant Murthy, *The IACUC Handbook* (2nd, edn, Taylor and Francis Group, 2007) P 410

⁷ David Saunders, 'Copyright and the Legal Relations of Literature', (1988) new formations

http://www.amielandmelburn.org.uk/collections/newformations/04_125.pdf Accessed 18 August 2018

⁸ Ellen 't Hoen, 'European Parliament Committee on International Trade Hearing on TRIPS and Access to Medicines', (2005), Medecins Sans Frontieres (MSF) Access to Essential Medicines Campaign

⁹ Ibid

¹⁰ Michelle McGrath, 'The patent provisions in TRIPS: protecting reasonable remuneration for services rendered - or the latest development in Western colonialism?', (1996), 7 EIPR 398

This article will explain and explore the conceptual approaches, including patent, principles of TRIPS and patent of traditional knowledge in TRIPS. Furthermore, it will argue and analyse the dimensions of traditional knowledge, the World Intellectual Property Organization (WIPO) has decided that for purposes of legal protection and principles of the TRIPS Agreement apply equally to the enforcement of IP rights. It will also to discuss and identify the impact of patent on pharmaceuticals in developing countries.

2. Conceptual Approach:

2.1 Patent:

The patentee gains some exclusive rights above the invention when a patent is awarded.¹¹ These rights include producing the invention, selling and marketing it in the state where the patent is considered legal.¹² Intellectual Property Rights (IPR) has a patent that provides the patent holder a powerful procedure of protection, mostly above inventions of large value.¹³

According to Agreement on Trade-Related aspects of Intellectual Property (TRIPS) the criteria for patentability that the invention is included an inventive stride should be industrially applicable.¹⁴ In addition, a patent application is a request pending at a patent office for the grant of a patent for the invention described and claimed by that application.¹⁵ Other requirements that are significant to the Traditional Knowledge (TK) are concerned with providing the inventor.¹⁶ However, these kinds of requirements make a difference between the inventions. It should be new, involve an inventive step, industrially applicable and that need to be fulfilled for paintable invention.¹⁷

Typically, including in existing *sui generis* systems, this entails the protection of certain aspects of TK which are susceptible to misappropriation, rather than a direct equivalence with all aspects of TK in its customary setting. Patent law could be changed by adding *sui generis* rudiments divide protection of indigenous people's rights could be completed.¹⁸ There are three kinds of patents they are, utility model patents, invention patents and design patents. The invention patents are delivered for inventions, counting processes and products, which are novel and have improved to the level where they could

¹¹ Ibid

¹² Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), art 28

¹³ Richerzhagen Carmen, Holm-Mueller Karin, The effectiveness of access and benefit sharing in Costa Rica: Implications for national and international regimes, *Ecological Economics* 53, (2005) p 449

¹⁴ TRIPS, art 27.1

¹⁵ TRIPS, art 29.1

¹⁶ WIPO, 'Initial Report on the Technical Study on Disclosure Requirements Related to Genetic Resources and Traditional Knowledge', (2002) WIPO/GRTKF/IC/4/11, P19

¹⁷ Ibid, 2002, p. 13

¹⁸ WIPO, 'Intergovernmental Committee on Intellectual Property and Genetic Resources, Traditional Knowledge and Folklore', *Traditional Knowledge: Policy and Legal Options* (2003), WIPO/GRTKF/IC/6/4, at para. 54

be used in industry. Other patents involve utility model patents that are improvements connected to the procedure fitting to a product and construction with lesser technical needs than an invention patent. As a final point, design patents that are supplied for original designs connecting to the shape of an object.¹⁹ Arguably, The World Trade Organisation (WTO) requires having advice and facilitates the commercial trade of containing goods former to own reached unanimity on the processes to be acceptable in practice.²⁰

There are three essential criteria to accept an invention to determine the patent, it should be useful, should be obvious. Likewise, the invention is presumably affecting generations and this invention has to be benefit for all people.²¹

