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MASTER'S THESIS

INTERNATIONAL PROTECTION OF INTELLECTUAL PROPERTY

WAAD ABID ARIF

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2016

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ABSTRACT

From review of this study, the Stockholm Conference had two main objectives. One was to set-up the structural and administrative rectification of the Paris and Berne Unions as well as of the then existing five special agreements under the Paris Union. The second main objective was the revision of a number of important requirements of the Berne AND Paris Convention. All this was attained through the conclusion of a new treaty, namely the one establishing WIPO. This study aims at studying various forms of international responsibilities in the protection of intellectual properties of various member countries of the world. In addition, it understands various forms of intellectual properties that could be protected. This could include; patent, copyright, structural design, and so on. This work clustered itself with the protection of intellectual property of innovators. By using the Conventions and treaties along with the relevant literature of scholars, these protections were clearly stated with its exceptions. The success of this work rests on the understanding of the evolution of agreements that bind States and the author was inspired through this to execute the aims of this research.

Keyword: international responsibilities in the protection of intellectual properties of the world focus on all forms of intellectual properties that could be protected.

ÖZ

Bu çalışmanın İnceleme, ben Stockholm Konferansı'nın iki ana amacı vardı. Paris ve Bern Birliği yapısal ve idari düzeltme ilk nesil yanı sıra beş özel anlaşmalar Paris Birliği ışığında o zaman mevcut. İkinci temel amacı Bern ve Paris Sözleşmesi gereksinimleri önemli bir dizi gözden geçirmektir. Bütün bu WIPO kurulması, yeni bir antlaşma yoluyla elde edilmiştir. Bu çalışma, dünyada çeşitli Üye ülkelerin fikri mülkiyet haklarının korunması alanında uluslararası sorumlulukları çeşitli şekillerde incelemeyi amaçlamaktadır. Buna ek olarak, bu korunabilir fikri mülkiyet çeşitli formları anlaşılmaktadır. Bu içerebilir; böylece patent, telif hakları ve yapısal tasarım ve. Bu çalışma yaratıcıları koruma fikri mülkiyet ile kendini birleştirir. bilim adamlarının literatür ve istisnalar var açıkça belirtilen bu koruma sözleşmeler ve anlaşmalar kullanma. Bu çalışmanın başarısı ulusları bağlayan ve bu araştırmanın amaçlarını uygulamak için bu yolla yazarın esinlenerek anlaşmaların evriminin anlaşılması üzerine kuruludu.

Anahtar kelime: korumalı olabilir fikri mülkiyet her türlü dünya odak fikri hakların korunması uluslararası sorumluluklar.

DEDICATION

I dedicate my Thesis work to my loving parents and my all family's members, a special feeling of gratitude to my brother Saad who has helped me financially and spiritually through my study stages. I also dedicate this dissertation to my many friends who have supported me through the process , and I will always appreciation all they have done especially to Dr. Tutku tugyan for helping me develop my skills and become more knowledge man and gave me good advices through my study in abroad.

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ABBREVIATIONS

ACTN: Advisory Committee on Trade Negotiations
BIRPI: United International Bureaux for the Protection of Intellectual Property
FAO: Food and Agriculture Organization of the United Nations
GATT: General Agreement on Tariffs and Trade
IP: Intellectual property
IPC: Intellectual Property Committee
IPR: Intellectual property Right
IBRD: International Bank for Reconstruction and Development
IDA: International Development Association
IFAD: International Fund for Agricultural Development
ILO: International Labor Office,
IMO: International Maritime Organization
IMF: International Monetary Fund
ITU: International Telecommunication Union
UPOV: International Union for the Protection of New Varieties of Plants
LDCs: Least Developed Countries
MTO: Multilateral Trade Organization
OECD: Organization for Economic Co-operation and Development
PCT: Patent Cooperation Treaty
PCT: Patent Cooperation Treaty
PBRs: Plant Breeder's Rights
PVP: Plant Variety Protection
UN: United Nations
UNCTAD: United Nations Conference on Trade and Development
UNESCO: United Nations Educational, Scientific and Cultural Organization.
UNIDO: United Nations Industrial Development Organization
UPU: Universal Postal Union
UPU: Universal Postal Union
USDA: US Department of Agriculture
WHO: World Health Organization
WIPO: World Intellectual Property Organization.
WMO: World Meteorological Organization

CHAPTER ONE

INTRODUCTION

1.1 BACKGROUND TO THE STUDY

Property can be referred to as the means of assigning and designating those items that are generally associated as part of the possession of an individual, group of people or company (www.caaa.in; Adukia, 2012). Furthermore, property ownership right is related with property that shows the good as being a personal belonging in relation to other individuals or groups; that in turn gives the assurance to the owner of the right of handling the property in a befitting manner. It can mean whether the individual wants to use it or not, exclude other people from using, or to transfer ownership (www.caaa.in; Adukia, 2012).

In this study, property is regarded as having two types. The first is referred to as tangible property which include immovable (realty) such as land and houses, and movables such as chairs, clubs, cars, and clocks (Kinsella, 2001: 1) and the second is regarded as intangible property which may be embodied in media such as writings or computer records, while others exist only in the mind (Winter, 2004: 1). Therefore, Intellectual Property is a form of an abstract or intangible property which is responsible in giving a material value to an object that at times can have more value than that of a tangible asset or property (www.caaa.in; Adukia, 2012).

In defining property, it is that individualistic and absolute sphere which enables an individual to lay a claim and exercise his rights over the tangible and external things of the world, in total exclusion of the right of any other individual in the universe (Diamond, 2009: 1). Therefore, in broader terms, 'industrial' is defined in the *Paris Convention for the Protection of Industrial Property* (Article 1 (3)) as: Industrial Property is a term that is broadly applied to industry and commerce as well as

agricultural and extractive industries that are responsible for manufactured or natural products, for instance; fruits, cattle, tobacco, mineral water, wines etc.

Industrial property takes diverse structures; while this incorporates licenses to defend developments; and mechanical outlines, which are tasteful manifestations significantly deciding the presence of industrial items. Industrial property encompasses service & trade marks, designations & commercial names, designs & layouts of integrated circuits as well as geographical indications and protection against unnecessary competition (Mapadaprova.com.br). Some of these parts as related to intellectual conception, albeit existent, are less obviously characterized. What is important here is that the item of industrial property normally comprises of symbols that are used to convey information, specifically to consumers, in respect to items and services offered available. Protection is generally given when certain entities use the sign in an unauthorized way to mislead the users and also against misleading practices and acts in general (Mapadaprova.com.br).

Intellectual property is generally referred to an abstract and intangible object that is created by human mind, which in turn is translated as something tangible with certain rights of property.Some very common examples of intellectual property include; copyright on a book or article by its author, a specified logo design representing a soft drink or any other producing company and its products, exclusive design elements of a web site, or a patent in the process to manufacture edible and non-edible (Mapadaprova.com.br).

Intellectual property seems to be far more egalitarian which shares much of the origin and orientation of all forms of property (Hughes, 1988: 3). Copyright laws provide protection to the original works of authorship which includes literary, drama, music, and artistic works: such as poetry, fiction, songs, computer software and even architectural designs. Patent laws also protectcreative activities and different types of breakthrough while Trademark laws protectthe designs, words or symbols that are the source of identification of some products for the consumers and which are supplied by specialized companies or groups (Fisher, 2001: 1). The Trade-secret laws

protect commercially valuable information (for example, soft-drink formulas, confidential marketing strategies, etc.) which specialized companies try to hide from the similar producers and competitors in the market (Fisher, 2001: 1). The "right of publicity" protects celebrities' interests in their images and identities (Fisher, 2001: 1).

