Research Paper Management

Intellectual Property Rights: Opportunities and Challenges

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ABSTRACT

Intellectual property Rights attempt to strike a balanced between the long-term social objectives of providing incentives for future inventions and creation, and the short-term objectives of allowing people to use existing invention and creation. Most of the attempt to make balance works accordingly. Invention and creativity in them should provide social and technological benefits. Intellectual property protection encourages investors and creators because they can expect to earn. World Trade organization and Trade related intellectual property right ship both are interdependable, Due to the Globalization, there has been a lot of challenges came. The resulting Agreement on Trade-Related Intellectual Property Rights (TRIPS) is one of three pillar agreements, setting out the legal framework in which the World Trade Organization (WTO) has operated since the end of the Uruguay Round. There are some unexpected challenges and opportunities come in this way. In this paper all those threats and opportunities have been try to cover.

KEYWORDS IPR, WTO,Trips,

1. Introduction:

The peace of mind is not to encounter the problem out the solution and this particular research is only the first step in this regard. The effect of patents on the prices of, and access to, medicines has become one of the major controversies of our times. Attention on this issue has intensified since the coming into force of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) in the World Trade Organization (WTO) in 1995.

Formulation of appropriate national laws and policies is critical because the implementation of the TRIPS Agreement is undertaken at the national level. The Agreement requires WTO Member governments to enact (or amend) national laws conforming to the minimum standards of intellectual property protection required by the provisions of the Agreement. However, the TRIPS Agreement is the result of an intensely negotiated process. The Agreement therefore reflects the uneasy compromise that was struck between those who sought high levels of intellectual property rights (IPRs) protection, on the one hand, and those who sought to ensure that a degree of flexibility or policy autonomy was retained in implementing the minimum standards of protection required, on the other. The provisions of the Agreement, in reflecting this compromise, incorporate a degree of flexibility in its interpretation and implementation.

They increasing pressure and challenges before small scale pharmaceutical industries can be minimized and managed with conditioning and analyzing about patent, copyrights, trademarks and many other related aspects. Various parameters have been considered to give a specific direction to this particular research and to give unique shape to confine this research. To standardize and control this research, Researcher has gone through the various similar research conducted on the similar topics earlier. It was very difficult to meet the objective of this research but their are hypothesis formulated after taking tare of the objectives of the research. For developing new medicines some mechanisms will have to be found which promote the innovation and development of new products and which, at the same time, make sure that patent have a fast access to the results of this research.

Objective of the study:

World Trade Organization has accepted and created a number of challenges and opportunities and TRIPS is not an exception. 21'st century is full of numerous advantages and treat are being imposed upon small-scale industry especially upon Indian small-scale pharmaceutical industries. It is not only necessary, but also likely to be mandatory to explore the realities that Indian small-scale pharmaceutical industry is facing. This particular research is conducted after consideration of opportunities and challenges before small-scale pharmaceutical industries.

In the way of world intellectual property organization (WIPO) newly patented products was invented after 2005, or it has never been manufactured in generic form, then India would have to issue a compulsory licenses for generic production to takes place. Compulsory licenses are not without this problem. They may be difficult and complicated to impose and require a great deal of government time and departmental cooperation to draw up. Be a part of bureaucratic nation, so it seems unlikely that compulsory licenses will be issue smoothly without a long struggle with red tape. Compulsory licenses also have political implications, as companies and countries that hold the original patent to drugs are unlikely to want to invest in a nation that is copying their products. For the IPR a challenge following objectives has been proposed.

1) To find out the future challenges of intellectual property rights.
2) To find out the opportunities of Intellectual property rights in near future for the industries.
3) To find out the role of WTO for trade of developing countries.