Patents are monopolized rights allowed for a limited time by countries via their lawful systems for inventors to prevent another from abusing the patent holder's invention.²² Patent applications include demands that leave the delicate nature of the protection. The trade abuse is somewhat in the range of the demand of a patent which has granted, and that does not need to allow the holder of the patent.²³

Patents have found to be important element in the market cost of companies that use assortment of systems to protect their IP as secrecy to companies. Patents have their significance in some aspects of trade. For example, the pharmaceutical industry is confident on IP protection; the costs of transporting a novel medication to market necessity to be recouped.²⁴ Moreover, medicines invented are easy to copy when they do not have patent protection and company's requirement to make up for the costs of investments in development and research.²⁵

2.2 Principles of TRIPS

The aims of TRIPS are the enforcement of IPRs and protection needs to contribute to the rise of technological innovation and welfare conducive to economic and social. According to Article 7 of the Agreement states that “[T]he protection and enforcement of intellectual property rights should contribute to the promotion of technological innovation and to the transfer and dissemination of technology, to the mutual advantage of producers and users of technological knowledge in a manner conducive to social and economic welfare, and to a

¹⁹ Alan Adcock, Rebecca Ordish, ‘China Intellectual Property Challenges and Solutions: An Essential Business Guide, (2008), Singapore’, JHTL http://www.suffolk.edu/documents/jhtl_book_reviews/Dervan08.pdf Accessed 25 August 2018

²⁰ Debra P. Steger, ‘Redesigning the World Trade Organization for the Twenty-first Century’, (2009), CIGI, p 42

²¹ Ian Kennedy, *The ethics of patenting DNA: a discussion paper*, (1st edn, Nuffield Council on Bioethics, 2002), p11

²² OECD, ‘Competition, Patents and Innovation’ (2007) DAF/COMP, 40 <http://www.oecd.org/daf/competition/39888509.pdf> Accessed 29 August 2018

²³ Kennedy, 2002, pp11-13

²⁴ Public Citizen, ‘New Study Expected to Significantly Overstate Drug Industry R&D Costs’, (2001) <http://www.citizen.org/pressroom/release.cfm?ID=942> Accessed 6 August 2018

²⁵ Spilker BA., ‘The drug development and approval process’, (2002), PhRMA <http://www.phrma.org/searchcures/newmeds/devapprovprocess.phtml> Accessed 8 August 2018

balance of rights and obligations."²⁶ The principles of TRIPS are preventing the abuse of IPR by right holders.²⁷ However, TRIPS need to provide better protection for holders and TK.²⁸

It should be noted that some new technologies have permitted easier copy of IPR bearing goods, facilitated the reproduction of producers in nearly all fields such as cultural products.²⁹ Intellectual Property (IP) could not be protected in application without enforcement measures.³⁰ There are three principles on based TRIPS Agreement that: establish standards for the enforcement and protection of IPR in any the signatory country. And also effectively, each country should protect the citizens of other contracting countries by allowing the rights leave in the Agreement. Then, signatories require providing the citizens of other countries with protection.³¹

2.3 Patent of Traditional Knowledge in TRIPS

TRIPS do not supply adequate protection for TK.³² Hence, it has suggested changing be completed to TRIPS patent regulations. This change is essentially concerned with requirements of patent applications and the information.³³ Also, it needs to have evidence of former knowledgeable consent; detection of the basis and system for benefit sharing must be contained in a patent application including genetic resources.³⁴

The TRIPS Agreement does not protect an amount of parts of IP topic, because there was no unanimity at the period when the agreement was discussed.³⁵ The negotiators of the TRIPS Agreement had not considered which difficulties of obstacles to commerce existed in those areas.³⁶ Some of those areas are of special benefit to developing countries, like traditional knowledge, handicrafts and utility models.³⁷ However, if the TRIPS agreement becomes patent on traditional knowledge than the majority of the developed countries would lose a high percentage of their patented traditional knowledge.³⁸

²⁶ TRIPS, art 7

²⁷ Ibid, art 8

²⁸ Patricia Moore, Wanhua Yang, *Trade, Biodiversity, and Sustainable Development: Proceedings of the Training Workshop*, (1st edn, IISD and IUSN, 2004) p63