There is no reason in conceptualizing intellectual property, without outlining intellectual property rights. Intellectual property Right (IPR) is a term that is used for various legal entitlements which bind to certain types of information, ideas, or other intangibles in their originally expressed form (www.caaa.in, 2012; Adukia, 2012). The person, who has this legal claim, is generally authorised to use and employ various and different exclusive rights in relation to the subject matter of the Intellectual Property (Adukia, 2012). The term also reflects the notion and idea that a particular subject matter is the product of the intellect of a certain individual, and that Intellectual Property rights may be protected by law in a similar fashion as any other property (www.caaa.in, 2012; Adukia, 2012). Intellectual property laws have a varied range. They can be legal to jurisdiction; that also implies that registration, enforcement and acquisition of these rights must be followed and utilized separately in each territory of interest (www.caaa.in, 2012; Adukia, 2012). Furthermore, IPR is the rights given to individuals' creativity. As a rule, they give the maker a private right to enjoy the product of his/her creativity for a specific timeframe (Levin, 2011: 13). Intellectual property (IP) can also be defined as the creations of the mind; which results in varied inventions, innovative literary and artistic works, and symbols, names, images, and designs used in various fields. (www.herdaily.com, n.d.; Adukia, 2012: 3).

The economic, political and cultural significance of this group of standards is expanding quickly (Fisher 2001). The fortune risks of numerous organizations presently rest vigorously on IP rights. Nowadays there is a growing trend of specialization in intellectual property disputes by the professionals. Furthermore, legislators all through the world are passing and amending laws that revolves round

the laws of intellectual property (Fisher 2001). In regards to these patterns, academic enthusiasm for the field has risen definitely lately (Fisher 2001). This study analyses law reviews and theories in the area of intellectual property where they would be evaluated, considering their roles in different forms in law making.

Intellectual property, more encompassing, means the legal rights which rises from various fields including; scientific, artistic, industrial and artistic fields (www.webster.nl, 2015; www.wipo.int, n.d.). Different States are known to have set of laws to steers and guide intellectual property for two major aims.

1) The first reason is to give the legal or judicial expression to the moral and economic rights of the work created by individuals in their inventions and the legal rights of the public to have an access to those inventions (Pharmatree.in, 2016; wipo.int, n.d.).
2) While the second is to promote, as a calculated act of Government policy, creativity, the circulation and the application of possible results, which resultantly increase fair trading that would contribute immensely to social and economic progress (Pharmatree.in, 2016; wipo.int, n.d.).

In general, intellectual property law intends to protect the intellectual goods and services of the creators and producers by giving them access to specific time-limited legal rights to control the usage and production of their goods (Pharmatree.in, 2016; sawtee.org, 2016). These rights are not applicable to the tangible entity rather they address the intellectual creation and property. Traditionally IP is divided into "industrial property" and "copyright" (Pharmatree.in, 2016; sawtee.org, 2016).

Intellectual property can be identified as information or knowledge, which is integrated with the physical items in an unlimited number of duplicates at various areas anyplace (Ip4all.co.uk, 2016; wipo.int, n.d.). The property is not in those copies but rather in the information or knowing reflected in them (Ip4all.co.uk, 2016; aprovaconcursos.com.br, 2016). Intellectual property rights are additionally portrayed by specific bad marks, for example, constrained length on account of

copyright and patents (Ip4all.co.uk, 2016). The relevance of protecting intellectual property became a matter to be discerned in the *Paris Convention for the Protection of Industrial Property* in 1883 and the *Berne Convention for the Protection of Literary and Artistic Works* in 1886; both treaties are distributed by the World Intellectual Property Organization (WIPO) (Badr, Sherif & Ragab, n.d.: 1; www.bibalex.org, n.d.).

As mentioned earlier that Intellectual property is commonly demarcated into two main branches: industrial property and copyright (wipo.int, 2008).

As regards copyright, it is mainly related to artistic creativity in the form of poetry, fiction writing, musical items, cinematography and paintings etc (wipo.int, 2008). For instance, in most European languages other than English, copyright is known as the exclusive author's rights (wipo.int, 2008). Further, the term*copyright* alludes to the legal act that safeguards literary and artistic creations, that might be done one individual or with his cooperation (wipo.int, 2008). This legal act protects the rights of the authors if someone tries to make copy of the literary or artistic work (wipo.int, 2008).

The second legal act, that is,*author's rights* alludes to the individual who is the creator and original owner of the artistic work; thus entitling him to specific rights in his creation and invention, such as the right to prevent a distorted reproduction, which only he/she can exercise, whereas other rights, such as the right to make copies, can be exercised by other persons, for example, a publisher who has obtained a license to this effect from the original author (wipo.int, 2008). Also, an author can give away his copyright partially or totally by signing to it as an agreement binding the publication. Immediately this agreement becomes legal, the author will lose the right to post copies of his own work on his own website without permission of the publisher and the author cannot legally make copies of his work for distribution to students or colleagues (lib.berkeley.edu, 2005: 1).

1.2 WORLD INTELLECTUAL PROPERTY ORGANIZATION

The World Intellectual Property Organization (WIPO) is a part and one of the specialized agencies of the United Nations (UN) Organisations. The Convention to establishthe WIPO approved and signed at Stockholm in 1967 and started working forcefully force in 1970 (www.wipo.int, 2016). Generally the initiation could be traced down to 1883 and 1886, with the appropriation of the Paris and the Berne Convention. Both the Conventionsplanned the formation of worldwide secretariats, and both were under the consideration of the Swiss Federal Government. Some of the authorities who were given the responsibilities to manage the organization of both the conventions were situated in Berne, Switzerland.

From the beginnings, there were two secretariats (one for industrial property and the other for copyright) but in 1893 the two secretariats were combined (infomag.eucck.org, 2016; www.wipo.int, 2016). Before WIPO, the organisation was called BIRPI (United International Bureaux for the Protection of Intellectual Property) and in 1960, BIRPI was shifted from Berne to Geneva (infomag.eucck.org, 2016; www.wipo.int, 2016).

At the 1967 diplomatic conference in Stockholm, when WIPO was founded, the administrative and final article of all the then existing multilateral treaties administered by BIRPI were revisited (infomag.eucck.org, 2016; www.wipo.int, 2016). They had to be revised because member States wished to assume the position of full governing body of the Organization (WIPO), thus getting rid of the supervisory authority of the Swiss Government, to offer WIPO the same status as all the other comparable intergovernmental organizations and to create way for it to become a specialized agency of the United Nations system of organizations (infomag.eucck.org, 2016; www.wipo.int, 2016).

A large number of international organizations which now have specified designations were nonexistent before the World War II. They were however made for the fundamental and particular motivation behind managing a specific area of action at the global level. In any case, some inter-governmental bodies, including the International Labor Office (ILO), the Universal Postal Union (UPU) and the International Telecommunication Union (ITU) existed (www.wipo.int, 2016),and had been in charge of intergovernmental organizations in their individual fields of action much sooner than the advancement of specific offices of the United Nations framework.

Also, way back before the UN was formed, BIRPI served the purpose of careful international relationship in the area of intellectual property (www.wipo.int, 2016). WIPO, earlier BIRPI, transformed into a particular branch of the UN after an agreement was made between the UN and WIPO with effect from December 17, 1974 (www.wipo.int, 2016).