WTO and TRIPS Way of fair negotiation:

The WTO's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), negotiated in the 1986-94 Uruguay Round, introduced intellectual property rules into the multilateral trading system for the first time. Need of TRIPS agreement come in figure after the formations of WTO? Knowledge is an increasingly important part of trade? Most of the value of new medicines and other high technology products lies in the amount of invention, innovation, research, design and testing involved. Creators can be given the right to prevent others from using their inventions, designs or other creations — and to use that right to negotiate payment in return for others using them. These are "intellectual property rights". As of January 2000, all developed and developing countries who are members of the World Trade Organization (WTO) were obligated to have domestic laws and enforcement mechanisms that comply with the international standards set forth under the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs). TRIPS, which is the most comprehensive multilateral agreement on intellectual property, includes a set of provisions dealing with domestic procedures and remedies for the enforcement of intellectual property rights. TRIPS lays down certain general principles applicable to all intellectual property rights enforcement procedures, and contains provisions on civil and administrative procedures and remedies, provisional measures, special requirements related to border measures and criminal procedures.

Areas covered under TRIPS:
- Copyright and related rights
- Trademarks including service marks;
- Geographical indications including appellations of origin;
- Industrial designs;
- Patents including the protection of new varieties of plants;
- The layout-designs of integrated circuits;
- Undisclosed information, including trade secrets and test data

The agreement covers five broad issues:
- How basic principles of the trading system and other international intellectual property agreements should be applied.
- How to give adequate protection to intellectual property rights?
- How countries should enforce those rights adequately in their own Territories?
- How to settle disputes on intellectual property between members of the WTO?
- Special transitional arrangements during the period when the new system is being introduced.

The TRIPS Agreement obliges WTO members to make certain notifications to the TRIPS Council. These notifications allow members to review each other's legislation, an important part of the council's work. They also promote the transparency of members' policies on intellectual property protection. In addition, members wishing to avail themselves of certain options allowed under the Agreement have to notify the Council. In order to implement these notification obligations, the Council has adopted procedures and guidelines relating to them.

TRIPS Agreement says developed country members must provide, on request and on mutually agreed terms and conditions, technical and financial cooperation in favor of developing and least-developed country members.

To ensure access to relevant information in this regard, developed country members have agreed to present annually to the TRIPS Council a description of their technical cooperation activities in the area of intellectual property. One of the fundamental characteristics of the TRIPS Agreement is that it makes protection of intellectual property rights an integral part of the multilateral trading system, as embodied in the WTO.

Pharmaceutical Patent and TRIPS: Long way to go
TRIPS attempt to strike a balanced between the long-term social objectives of providing incentives for future inventions and creation, and the short-term objectives of allowing people to use existing invention and creation. Most of the attempt to make balance works accordingly. Invention and creativity in them should provide social and technological benefits. Intellectual property protection encourages investors and creators because they can expect to earn. Many developing countries can not afford to have anything but the most effective Implementation of trips, safeguard and DOHA to address their pressing public health problems, and technical assistance is one important way to make this happen. Unfortunately, some countries have been receiving inappropriate and dangerous technical assistance from multilateral or bilateral sources, reflecting more the interest of the provider than recipient. One prominent example in the world intellectual property organization (WIPO), which is the UN agency that has an agreement with the WTO to provide legal and technical assistance. TRIPS attempt to strike a balance between the long-term social objectives o providing incentives for the future inventions and creations, and the short-term objectives to allowing people to use existing inventions and creation. The agreement covers wide range of subjects, from copyright to and trademarks, to integrated circuit design and trade secrets. Patent of pharmaceuticals and other products are only part of the agreement.