²⁹ Ian Hargreaves, 'Digital Opportunity: A Review of Intellectual Property and Growth', (2011) <http://www.ipo.gov.uk/ipreview-finalreport.pdf> Accessed 21 August 2018

³⁰ Ibid

³¹ Keith Eugene Maskus, *Intellectual Property Rights in the Global Economy* (1st edn, Institute International Economics, USA, 2000) p145

³² Ibid

³³ Biswajit Dhar, R.V. Anuradha, Access, Benefit-Sharing and Intellectual Property Rights, (2005) *The Journal of World Intellectual Property*, 7, 5, p 597–639

³⁴ WTO, 'Council for Trade-Related Aspects of Intellectual Property Rights, The Relationship Between the TRIPs Agreement and the Convention on Biological Diversity', (2006) IP/C/W/368/Rev.1, p. 33

³⁵ Ibid

³⁶ WTO, The TRIPS Agreement, (1995) MAIP http://www.wto.org/english/tratop_e/trips_e/intel2_e.htm Accessed 22 August 2018

³⁷ WIPO, 'Advice on Flexibilities under the TRIPS Agreement'

http://www.wipo.int/ip-development/en/legislative_assistance/advice_trips.html Accessed 22 August 2018

³⁸ Ibid

3. International Patent Protection in TRIPS

The TRIPS agreement has established a standard of protection that member countries have obliged to perform in their state regulation.³⁹ The patent system supplies the powerful form of IPR that is found in numerous states, particularly in the developed world countries.⁴⁰ Some companies have a number of persons involved in conducting research and development, and their acceptance to opinions inventing as a process. This process is an invention relationship to the company, which is not pertinent to the individual inventors. Hence, the collective nature of TK should not to be a barrier to patent protection.⁴¹ IP protection is far from a virtuously state issue.⁴² This presumably as according to Suthersanen (1999) the benefits might involve in connection with extracting informational resources which influence not only state matters by national governments, but also a trans-border effect distribution, manufacturing and consumer directions in other countries.⁴³

The TRIPS Agreement permitted governments to allow generic drug manufacturers to accept and the whole the task of getting a controlling endorsement from the public health powers for their generic type before the end of the patent period.⁴⁴ The argument ruled that TRIPS permits generic drug manufacturers that does not need to allow the patent holder, to products, import and use numbers needed to conduct tests and to get control over endorsement before the end of a patent. This permits generic drugs to be located on the market better and more quickly than when this work to wait the patent expired.⁴⁵

3.1 Protecting the Patent of Traditional Knowledge

The current protection of TK is improving in some developing countries, especially in terms of genetic resources.⁴⁶ However, patents have been established mostly insufficient in the protection of original people's rights over their TK.⁴⁷ It is necessary to encourage as would all model that joins the customary laws of original peoples. Hence, according to Dutfield, (2001) there are several parties with an importance in TK and medical needs to try to work collected as partners to limit resources.⁴⁸

³⁹ TRIPS, art 1

⁴⁰ Integrating Intellectual Property Rights and Development Policy, Report of the Commission on Intellectual Property Rights, (2002), London, p 63

http://www.iprcommission.org/papers/pdfs/final_report/ciprcoverintrofina.pdf Accessed 18 August 2018

⁴¹ Graham Dutfield, 'TRIPS-Related Aspects of Traditional Knowledge', (2001), Case Western Reserve Journal of International Law, 33:2, pp 254 - 255

⁴² Ibid

⁴³ Uma Suthersanen, 'Legal and Economic Considerations of Bioprospecting', (1999) IPASE, 3, pp 72-79

⁴⁴ Ibid

⁴⁵ Marko Berglund, 'The Protection of Traditional Knowledge related to Genetic Resources', (2005) The Case for a modified patent application procedure, SCRIPT-ed, 2, 2

⁴⁶ United Nations Conference on Trade and Development, 'Protecting and promoting traditional knowledge: systems, national experiences and international dimensions', (2004), p200