A particular agency, in spite of the fact that it has a place with the UN, holds it's solitary and every specific organization has its own enrolment (www.wipo.int). All party States of the UN has the opportunity to become a member of the specialized bodies although not all the UN part states are supposedly members of specialized bodies (www.wipo.int, 2016). Thus, it was decided by every state to safeguard their own needs, especially when it comes to become the member of any specialized agency of the UN (www.wipo.int, 2016). Each specified body comprise of its own structure, principal bodies, elected executive branch, earnings, financial plan, its personal staff, plans and other related events as regards their constitutional duties (www.wipo.int, 2016). Machinery however is there to coordinate the activities of all the specialized agencies, within themselves and with the UNO, but mostly (www.wipo.int, 2016), every single agency remains creditworthy, with its own specialized constitution and governing bodies, that are the members of the organising bodies (www.wipo.int, 2016).

The arrangement between the UN and WIPO is considerate of the fact that WIPO is, subject and directly associated with the proficiency of the UNO and its organs, responsible to carry out the working, organization, treaties, agreements and pacts according to rules chalked out by it. As a result it aids in promoting intellectual activity and aiding the transfer of technology to the developing countries in order to boost cultural, economic and socialdevelopment (infomag.eucck.org, 2016; www.wipo.int, 2016).

The Convention that organized the WIPO concluded in Stockholm on July 14, 1967. The (Article 2(viii)) proposed that IP shall include the rights related to the following points (jrcastine.com, 2016;www.wipo.int, 2016):

i. Original scientific, artistic and literary works;
ii. Conduction of performances by artists, phonograms and broadcasts;
iii. Inventions and creations in all fields of human endeavour;
iv. Empirical breakthroughs;
v. Industrialised architecture;
vi. Trademarks and other designated marks (www.caaa.in; Adukia, 2012);
vii. Protection and guidance against unfair challenger; and
viii. Finally, all possible rights related to Intellectual activities concerning the above mentioned fields (www.wipo.int, 2016).

The areas mentioned as literary, artistic and scientific works can all be categorised under the copyright branch of intellectual property (www.wipo.int, 2016). The areas regarded as performances of performing artists, phonograms and broadcasts are always categorised and often called "related rights," that is, rights related to copyright (www.wipo.int, 2016). Areas such as inventions, industrial designs, trademarks, service marks and commercial names and designations falls under the industrial property branch of intellectual property (www.wipo.int, 2016). The area which incorporates protection against out of line rivalry might in specific situations, likewise be seen as additionally fitting in with that arm. The Article 1(2) of the Paris Convention for the Protection of Industrial Property (Stockholm Act of 1967) (the

Paris Convention) incorporates the control of uncalled for rivalry among the areas of safeguarding of latest property. The Convention concluded that the display of rivalry which creates conflict with the legal industrial and business practices constitutes a demonstration of unjustifiable rivalry(www.wipo.int, 2016).

The word “industrial property” covers inventions and industrial designs (www.wipo.int, 2016). Simply outlined, the upcoming technical problems can be solved by innovative inventions, at the same time industrial designs are defining a new innovative look for industrial products (www.wipo.int, 2016). Moreover, service marks, designations, trademarks and commercial names are also included in industrial property; so these require safeguarding against unfair and unnecessary competition (www.wipo.int, 2016). For this situation, the part of intellectual manifestations, albeit existent, is less famous, however what numbers in the circumstance is that the item of IP commonly contains signs and symbols giving information to buyers, specifically as respects items and goods offered (asies.org.gt, 2016) available, and that the protection is coordinated against unapproved utilization of these symbols and signs which are destined to deceive customers, and also deceptive practices as a rule (pfionline.com, 2016; www.wipo.int, 2016).

The Geneva Treaty on the International Recording of Scientific Discoveries (1978) has defined scientific discovery as “the acknowledgement of phenomena, properties or laws of the material universe” which are not verified or recognized yet (Article 1(1) (i)) (www.wipo.int, 2016). Innovative Inventions are offering new solutions to the specified technical problems and as such these solutions must, on their own, are safeguarded as properties or laws of the material universe. Otherwise it will be difficult to apply them to the issues in practical terms. These properties and laws must be developed and recognized to ensure their implementation (www.wipo.int, 2016). An invention puts to new technical use, the said features or laws, whether they are distinguished (“discovered”) at the same time, with the construction of the invention or whether they were already recognized (“discovered”) before, and independently of, the invention (www.wipo.int, 2016)..

1.3 ROLE OF WIPO

Once more, the World Intellectual Property Organization (WIPO) is an international body devoted to guaranteeing that the rights of inventors and proprietors of IP are ensured generally and that innovators and creators are accordingly perceived and credited for their imaginativeness (www.wipo.int, 2016). As a specific agency of the UN, WIPO exists as a discussion ground for its Member States to make and accord standards and practices to secure intellectual property rights (www.wipo.int, 2016). A good number of developed countries have a long-dated system that protects the rights of inventors. However, many developing countries are preferring and developing their copyright law, patent and trademark (www.wipo.int, 2016). The last ten years have seen a rapid global increase in trade and WIPO has played a significant role in facilitating these systems through negotiations, treaties, trainings, legal & technical assistance and the implementation of IP property rights (www.wipo.int, 2016). International registration systems for appellations of origin, patent and industrial designs are also given by WIPO, as a result it hugely changes the procedures for those seeking IP protection at the same time in large number of countries (www.wipo.int, 2016). Rather than filing many applications in different languages, it allows them to file single application with single fee and language (www.wipo.int, 2016). The system for international protection; administered by WIPO consist of 4 different mechanisms each for specified industrial property rights (www.wipo.int, 2016):

i. The Patent Cooperation Treaty (PCT) for the purpose of filing patent applications in multiple countries;
ii. The Madrid System for the International Registration of Marks for the purpose of trade and service marks;
iii. The Hague System for the International Deposit for the objective of Industrial Designs;
iv. Lisbon System for the International Registration of Appellations of Origin (www.wipo.int, 2016).

Anybody making application for a patent or enlisting a trademark or plan as the case might be, even though it's at national or even at international level, regularly needs to identify if the invention is new or is possessed or asserted by another person other than them (www.wipo.int, 2016). To make this purpose, a good volume of info should be sought. Four WIPO treaties have formed grouping systems, which organize information on (www.wipo.int, 2016) not the same outlets of industrial property into indexed, convenient arrangements for stress-free recovery:

i. Strasbourg Agreement as regards the International Patent Classification ;
ii. Nice Agreement Concerning the International Classification of Goods and Services for the main objective and purposes of the Registration of Marks;
iii. Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks; and finally;
iv. The Locarno Agreement Establishing an International Classification for Industrial Designs (www.wipo.int, 2016).

World Intellectual Property Organization also gives an Arbitration and Mediation Centre that provides services for the settlement of international commercial disputes and rivalry between private parties involving intellectual property (www.wipo.int, 2016). The subject matter of these proceedings includes and not limited to the disputes that are contractual as well as non-contractual disputes (www.wipo.int, 2016). Now the Centre is given recognition as the major service provider for those disputes which comes into existence due to faulty registration or the use of Internet domain names that are already owned by another body (www.wipo.int, 2016).