As we know inventions and creativity in them should provide social and technological benefits. Intellectual property protection encourages inventions and creators because they can expect to earn more future benefits from their creativity. The encourage new inventions such as new drugs, whose development costs can some times be extremely high, so private right also being social benefits. The way intellectual property is protected can also serve social goal. Patent inventions have to be disclosed. Allowing other to study invention, even while its patent is being protected. This helps technology dissemination and transfer. After a period of protection expire, which mean that the invention become available for other uses. All of this avoided reinventing the wheel. Patent protection will be of 20-year duration. It will give an inventor the right for the above period to stop others from making, using or selling an invention without the permission of the inventor. TRIPS provides for patent protection for all inventions provided that they are new (not a prior art), involve an inventive step (are of economic significance or technologically superior or both and that makes the inventions not obvious to a person skilled in the art), and are capable of industrial application. The latter is how India interprets the new patentability conditions laid down in the WTO. The bone of contention in TRIPS seems to be the open ended definition of patentability. This means countries can lower the standards for new drug formulations using the open definition given in the WTO (as in India). One thing is for sure: in passing the Patent Ordinance, the Indian parliament is recognizing that India can take a leading role in global pharmaceutical R&D and should adhere to international agreements. Higher forms of property rights, appropriate regulations, strengthening of generic exports and promoting R&D are a few suggestions to make our industry competitive in the days to come. India should use more of the inbuilt flexibilities available in the TRIPS as one of the many ways to tackle the egregious impact of TRIPS on the welfare of people, rather than adopting alternative regimes (bilateralism) which call for higher form of protection in the form of data protection. India should go for higher forms of patentability for the new drugs though to reduce the menace of patenting incrementally modified medicines. Thus the reason to go long in various aspects cause, the systems overriding purpose is to help trade flow as freely as possible –so long.

Impact of DOHA on TRIPS regulations: A challenge for WTO
The ministers came to an agreement to launch tariff-cutting negotiations on all non-agricultural products. The aim is "to reduce, or as appropriate eliminate tariffs, including the reduction or elimination of tariff peaks, high tariffs, and tariff escalation, as well as non-tariff barriers, in particular on products of export interest to developing countries". These negotiations shall take into account the special needs and interests of developing and least-developed countries, and recognize that these countries do not need to match or reciprocate in full tariff-reduction commitments by other participants.

Another example is "tariff escalation", in which higher import duties were applied on semi-processed products than on raw materials and higher still on finished products. These practices protect domestic processing industries and discourage the development of processing activities in the countries where raw materials originate. In the declaration, ministers have stressed that it is important to implement and interpret the TRIPS Agreement in a way that supports public health — by promoting both access to existing medicines and the creation of new medicines. They refer to their separate declaration on this subject. This special declaration on TRIPS and public health is designed to respond concerns about the possible implications of the TRIPS Agreement for access to medicines.

It emphasizes that the TRIPS Agreement does not and should not prevent member governments from acting to protect public health. It affirms governments' right to use the agreement's flexibilities in order to avoid any reticence the governments may feel. The separate declaration clarifies some of the forms of flexibility available, in particular compulsory licensing and parallel importing.

The ministers agreed on negotiations concerning the Anti-Dumping (GATT Article 6) and Subsidies agreements. The aim is to clarify and improve disciplines while preserving the basic, concepts, principles of these agreements, and taking into account the needs of developing and least-developed participants.

In overlapping negotiating phases, participants first indicated which provisions of these two agreements they think should be the subject of clarification and improvement in the next phase of negotiations. The ministers mention specifically fisheries subsidies as one sector important to developing countries and where participants should aim to clarify and improve WTO disciplines.

Conclusion: The World Trade Organization's Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) set global minimum standards for the protection of intellectual property, substantially increasing and expanding intellectual-property rights, and generated clear gains for the pharmaceutical industry and the developed world. The question of whether TRIPS generates gains for developing countries, in the form of increased exports, is addressed in this paper through consideration of the importance of pharmaceuticals in health-care trade, outlining the essential requirements, implications, and issues related to TRIPS, and TRIPS-plus, in which increased restrictions are imposed as part of bilateral free-trade agreements. A TRIP has not generated substantial gains for developing countries, but has further increased pharmaceutical trade in developed countries. The unequal trade between developed and developing countries (ie, exporting and importing high-value patented drugs, respectively) raises the issue of access to medicines, which is exacerbated by TRIPS-plus provisions, although many countries have not even enacted provision for TRIPS flexibilities. Therefore this paper focuses on options that are available to the health community for negotiation to their advantage under TRIPS, In this regard, developing countries must be allowed to exercise the options already provided for in TRIPS and other international agreements, free from pressure. National legislation putting into effect the compulsory licensing, parallel importing and other options in a manner most conducive for the individual health, economic and development needs of a country should be considered of primary importance.

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