⁴⁷ Ibid

⁴⁸ Dutfield, (2001), p 240

Developing countries have some problems with patents.⁴⁹ They are problems with income such as patent licence prices; they are used in medical procedures, pharmaceutical drug and agricultural technique in a developing country for the good of any people. Other problems encompass the influence of stricter patent rules on the long-term development of Least Developed Countries (LDCs') original scientific. The new TRIPs provision is problematic in developed countries. The LDC is provided to patent protection for materials, discoveries and methods for the medical dealing of animals and humans.⁵⁰

Patenting is one approach for industry and inventors to protect their inventions. Moreover, TK has several types of knowledge as agricultural, art, songs, technology, dance literature and medical knowledge.⁵¹ It is concerned with the use of plants and animals, which is an important traditional agricultural and medicinal knowledge of plants and animals.⁵² Basically, the developed countries started using it in the knowledge from pharmaceutical and agricultural industries.⁵³

3.2 Enforcing Intellectual Property Rights

All patent enforcements need to contain an explanation of the invention, so that an individual who is skilled in the art might copy the invention.⁵⁴ When an inventor is allowed to monopolise his/her invention, after the time of individuality runs the probable for public to make practice or make use of the invention.⁵⁵ In some cases, there would need to disclose the basis of the genetic material in order to perform the invention, numerous states want this to accept the disclosure requirement.⁵⁶ Some states need that patent applicants gave a sample of the genetic material to be accessed by the public. However, there are no demands regarding disclosure of origin in TRIPs.⁵⁷

The inventor needs to identify the application, product and research. This is a significant foundation for patent protection, such as the patent rights originated via the rule of invention.⁵⁸ Enforcing the protection of TK in a global context, connecting to the use of

⁴⁹ *ibid*

⁵⁰ Keith E Maskus, 'Intellectual Property Rights and Economic Development', (2000), 32 Case W. Res. J. Int'l L. 471

⁵¹ Integrating Intellectual Property Rights and Development Policy, Report of the Commission on Intellectual Property Rights, (2002), London, p 63

http://www.iprcommission.org/papers/pdfs/final_report/ciprcoverintofinal.pdf Accessed 18 Aug 2018

⁵² Darrell A. Posey, Graham Dutfield, 'Beyond Intellectual Property: Toward Traditional Resource Rights for Indigenous Peoples and Local Communities', (1996), International Development Research Centre, p12

⁵³ Dutfield, 2001, p 243

⁵⁴ TRIPs, art 29.1

⁵⁵ Nuno Pires de Carvalho, *The TRIPs Regime of Antitrust and Undisclosed Information* (1st edn, Wolters Kluwer, 2008)p 34

⁵⁶ *Ibid*

⁵⁷ Joshua D. Sarnof, 'Analysis of Options for Implementing Disclosure of Origin Requirements in Intellectual Property Applications', (2005), American University Washington College of Law, pp12-17

⁵⁸ Intellectual Property Office is an operating name of the Patent Office, Examination Guidelines for Patent Applications relating to Biotechnological Inventions in the Intellectual Property Office (2013)

<http://www.ipo.gov.uk/biotech.pdf> Accessed 5 August 2018

patents to protect genetic resources (Asahi Kasei Kogyo KK's Application).⁵⁹ Bengwayan believes that there are no potential mechanisms to domination foreigners' arrival to indigenous bio-resources and to determine the same divide sharing of benefits.⁶⁰ World Intellectual Property Organisation (WIPO) has a completely effective Mediation Centre and Arbitration, this organ merely has incomplete competence.⁶¹

Numerous industrialized countries led by the US which have pushed for an enforceable and compulsory regime of global intellectual property protection.⁶² The resultant TRIPs Agreement and connected WTO dispute equalization mechanism supplies the best opportunity for enforcing IPRs globally.⁶³

3.3 Applying a Setting of Standards over WTO Members

Many countries are members of the WTO with the TRIPs. A TRIP is made to contain requests of previous knowledgeable agreement and benefit sharing between developing countries and indigenous communities may benefit.⁶⁴ It has been argued that several states do not have genetic resources and decline to legislate for patent. Patents need to be available for all inventions, if processes and products, in any arenas of technology, providing that they are capable of industrial application.⁶⁵