1.4 PURPOSE OF THE STUDY

The study aims at unravelling various forms of international responsibilities in the protection of intellectual properties of various member countries of the world. This study will also try to understand various forms of intellectual properties that could be protected. This could include; patent, copyright, structural design, etc. The study will therefore examine various forms of protection accruable by the intellectual properties in the international community.

CHAPTER TWO

WORLD INTELLECTUAL PROPERTY ORGANIZATION (WIPO)

1.5 HISTORICAL BACKGROUND

In the beginning, BIRPI is the descriptor of Bureaux internationaux réunis pour la protection de la propriété intellectuelle (cgkd.anu.edu.au, 2016; regnet.anu.edu.au, 2016), often translated into English by United International Bureaux for the Protection of Intellectual Property (Aggarwal, Kulkarni, Sharma, Joseph, Dixit, Grover & Kurwayun, N.D.: 49). BIRPI was the former name of the organization before the introduction of WIPO (WIPO, 1997: 27). BIRPI started in 1883, and WIPO overrode the organization 87 years later, in 1970 (Bogsch, 1992). The core of the intergovernmental organization or, at least, of the international secretariat that BIRPI later became, was the "International Bureau" founded by the 1883 Paris Convention for the Protection of Industrial Property (hereinafter referred to as "the Paris Convention") (www.wipo.int, 2016). Bureau was the then stylish name for the secretariat of an international organization. Three years later, in 1886, another "International Bureau" was founded, this time by the Berne Convention (www.ddriu.hu, 2016). The two International Bureaus were under "the high supervision" (in French, haute surveillance) of the Government of the Swiss Confederation which, in 1893, "united" them, that is, placed them under the same director and were also given the same staff (International Intellectual Property Alliance, 2002).

The words "Intellectual Property" in BIRPI's title came into use much later, around early 1950s. Before that, "industrial property," mainly covering the property in inventions (patents), trademarks and industrial designs, and "property in literary and artistic works" (or, in English, "intellectual property" or "copyright") were the expressions were commonly used (World Intellectual Property Organization, BIRPI, 1992: 249).

However, as from the 1950s "intellectual property" has been understood overtime as covering copyright and industrial property. By the early nineteen-sixties, BIRPI had grown into an international body and secretariat, with a director and some 50 staff (Bogsch, 1992). Until around 1960, the main headquarters were in the capital of Switzerland, Berne. In the same year, the headquarters were moved to Geneva (Alikhan & Mashelkar, 2004: 47). A at that time, French was the only working language of the Secretariat. BIRPI "administered" not only the Paris Convention and the Berne Convention but also the (www.wto.org) "special agreements" (an expression used in the Paris Convention) resolved under the Paris Convention (Su, 2000), "under" meaning that only States party to the Paris Convention are qualified to adhere to (www.jmcti.org, 2016) those agreements and that the latter may not conflict the provisions of the former (Bogsch, 1992). By 1967, there were five such special arrangements: the Agreement of Madrid related to the International Registration of Marks, concluded in 1891 (www.wipo.int, 2016; alianta.md, 2016) (also referred to as "the Madrid (Marks) Agreement"); the Madrid Agreement for the control of False or Deceptive Indications of Source on Goods (Correa, 2011: 49; www.wipo.int, 2016), also resolved in 1891 (also referred to as "the Madrid (Indications of Source) Agreement") (www.wipo.int, 2016); the Hague Agreement regarding the International Deposit of Industrial Designs, concluded in 1925 (www.alianta.md, 2016) (also referred to as "the Hague Agreement"); the Nice Agreement concluded in 1957 (www.wipo.int, 2016; eur-lex.europa.eu, 2016); and the Lisbon Agreement for the Protection of designation of Origin and their International Registration (www.wipo.int, 2016), concluded in 1958 (also referred to as "the Lisbon Agreement") (Bogsch, 1992).

The name of cities in the titles of these and other treaties means the place where the diplomatic conference that assumed the treaty was held. "Treaty" is used in this essay as dealing with both "Conventions" and "Agreements" (www.deakin.edu.au, 2016). Both the Paris and the Berne Conventions and four of the five Agreements (namely, the Madrid (Marks), Hague (Bogsch, 1992). Nice and Lisbon Agreements) provide that the countries party to them "institute a (Special) Union." The term "Union" is

also an expression that was fashionable when these treaties were resolved (World Intellectual Property Organization, United International Bureaux for the Protection of Intellectual Property, 1992: 249). It is intended to pass the notion that the members adhere to a treaty and with a joint effort from an organization with independent generation of finances and individual identity (www.iprsonline.org, 2016). It seems foreign today that none of the Unions had a governing body, that is, a forum in which the States members of the Union meet, discuss and make decision (by voting, if there is no unanimity). Instead, as already stated, they were under the management of the Government of Switzerland, which set up the director and staff of BIRPI (1992: 341).

The status of BIRPI and the Unions it administered was very alike to the then status of what are today the International Telecommunication Union and the Universal Postal Union, whose precursor organizations ("precursor" in the sense that BIRPI is the predecessor of WIPO) came into existence much years before BIRPI, namely in 1865 and 1874, respectively, with their headquarters also in Berne and also under the oversight of the Swiss Government (Paun, 2013, 129). However, those two organizations went through the new development of their structure and became specified agencies of the UNO (www.wipo.int, 2016) much earlier than WIPO, namely in 1949 and 1948, respectively (www.asies.org.gt, 2016).

1.6 STOCKHOLM CONFERENCE (1967) AND THE ENTRY INTO FORCE OF THE STOCKHOLM TEXTS (1970-1975)

From review of this study, the Stockholm Conference had two main objectives. One was to set-up the structural and administrative rectification of the Paris and Berne Unions as well as of the then existing five special agreements under the Paris Union (Thussu, 2010). The second main objective was the revision of a number of important provisions of the Berne Convention and one essential provision of the Paris Convention ((Badr, Sherif & Ragab, N.D., 40; www.bibalex.org, 2016). All this was attained through the conclusion of a new treaty, namely the one establishing WIPO, and, as far as the existing treaties were pertained, through the revision of the

Paris and Berne Conventions (which then had 77 and 58 contracting States, respectively) and the Madrid (Marks), Nice and Lisbon Agreements, and through the organization of an "Additional Act" and a "Complementary Act" to the Madrid (Indications of author) and the Hague Agreements, respectively (World Intellectual Property Organization, 2004). In other words, one completely new multilateral treaty had to be created and seven many-sided treaties had to be rectified, all at the same time. All these objectives were achieved in one and the same set of encounters at the Stockholm Conference. Seventy-three States, represented by 389 delegates, and 36 organizations, constituted by 93 observers, were involved. The Secretariat was rendered by BIRPI; it comprised of 14 persons. Thus, there were almost 500 participants. They met for five weeks (June 11 to July 14, 1967) in the then Swedish Parliament (Riksdag) building (Bogsch, 1992). The President of the Plenary was the Minister of Justice of Sweden (www.ipu.org, 2016; Inter-parliamentary union, Geneva, 1999), Herman Kling, but his operations were mainly practiced by Torwald Hesser, Justice of the Supreme Court of Sweden (Bogsch, 1992). The Stockholm Conference did most of the work through the five-man Main Committees. Three of them were concerned with provisions of substantive intellectual property law that resulted in the revision of the Berne and Paris Conventions (www.go-euromed.org, 2016; www.wipo.int, 2016):

1) Main Committee I, concerned mainly with the general revision of such provisions in the Berne Convention (under the chairmanship of Eugen Ulmer, a law professor in the Federal Republic of -Germany);
2) Main Committee II, pertained with the creation of a protocol that instituted possible exemptions to some of the sterner rules of the Berne Convention in grace of developing countries (Olwan, 2012) (under the chairmanship of Sher Singh, a Minister of State in the Ministry of Education of India); and
3) Main Committee III, with the revision of the given articles of the Paris Convention that are (policydialogue.org, 2016: 49) concerned with the right of preference (under the chairmanship of Lucian Marinete, head of the Romanian State Office for Inventions) ((World Intellectual Property Organization, 1992).