Developing countries were opposed to increase patent protection by setting a least patent lifetime.⁶⁶ The WIPO has recognized four groups of lawful measures in the agreement considered as it brings to the fore the challenge to WTO member states, such as the method of implementing TRIPS obligations, the mechanisms of enforcement, and the substantive standards of protection and to those areas which not covered by the agreement.⁶⁷ In general, for production standards in the WTO are two agreements dealing with food safety and animal and plant health.⁶⁸

Many countries in the world are WTO members and some are on the waiting list to be enrolled as members.⁶⁹ The TRIPS agreement has established standard obligations of

⁵⁹ [1991] R.P.C 485

⁶⁰ Michael A. Bengwayan, 'Intellectual and Cultural Property Rights of Indigenous and Tribal Peoples in Asia', (2003), Minority Rights Group International, p14

⁶¹ Ibid

⁶² Johanna Gibson, 'Traditional Knowledge and the International Context for Protection', (2004) 1:1 SCRIPTed, p11

⁶³ Anthony B. Blakeney, 'Trade Related Aspects of Intellectual Property Rights: A Concise Guide to the TRIPs Agreement', (1996), pp123-132

⁶⁴ Christophe Bellmann, Graham Dutfield, Ricardo Meléndez-Ortiz, *Trading in Knowledge: Development Perspectives on TRIPS, Trade, and Sustainability* (1st edn, ICTSD, London, 2003)p 209

⁶⁵ Ibid

⁶⁶ Walter G. Park, 'International patent protection: 1960–2005', (2008), Department of Economics, American University, 37, 4

⁶⁷ WIPO, 'Advice on Flexibilities under the TRIPS Agreement'

http://www.wipo.int/ip-development/en/legislative_assistance/advice_trips.html Accessed 22 August 2018

⁶⁸ WTO, Understanding the WTO: the agreements, standards and safety

http://www.wto.org/english/thewto_e/whatis_e/tif_e/agrm4_e.htm Accessed 20 August 2018

⁶⁹ Mitsou Matsushira, Thomas J. Schoenbaum and Perros C. Mavroidis, *the world trade organization: Law, Practice and Policy* (2nd edn, OUP, 2006) p 11

protection in their state legislatures. The patent system in the TK is easier than to establish the procedure of protection.⁷⁰

4. The Impact of Patent on Pharmaceuticals in Developing country

The new international procedures for pharmaceutical patenting are impacting the arrival of medicines in the developing world.⁷¹ Many people in the developing world are unable to gain access to their medication they need to alleviate suffering and treat their diseases. Hence, the high cost of medicine and the high drug prices and patent protection has affected attention on the connection together.⁷²

Developing countries have not experienced paying for new fundamental medicines which has elevated concerns about the impacts of the WTO Agreement on TRA of TRIPS, that orders universal least standards for the protection of IP.⁷³

The TRIPS Agreement has been harmonized patent conditions for a least of 20 years. All dimensions of technology mandated the allowing of patents, this necessity led to excluding food and medicines from patenting.⁷⁴ Doha Declaration was unresolved how to guarantee which products constructed in a compulsory license, being transferred to states without national production capacity. However, the Doha Declaration has a significant effect on international and national policies.⁷⁵ Moreover, In India, the patent law has served or affected as the pharmacy of the developing world.⁷⁶ The Indian generic medicines part will change its trade direction away from providing new medicines to the developing world.⁷⁷

Nowadays, the pharmaceutical innovation system is mostly relies on patent protection for priority-setting and financing.⁷⁸ The TRIPS agreement also enforces developing countries to range patent protection to pharmaceutical inventions.⁷⁹ It obliges certain procedural settings that member countries should follow before issuing a compulsory license.⁸⁰ They need to protect commercial, and to use submitted data by drug

⁷⁰ Integrating Intellectual Property Rights and Development Policy, Report of the Commission on Intellectual Property Rights, (2002), London, pp 60-67

http://www.iprcommission.org/papers/pdfs/final_report/ciprcoverintrofinal.pdf Accessed 18 August 2018