Main Committee I worked on the revision of the already existing major provisions of the Berne Convention, most especially on the ownership of and (www.coursehero.com, 2016) rights in what were then called cinematographic/audio-visual works and on the degree to which the legislation of member countries might limit the (otherwise) exclusive right of reproduction (World Intellectual Property Organization, 2005).

Main Committee II, as already stated, offered an addition to the Berne Convention. The addition was called "Protocol Regarding Developing Countries" (Shaheed, 2012). The proposed Protocol was adopted and passed in Stockholm. However, soon after the Stockholm Conference, it was earned that the Protocol went too far and that it could never go into consequence. It was replaced by less far-reaching provisions, four years later, at a diplomatic conference of revision of the Berne Convention, held in Paris (1971) at the same time as the same provisions were lent also to the Universal Copyright Convention (overseen by the UNESCO).

The revision proposed by Main Committee III consisted in absorbing inventors' certificates to patents for the main purposes of the choice of preferences provided for in Article 4 of the Paris Convention (www.zalf.de, 2010; fr.expo2010.cn, 2016). Inventors' certificates were a form of right protection invented by the Soviet Union in the nineteen-twenties. With the adjournment of that country in 1991, the institution of inventors' certificates has stopped to exist. As far as the structural and administrative reforms were concerned, Main Committee IV dealt with the introduction of adjustments in the administrative and final clauses of the Paris and Berne Conventions and the five Special Agreements, whereas Main Committee V was concerned with the establishment of WIPO (World Intellectual Property Organization, 2001).

The founding of WIPO and the introduction of the said changes in the then existing seven treaties were complementary operations in the sense that neither of them could be realized without, and at the same time, realizing the other (Bogsch, 1992). Main Committees IV and V were led, respectively, by François Savignon, Director of the

National Institute of Industrial Property of France, and Eugene M. Braderman, a high official of the Department of State of the US (Bell, Ziegler, Blechman, Finlay & Cottier, 2012). Each of those five Main Committees gave remarkably well-written reports. The authors of the reports were Svante Bergström (a professor of law in Sweden; Main Committee I), Vojtech Strnad (a legal advisor in the Ministry of Culture of Czechoslovakia; Main Committee II), Alfred Capel King (a barrister in Australia; Main Committee III), Valerio de Sanctis (an attorney-at-law in Italy; Main Committee IV) and Joseph Voyame (Director of the Swiss Federal Intellectual Property Office; Main Committee V) (Bogsch, 1992). The Secretary General (The head) of the Stockholm Conference was Arpad Bogsch, then First Deputy Director of BIRPI. The structural and administrative reform, attained in Stockholm, had as its overall objective the creation of a situation in which the Member States, jointly and systematically, decide and control, or at least discuss, the development of international relations in the field of intellectual property (Drexl, Ruse-Khan, & Nadde-Phlix, 2014). This new situation counterpoint with the situation that existed between 1883 (when the Paris Union was established) and 1970 (when the reforms made in Stockholm entered into effect): before 1970, Member States made decisions only ad hoc (mainly in diplomatic conferences of revision, which held, on the average, every 20 years), and the control of the secretariat's (that is, BIRPI's) functioning and finances was essentially displayed by one country, Switzerland, the country on whose territory the secretariat was located (World Trade Organization, 1994).

The structural and administrative reform had also the aim of altering the new organization, WIPO, to become a specified body of the UNO (www.wipo.int, 2004). This objective could not be earned at the Stockholm Conference itself because becoming a specialized agency is a matter that must be accorded upon between the United Nations and WIPO, and that could be achieved only once WIPO existed, namely once the Convention Establishing the World Intellectual Property Organization (fr.expo2010.cn, 2016) (referred to as "the WIPO Convention") (www.absoluteastronomy.com, 2016) had amalgamated into force. This came into

being, but for only three years after the Stockholm Conference (Scoullos, Kouroutos, Mantzara, Alampei, Malotidi & Psallidas, 2013: 73). However, the copy of the WIPO Convention and the copie for the modified article of the past 7 agreements, introduced by BIRPI to the Stockholm Conference, were recommended in light of the said point and with the firm decision to insist that the texts, as adopted, should make it possible that the future WIPO could also aim to the status of a specialized agency of the UNO (www.wipo.int, 2016).

These two objectives were realized through the texts adopted at the Stockholm Conference. They were realized in the following manner; WIPO was founded. Its members are those States that bind to the WIPO Convention (Ladas, n.d.). Any State party to the Paris Convention or the Berne Convention (fr.expo2010.cn, 2016; Kenyalaw.org, 2016), as well as any party State of the UN system (ie., the United Nations, any of its specialized agencies, the International Atomic Energy Agency (www.evb.ch, 2016) or the International Court of Justice), can also be a part of WIPO. Therefore, was accomplished the double condition that (The World Intellectual Property Organization, 1996):

i. Any State related with BIRPI could become a member of WIPO even if it did not be a part to the United Nations system, and
ii. Any State or country belonging to the United Nations system could become a member of WIPO even if it was not related with BIRPI. The Secretary General of the Stockholm Conference was Arpad Bogsch, the then First Deputy Director of BIRPI (1986: 321).

The structural and administrative rectification, accomplished in Stockholm, had as its overall objective the creation of WIPO. WIPO has three Governing Bodies, which includes and not limited to the following: the Conference, the General Assembly and the Coordination Committee (1992: 252). The country members of the Conference are all the countries who are signatories to WIPO. The memberships of the GA are all the States that are not only members of WIPO but that are also members of the Paris and/or Berne Unions (www.wipo.int, 2016). This means that States that are

members of WIPO but not members of the Paris or Berne Unions (www.wipo.int, 2016), as well as States that are members of the Paris and/or Berne Unions but not members of WIPO (fr.expo2010.cn, 2016; Kenyalaw.org, 2016) cannot be a member of the General Assembly. In other words, the General Assembly is a body in which the members of at least one of the two "main" Unions (Paris and Berne) make the decisions, thereby giving them certain prevalence since some of the important decisions for example, the election of the Director General are reserved for the General Assembly.

The memberships of the Coordination Working group are automatically the members of the Executive Committee of the Paris Union and the Executive Committee of the Berne Union (fr.expo2010.cn, 2016; Kenyalaw.org, 2016), with some ad-hoc members who belong to neither of the two Unions but are members of World Intellectual Property Organization (WIPO) (fr.expo2010.cn, 2016; Kenyalaw.org, 2016). Each of the Unions has an established and independent Assembly, that is, a body of which all the members of the Union (that cling at least to the administrative and final clauses of the Stockholm Act (1967) of the Paris Convention or the Paris Act (1971) of the Berne Convention) are members (www.wipo.int, 2016). At the time of the Stockholm Conference, there were six such Unions (Paris, Berne, Madrid (Marks), Hague, Nice and Lisbon). The two great ones in the Union, Paris and Berne also have, each, a separate Executive Committee, elected from among the members of each Union independent of the other (www.wipo.int, 1992). However, their number is one-fourth of the members of the Union concerned. Switzerland is an ex-officio member of both Executive Committees Hague and Berne (United International Bureaux for the Protection of Intellectual Property, World Intellectual Property Organization, 1983: 344). These bodies were founded in the texts adopted at Stockholm and started operating once the Stockholm texts or their relevant provisions had entered into force (1992: 252). On July 14, 1992, 131 States were members of WIPO; the WIPO Coordination Committee had a total of fifty-two (52) members, the Paris Executive Committee twenty-six (26) members, and the Berne Executive Committee twenty-three (23) members (1992: 27). The texts took over at

Stockholm provided that the Conference and the General Assembly of WIPO and the Assemblies of the Unions would have (www.wipo.int, 2016) to meet in frequent and regular session once every three years (Osmańczyk & Mango, 2003: 2743). This period, however, proved to be too long and, in any case, did not match to the practice of most of the other specialized agencies. The main governing bodies of those agencies normally meet every second year. WIPO and the Unions assumed the same frequency, through a rectification of the relevant treaties, in 1977 and 1980, and, since then, the General Assembly and the Conference of WIPO and the Assemblies of the (fr.expo2010.cn, 2016; Kenyalaw.org, 2016) Unions converge once in every two years oddly.

The lower-ranking governing bodies, the Coordination and Executive Committees, meet in average session each year. The average sessions are usually held towards the end of September (Bogsch, 1992). In addition to average sessions, any of the ruling bodies may meet in extraordinary session. In the 1980s, on more and more occasions. The GA of WIPO and the Assemblies of the various Unions met in extraordinary session at the yearly sessions of the Coordination Committee and the Executive Committees (1992: 252). This exercise resulted in a situation in which the said Committees have a rather limited or no role, since their main task, the preparation of the work of the (General) Assemblies becomes unnecessary if they meet (as they do in practice) mostly at the same time as and together with the (General) Assemblies and even the WIPO Conference (www.wipo.int, 2016). However, the WIPO Coordination Working group further has an important role in the electioneering activities in the Director General and in staff matters.[1] Just one person proposed by the Coordination Committee may be elected Director General (1992: 252). The Staff Rules were however founded and are regularly corrected by the Coordination Committee.

[1] WIPO Coordination Committee Sixty-Seventh (44th Ordinary) Session Geneva, September 23 to October 2, 2013 ANNUAL REPORT ON HUMAN RESOURCES prepared by the Director General.

The Deputy Directors General and any staff member of directorial rank (there were two of the former, and 21 of the latter, on July 14, 1992), although nominated by the Director General, are appointed after the approval of the Coordination Committee (fr.expo2010.cn, 2016; Kenyalaw.org, 2016) is given, as far as Deputy Directors General are concerned, and after the advice of the Coordination Committee is heard, as far as staff members of directorial rank are concerned, that is, for all practical purposes, their appointment always requires a meeting of the minds of the Coordination Committee and the Director General (1992: 27). The most essential function of the Assemblies consists in the founding of the biennial program and budget of each Union that has its own finances and expenditures and of WIPO as such. Afterwards, the Secretariat officially called the International Bureau of Intellectual Property but, in real life situation, simply called "the International Bureau (of WIPO)" is one and the same for all the Unions (in 1992 there were 12, but two of them (the Lisbon and the Budapest Unions) had no budget), the organization of the budgets is a very special and important task. The budgets of those Unions must be distinguished because each Union has its own members and the identity of the member States differs from one Union to the other. It is because States members of a given Union want, without interference by States not members of that Union, to resolve the program and budget of the said Union, that the programs and the finances of (www.wipo.int, 2016) the various Unions have to be separated from each other but, at the same time, have to be organized with each other. In respect of treaties concluded before the Stockholm Conference, the Swiss Confederation had the task of repository; according to the texts of the Stockholm Conference (and later texts), this task belongs to the Director General of WIPO. This change was introduced to adjust to the practice of the specified bodies of UNO(www.wipo.int, 2016).

Another characteristic corresponding to that exercise consists in the fact that the Director General is elected by the Member States (www.iipi.org, 2016). He is "the chief executive" of WIPO and "constitute" WIPO. He is required to report to and make the necessary changes given by General Assembly (fr.expo2010.cn, 2016;

Kenyalaw.org, 2016). (The quotations are from Article 9(4) of the WIPO Convention). His duties admit the formulation of drafting the programmes, budget and reports on the activities(www.idrc.ca, 2016, doc.rero.ch, 2016). The Director General by himself chooses and nominates the staff. The first Director General of WIPO was Georg H.C. Bodenhausen. His term (after having been Director of BIRPI since 1963) lasted from September 22, 1970, to November 30, 1973. He was succeeded by Arpad Bogsch who was elected in 1973, took office on December 1, 1973, and was pondered in 1979, 1985 and 1991 (Bogsch, 1992). His recent term of office expires on December 1, 1995. Between 1963 and 1970, he was (First) Deputy Director of BIRPI, and between 1970 and 1973, First Deputy Director General of WIPO (Bogsch, 1992). But this expects the working of the Stockholm texts. Those texts were assumed on July 14, 1967, but they achieved the number of ratifications and accessions required for entry into force only a few years later, variant between 1970 and 1975: in 1970, the WIPO Convention and the Madrid (Indications of Source) Agreement (on April 26), and the administrative and final clauses of the Stockholm Acts (effecting the structural and administrative reform) of the Paris Convention (on April 26), of the Berne Convention (www.ecostat.unical.it, 2003) (on May 4) and of the Madrid (Marks) Agreement (on September 19), in 1972, the said clauses as regards the Nice Agreement (on July 5), in 1973, the said clauses concerning the Lisbon Agreement (on October 31), in 1975, the said clauses concerning the Hague Agreement (on September 27) (World Intellectual Property Organization, 2004). But the later entry into force of the last three did not adjourn the meeting, for the first time in history of organizing meetings, of the three Governing Bodies of WIPO and the Assemblies of the Paris and Berne Unions in September 1970 (www.wipo.int, 2015). The piece and the powers of the Governing Bodies, and the powers of Director General of WIPO, were very much alike to those of the governing bodies and the executive heads of the specific organisations of the UN, therefore, the hypothesis of seeking specialized agency status for WIPO came into existence in 1970 (World Intellectual Property Organization, 2004).

1.7 THE STATUS OF WIPO AS A SPECIALIZED AGENCY IN THE UN SYSTEM OF ORGANIZATIONS (1974)

WIPO, becoming a specific agency of the UN system of organizations existed turned out to be a possibility, but a number of the Member States paused (www.wipo.int, 2016). All States appeared to agree on the potential benefits of specialized agency status for WIPO. At least three such advantages were seen at the time:

i. The worldwide credit will given to the fact that WIPO is responsible win dealing with intellectual property;
ii. WIPO would also consist of almost the same number of members as UNO, with special consideration to developing countries;
iii. The governments of Member States would be responsible to decide about the working conditions, work environment, salaries; pensions would follow the norms set by the UNO and its agencies (Olwan, 2011).

The refusal concerned the second point: some of the developed countries were scared that the developing countries would have the role of majority and interact with each other to strengthen the international protection of intellectual property (virtualbib.fgv.br, 2016), since it was conceived by certain people that most developing countries were likely to recommend lower standards of protection (Aronson, 2005: 20). This fear was partly based on the pressure of developing countries at the Stockholm Conference of 1967, on having the (Halbert, 2006: 7) right to give, in certain respects, a significantly lesser degree of copyright protection than the other countries.