⁷¹ Graham Stuart and Matthew Higgins, 'The Impact of Patenting on New Product Introductions in the Pharmaceutical Industry', (2007) MPRA, 4574, p5-12

⁷² Susan Cleary, Don Ross, 'The 1998-2001 legal interaction between the South African government and the international pharmaceutical industry: a game-theoretic analysis',

<http://www.commerce.uct.ac.za/economics/staff/dross/2010/aids.htm> Accessed 11 August 2018

⁷³ Dutfield, 2001, pp 257

⁷⁴ WHO, 'WTO and the TRIPS Agreement' http://www.who.int/medicines/areas/policy/wto_trips/en/ Accessed 9 August 2018

⁷⁵ Carlos M. Correa, 'Implications of the Doha Declaration on the Trips Agreement and Public Health', (2002), University of Buenos Aires, p50

⁷⁶ WTO, 'India Patent Protection for Pharmaceutical and Agriculture, Chemical Products', (1998) WT/DS79/R http://www.wto.org/english/tratop_e/dispu_e/79r.pdf Accessed 6 August 2018

⁷⁷ Ibid

⁷⁸ Strengthening Pharmaceutical Innovation in Africa: Designing strategies for national pharmaceutical innovation: choices for decision makers and countries (2007-2009) <http://unido.org.cn> Accessed 9 August 2018

⁷⁹ TRIPS art 27.1

⁸⁰ Ibid, art 31

companies, register new drugs with state health controllers.⁸¹ In the last decade, the Doha Declaration was an important development in health and trade. It tries to change regarding medicines and patents, and is changing processes purposed at reformulating IP protection as a public policy for the profit of society as a whole.⁸²

Some times between developing countries and WTO has disputed about patented medicines the obligation from TRIPS Agreement. This Agreement covers some parts that are related to health and the problem of patent protection for pharmaceutical products, mainly critical.⁸³ Hence, this field is significant to discovery a suitable balance between harmonizing public health aims, provided that encouragements for future inventions of new drugs and to make sure affordable arrival to existing drugs.⁸⁴ It is particularly significant from a public health and social points of view that new medicines and vaccines prevent and treat illnesses are produced, and that the encouragements providing by the patent system efficiently improve this and the social cost of the drugs so produced.⁸⁵

The global of organization of WHO estimated that now one third of the world's people lack accesses to basic and necessary drugs. Moreover, people in poor states in Asia and Africa do not have admittance even to the most basic necessary drugs. There are four critical elements arrival to essential vaccines depends and medicines: affordable prices, sustainable financing, rational selection and use and reliable supply systems.⁸⁶ It is worth mentioning that there should be attempts to keep drug prices affordable for poor people in the developing world. For example, in Africa over % 50 of people do not have food or medicine to facilitate their basic needs.⁸⁷

The TRIPS Agreement is related to health contained in the areas of intellectual property, including patent, services mark, trademark that is related to undisclosed information, combating counterfeit drugs, test data and trade secrets.⁸⁸

The main complaint about international patent law is not necessarily to keep balance between the lack of obligation and the pharmaceutical companies to provide access to drugs.⁸⁹ In developing countries the patent for protection of pharmaceuticals remains a complex issue in relation to providing patents.⁹⁰ However, developed countries to confirm

⁸¹ TRIPS art 39.3

⁸² Daniel Gervais, TRIPS, 'Doha and Traditional Knowledge', (2003) *The Journal of World Intellectual Property*, V 6

⁸³ WHO, *Intellectual property and access to medicines: papers and perspectives*, (2010) India, p18

⁸⁴ WHO, 2010, PP-33-36

⁸⁵ Thomas Pogge, Matthew Rimmer, Kim Rubenstein, *Incentives for Global Public Health: Patent Law and Access to Essential Medicines* (Connecting International Law with Public Law) (1st edn, Cambridge University Press, 2010), p88