Other industrialized countries and the Director General distinguished that this possibility existed but were of the view that, on balance, the step should be followed (virtualbib.fgv.br, 2016). They took the perspective that what was of prime importance was that the developing countries should belong to the international intellectual property system so that the protection of intellectual property (Drexl, Ruse-Khan, & Nadde-Phlix, 2014) might go further all over the world, or at least to

the great most of the countries (Halbert, 2006: 10). Without any doubt, this provision would not give a chance to industrialized countries to dictate the rules, but the price seems to be worthwhile if it meets reasonable standards or even if from the perspective of the interests of some of the industrialized countries. This might not result in ideal international system (virtualbib.fgv.br, 2016). Some 20 years after this thoughts developed and after WIPO became a specific agency, it could be concluded that—although the first two of the three abovementioned expected benefits were not fully realized, however, on balance, the decision to seek specialized agency status was a good move since it resulted in better and wider international relations in the field of intellectual property protection (www.zalf.de, 2010).

The contents of such an agreement between the UN and WIPO were first managed by their Secretariats (wipo.int, 1999), the International Bureau being assisted by Martin Hill, an expert in such agreements; the agreement was then sanctioned by the General Assembly of WIPO on September 27, 1974, and by the General Assembly of the United Nations on December 17, 1974 (wipo.int, 1999). A protocol was signed by Kurt Waldheim, then Secretary-General of the United Nations, and Arpad Bogsch, Director General of WIPO (wipo.int, 1999), on January 21, 1975; the protocol noted that the Agreement had enrolled into force on December 17, 1974 (World Intellectual Property Organization, 1975). At that time namely, the end of 1974—the following organizations were already specialized agencies: the International Labour Organisation (ILO), the Food and Agriculture Organization of the United Nations (FAO) and the United Nations Educational, Scientific and Cultural Organization (UNESCO) (ggi.unesco.or.kr, 2016; Un.org, *2016*) since December 14, 1946; the International Civil Aviation Organization (ICAO) since May 13, 1947; the International Bank for Reconstruction and Development (IBRD) (www.unsceb.org, 2016) or "World Bank") and the International Monetary Fund (IMF) (Downes, 2010: 4; www.history.com, 2016) since November 15, 1947; the Universal Postal Union (UPU) since July 1, 1948 (Norris McWhirter, 1981: 213); the World Health Organization (WHO) since July 10, 1948; the International Telecommunication Union (ITU) since January 1, 1949 (Department of State

publication, Issue 8424 *Foreign relations of the United States Department of State Publication*, United States. Dept. of State 1968); the World Meteorological Organization (WMO) since December 20, 1951; the International Finance Corporation (IFC) since February 20, 1957 (United Nations, 1959: 450); the International Maritime Organization (IMO) since January 13, 1959 (Calvert, 2002: 58); the International Development Association (IDA) since March 27, 1961 (Shihata, 1995: 34). After 1974, two more organizations, namely, the International Fund for Agricultural Development (IFAD) on December 15, 1977 (Inter-parliamentary union, Geneva, 1999: Annex XVI), and the United Nations Industrial Development Organization (UNIDO) (Kwakwa, 2011) on May 29, 1986, became specialized agencies (Andrzej Abraszewski Raúl Quijano, 1993: 5). Thus, on July 14, 1992, WIPO was one of 16 specialized agencies. Now there is return to the rating of the said 20 years. The agreement between the UNO and WIPO says that WIPO is (www.wipo.int, 2016) discerned as specialized agency in the field of IP, but it adds "subject to (www.dziv.hr, 2016) the competence and responsibilities of the United Nations and other specialized agencies" (Halbert, 2006: 9). This was found necessary, in 1970, mainly because of the copyright part of WIPO's activities: in addition to the Berne Convention (concluded in 1886) distributed by WIPO, there had been since 1952 the Universal Copyright Convention, a multilateral treaty on copyright (like the Berne Convention) agreed mainly on the urging of the United States of America (which then was not (Gibbons, 2014) a member of the Berne Union) under the aegis of UNESCO (www.wipo.int, 2016, 1992: 1). In the meantime however, the USA left UNESCO (1986) and joined the Berne Convention (1989) (Onlinebooks.library.upenn.edu, 2016), whereas the Soviet Union (like the United States of America, party to the Universal Copyright Convention but not to the (Olwan, 2011) Berne Convention) stopped to exist (1991) (World Intellectual Property Organization, 1992: 254). These events slowed down UNESCO's activities in the field of copyright and, by 1992, WIPO was undoubtedly the leading specialized agency in the field of intellectual property (Ullrich, Hilty, Lamping & Drexl, 2016).

Another duplication of WIPO's activities came and in 1992 still comes from two organizations which, although not specialized agencies, are in their effect not very different from them. One is the UNO Conference on Trade and Development (UNCTAD, founded in 1964) (Rizk & Shaver, 2010: 21) whose topmost management body is the Conference of the Member States, but whose secretariat is part of the secretariat of the United Nations (mvoplatform.nl, 2016). The other is the General Agreement on Tariffs and Trade (GATT) which, as is frequently underlined by (etraining.wto.org, 2016) GATT itself, is not an organization but also an agreement (Spies& Petruzzi, 2014). Nonetheless, the Agreement (which was concluded in 1947 and to which 103 countries were party on July 14, 1992) has two governing bodies (the Sessions of Contracting Parties and the Council of Representatives) and a secretariat (1992). On the discuss of the Uruguay Round of GATT, started in 1986 and not yet finished on July 14, 1992, a long text on intellectual property was drafted which, if it comes into effect, will clearly replicate the Paris and Berne Conventions and the Washington (Integrated Circuits) Treaty, which are done by WIPO (UNCTAD-ICTSD, 2005; policydialogue.org, 2005). If this duplication becomes a reality, the question will arise in which of the two organizations— WIPO or GATT (which might become in the future a "real" organization, possibly under the name of Multilateral Trade Organization (MTO)— the international norms of the protection of intellectual property will be further formulated (World Intellectual Property Organization, 1992: 327).

The writer believes that such norms will probably be formulated in both, thereby prolonging the replication. However, incidentally, replication is a development that most governments very much condemn. But its existence is a reality, not as if the secretariats would cause it by trying to extend the field of their activities: secretariats cannot do that since their activities are decided by the governments of the Member States. Rather, it is they, the governments that decide duplication, usually as a result of persuasion by those among them that believe that a second or third organization is a more favourable forum, giving more scope for their bargaining power (Abdel-Latif, 2005).

Furthermore, the other objective, which is boosting and encouraging developing countries into the convention of international relations in the field of intellectual property, was, to a much extent, achieved by WIPO during the nineteen-seventies and eighties (www.wipo.int, 2016). But there remain some exceptions, especially, the absence from the Paris Union, of India and some of the middle-sized Latin American countries and, from the Berne Union, of the successor States of the former Soviet Union (1992: 30).

The third objective of accomplishing specialized agency status for WIPO was also significantly attained: the Member States generally do not have to deal with the salaries and pensions of the staff of WIPO since salaries and pensions are governed by the "common system" controlled by the (Olwan, 2011) decisions of the General Assembly of the UN (www.wipo.int, 2016). The consequence are not always to the liking of the International Bureau since the "common system" is based in New York and is universal, and it does not significantly take into account the needs of those specialized agencies (like WIPO) most of whose staff are in Europe (Maskus, 2000).