⁸⁶ Ibid

⁸⁷ Angela J. Anderson, 'Global Pharmaceutical Patent Law in Developing Countries- Amending TRIPS to Promote Access for All', (2006), *University of Tulsa College of Law*, pp12-29

⁸⁸ Ibid

⁸⁹ Ellen 't Hoen, 'European Parliament Committee on International Trade Hearing on TRIPS and Access to Medicines', (2005), *Medecins Sans Frontieres (MSF) Access to Essential Medicines Campaign*

⁹⁰ Wesley A. Cann, Jr., 'On the Relationship between Intellectual Property Rights and the Need of Less-Developed Countries for Access to Pharmaceuticals: Creating a Legal Duty to Supply under a Theory of Progressive Global Constitutionalism', (2004), *25 U. PA. J. INT'L ECON. L.* 755, 808-826

the significance of the international acknowledgment of patents in an international commerce environment is that patent protection promotes involvement in the medicinal industry by providing financial encouragements.⁹¹ Developed countries explain or justify by providing patents medicinal companies will develop and research more drugs which will progress the general international public health.⁹²

5. Conclusion and Recommendation

When medicines are products needed to the publishing of the provisions of the Doha Declaration.⁹³ The WTO needs extend for LDCs to accept or comply with commitments in the TRIPS Agreement to supply pharmaceutical product patents.⁹⁴ The global community has included generic pharmaceutical companies and, patent-holding that needed to support patent pools for the progression of the management of IP for innovation.⁹⁵

The TRIPS agreement has the most significant provisions concerning patent protection. These are forced to make patents for any inventions processes and products.⁹⁶ There are three exceptions in the agreement countries which have prevented patentable subject. Firstly, whether inventions, which are contrary to morality and *ordre public*, such as, those inventions which are dangerous to animal, health, human and plant life.⁹⁷ Secondly, whether, the inventions are effected for diagnostic, surgical and therapeutic approaches for the dealing of animals and humans.⁹⁸ Finally, whether the production of animals or plant unlike methods for microbiological and non-biological processes.⁹⁹

The requirements under IPR were unsuitable for trade, especially in dealing with goods. It is recommended that it is better to deal with under the present international conventions.¹⁰⁰ Apparently, the US was awarded before on the foundation of 'first to invent' after that gives 'first to file'. Under 'first to invent' the system is complicated and inappropriate for other industrialised countries. Hence, US nationals have benefit in claiming monopoly rights.¹⁰¹

⁹¹ Sahar Asiz, 'Linking Intellectual Property Rights in Developing Countries with Research and Development, Technology Transfer, and Foreign Direct Investment Policy: A Case Study of Egypt's Pharmaceutical Industry', (2003), 10ILSA J. INT'L & COMP. L. 1, 5

⁹² Sahar Asiz, 'Linking Intellectual Property Rights in Developing Countries with Research and Development, Technology Transfer, and Foreign Direct Investment Policy: A Case Study of Egypt's Pharmaceutical Industry', (2003), 10 ILSA J. INT'L & COMP. L. 1, 5

⁹³ Cann, 2004, p762

⁹⁴ Ellen 't Hoen, 'European Parliament Committee on International Trade Hearing on TRIPS and Access to Medicines', (2005), Medecins Sans Frontieres (MSF) Access to Essential Medicines Campaign

⁹⁵ Ibid

⁹⁶ TRIPS, art 27.1

⁹⁷ TRIPS, art 27.2

⁹⁸ TRIPS, art 27.3(a)

⁹⁹ TRIPS, art 27.3 (b)

¹⁰⁰ Ruth L.Gana, 'Prospects for Developing Countries under the TRIPS Agreement', (1996), 29 Vand. J. Transnat'l L. 735

¹⁰¹ Ibid

The inventions are products of pharmaceutical; customers could not have numerous alternatives and cannot buy the medicine. They have not choice to buy medicine which can save life because of a company that does not share profits with TK holders.¹⁰² Companies should be having guidelines in cooperation with people in developing states. However, the pharmaceuticals are not probable to rely on the power of consumers and the market forces because the medicines used on TK.

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حقوق الملكية الفكرية حماية براءة الاختراع في اتفاق تريبس:

إنفاذ حقوق الملكية الفكرية و / أو تطبيق وضع معايير على أعضاء منظمة التجارة العالمية
الخلاصة :

البراءة هي حق قانوني للمخترع لاستبعاد الآخرين من صنع اختراع معين أو استخدامه. وهذا البحث سيناقش ويحلل العملية القانونية للحصول على براءة اختراع في الولايات القضائية الرئيسية في العالم. تدرس هذه المقالة إمكانية استخدام المؤسسات الدولية لتزويد القواعد بآليات لربط الدول القوية بقبول نظام التصنيف التعاوني للبراءات على المستوى الدولي. يمكن للدول النامية تعزيز المؤسسات في كثير من الأبعاد. فعلى سبيل المثال ، يكون لعقد منظمة التجارة العالمية قوة على جوانب حقوق الملكية الفكرية المتصلة بالتجارة (تريبس) ؛ يمكنهم أيضا التخطيط استراتيجيا لتشغيل جميع التزامات السياسة التجارية الدولية. أنشئ اتفاق تريبس لتسهيل تطبيق قواعد قانون البراءات الدولي. تحسنت الملكية الفكرية بشكل كبير في كمية السلع والخدمات التي تحتوي عليها التجارة الدولية. بعض الدول لا تتمتع بحماية كافية في توسيع نطاق حقوق الملكية الفكرية وتطبيقها ، ولا يمكنها ضمان أن تكون فعالة بشكل كاف. ثم تشير الأدلة العملية إلى أن اتفاق تريبس نجح في إكراه الدول الأعضاء في منظمة التجارة العالمية على تعزيز الحماية الوطنية لحقوق الملكية الفكرية.





پوخته :

داهینان نامه مافیکی یاسایی داهینه ره بۆ دهرکردنی نهوانی تر له دروستکردن و به کارهینانی داهینانیکی تاییه ت، نه م توئینه وهیه نامانجی گفتوگۆکردن و شیکردنه وهی پرۆسه یه کی یاساییه بۆ به دهستهینانی مافی داهینه ره له دادگا سه ره کیه کانی جیهان. نه م توئینه وهیه ده کۆئیتته وه له نه گهری به کارهینانی په یمانگا نیوده وه ته تیهه کان بۆ به کارهینانی یاسا و میکانیزمییه کان بۆ به ستنه وه یان به ولاته به هیزه کان بۆ قبوئکردنی سیسته می دابه شکاری داهینانی نیوده وه ته تی. ولاته پیشکه وتوووه کان ده توانن نه و دامه زراوانه به هیزه بکه ن له زۆر بواری جیاوازا بۆ نموونه نه گرییه ستنه کانی ریکخراوی بازرگانی نیوده وه ته تی که ده سه لاتی هیه به سه ر مافی خاوه نداریتی لایه نه کانی بازرگانی تاییه ت، ههروه ها ده توانیت پلانی ستراتیزی دابریژیت بۆ په یه وه کردنی پیداویستییه کانی سیاسه تی بازرگانی نیوده وه ته تی وهک (تریپس) که دامه زراوه بۆ ناسانکاری جیهه جیکردنی ریساکانی یاسایی داهینانی نیوده وه ته تی، مافی خاوه نداریتی به شیوه یه کی کاریگه ر پیشکه وتوووه نه ریژه ی شتومه ک و خزمه تگوزارییه کان له سه ر ناستی بازرگانی نیوده وه ته تی، نه هه ندیک ولاتا مافی پاراستن وهک پیویست دابین نه کراوه، نه به رده وای جیهه جیکردنی مافه کانی خاوه نداریتی و گرینتی پیویستییان پیشکه ش نه کردوووه. به نگه ی پیویست هیه که پیشنیاری نه وه ده کات که ریکه وتنی (تریپس) سه رکه وتوووه بووه له فشار خستنه سه ر ولاتانی نه ندای ریکخراوی بازرگانی نیوده وه ته تی بۆ به هیزه کردنی پاراستنی مافی خاوه نداریتی تاییه ت.