CHAPTER THREE

TRADE-RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS (TRIPS) AND WORLD TRADE ORGANIZATION

TRIPS is important from an important point of view of earlier trade liberalization efforts which were employed by the governance of the General Agreement on Tariffs and Trade (GATT), the forebearer to the World Trade Organization (WTO), and also it promotes international coordination of IPRs as engaged by plenteous past treaties and agreements in the setting of the World Intellectual Property Organization (WIPO) (Moschini, 2003: 3; www.card.iastate.edu, 2003). From the point of view of trade institutions and traditions, TRIPS burst from the past by attacking the somewhat esoteric issues of IPRs, an entirely new sub-topic (Moschini, 2003: 3; www.card.iastate.edu, 2003). In this manner the agreement comes to past the fringe procedures which have been with the verging on unified space of exchange liberalization endeavours. The need to legitimize such a not exactly evident expansion of the span of GATT was particularly emphasised by the precisely worded prefix 'trade related' that was utilized to highlight the new topic (Moschini, 2003: 3; www.card.iastate.edu, 2003). From the point of past global endeavours at planning national IPR rules, TRIPS is vital on the grounds that it organised the primary procurements of the main (and up to this point isolated) global IPR agreements, since it enabled the pre-necessities of present understandings in some vital sections, and on the grounds that it let in the last bundle as a required component for inclusion in the WTO (as a major aspect of the 'single undertaking' procedure for approval) (Moschini, 2003: 3; www.card.iastate.edu, 2003). Besides, authorization of global IPRs, in actual fact absent under WIPO, under TRIPS can exclusively depend on the WTO disagreement resolution instrument and on the risk of trade permissions for not conforming to the law (Moschini, 2003: 3; www.card.iastate.edu, 2003). This extension of the areas of WTO exercises is liable to have more vital long-span impacts. As one observer put it soon after the decision of the Uruguay round that the

agricultural subsidies and issues related to farmers were highlighted. TRIPS, in this regard, seem to acquire a major role in the global economy monopoly (Moschini, 2003: 3; www.card.iastate.edu, 2003).

In a number of means TRIPS was the sole result of an incomprehensible exertion pioneered by a wide coming together of trade interests, for the most part from the US. This captivating story, as told by Drahos (1995) and Matthews (2002), begins with the inadequately poor performance of US corporations in the 1980s and the related anxiety of a secular reduction in their international competitiveness (Moschini, 2003: 3; www.card.iastate.edu, 2003). It's however inferred that, as opposed to the rivalry of Japanese companies for instance, the US was encountering a solid unrestricted condition issue on its thoughts and aptitude (Moschini, 2003: 3; www.card.iastate.edu, 2003). Durable IPRs in a foreign country seem like a non-artificial and unassuming way forward. The idea of connecting IPRs and trade was followed vehemently by business representatives of some industries, specifically from pharmaceutical, chemical and computer-related companies, a line of attack that at the end won over the initially reluctant copyright-based industries (such as music and entertainment) (Moschini, 2003: 3; www.card.iastate.edu, 2003). This broad-based, single-issue agenda first followed in convincing Congress to make amends to the 'Section 301' provisions of the US Trade and Tariff Act in 1984, making failure to protect IPRs by any country actionable with trade penalties (Moschini, 2003: 3; www.card.iastate.edu, 2003). This instrument and the ensuing 'Special 301' of 1988, demonstrated very imperative in the US way to deal with bilateral trade negotiation, furthermore permitted a nearer coalition between business interests and the office of the US Trade Representative (Moschini, 2003: 3; www.card.iastate.edu, 2003). With the backing of Europe and Japan, IPRs were effectively incorporated into the discussed motivation for the Uruguay Round (Moschini, 2003: 3; www.card.iastate.edu, 2003). As expressed in the official declaration of Punta del Este in September 1986, the desire in this perspective were to some degree unobtrusive, being engaged for the most part around the issue of trade in fake and unworthy products and the part that IPRs and GATT rules should play in such

manner (Moschini, 2003: 3; www.card.iastate.edu, 2003). Be that as it may, what created toward the end was a significantly more clearing and yearning program, which made TRIPS one of the most vital global agreement on IPRs ever (Moschini, 2003: 3; www.card.iastate.edu, 2003).

A clear and comprehensive study of the text of this agreement (WTO, 1994) present a clear picture that the scope of TRIPS is quite large, broad and extensive because it encompasses copyright and related rights (i.e., the rights of artists, producers of sound recordings and broadcasting companies); trademarks of the companies, including their service marks; geographical indications& appellations of origin; designs that are industrial; patents along with the protection of new varieties of plants; the layout designs of integrated circuits; and undisclosed information, including trade secrets and test data etc (Moschini, 2003: 3; www.card.iastate.edu, 2003). Maybe more cogent are the fundamental standards revered in TRIPS: national treatment, most-supported country and least guidelines to get together with (Moschini, 2003: 3; www.card.iastate.edu, 2003). National management necessitates that the equal rights be in the meantime made accessible to nationals and outsiders, and it has been a principal component of all the past endeavours at planning global IPRs. Be that as it may, the other two standards are new to the global field as regards IPRs. The most-supported country provision (level with treatment for nationals of all trade accomplices in the WTO) is, obviously, integral to other WTO assentions, and it has the ability to intensify expanded IPR assurance that may far ahead result from mutual arrangements (Moschini, 2003: 3; www.card.iastate.edu, 2003).

In any case, it is in the setting of guidelines, that TRIPS gives perhaps the most aggressive detachment from existing global IPR management (Hassan, Yaqub & Diepeveen, 2010: 1; www.econ.iastate.edu, 2010). Specifically and in particular, the agreement approves that measures of IPR security be given by every part in each of the principle section of IP that it touches. This is accomplished by stating the topic to be secured, the rights to be offered (and what the passable special cases to those rights are), and the length of safety to be given. The main obligations of the Paris

Convention and of the Berne Convention are made provided by reference and must be strictly complied with (Moschini, 2003: 2; www.card.iastate.edu, 2003). With the exception of the Berne Convention provisions on moral rights, all the main provisions of these conventions became obligations under the TRIPS Agreement between WTO member countries because of the 'single undertaking' approach of the WTO, which gives no opt-out choice) (Moschini, 2003: 3; www.card.iastate.edu, 2003).

The TRIPS Agreement likewise includes some extra new commitments not considered by past treaties. Patent protection must be offered for both products and processes, for at least 20 years, in almost all fields of technology in creation (Moschini, 2003: 3; www.card.iastate.edu, 2003). Plant varieties must be protected, either by patents or by a *sui generis* protection system (such as PBRs) (Moschini, 2003: 3; www.card.iastate.edu, 2003). Residential generation of a patented item could not be needed with a specific end goal to take pleasure the privileges of a patent recipient.

In respects to trademarks, the prerequisite that foreign marks be utilized as a part of domestic marks is forestalled, and revocation of a mark because of neglect is exceptionally limited. TRIPS depart from pre-existing norms by making sure that computer programs be protected by copyrights under the provisions of the Berne Convention (Moschini, 2003: 3; www.card.iastate.edu, 2003). It also brings in provisions on rental rights (Moschini, 2003: 3; www.card.iastate.edu, 2003). As for geological signs, a larger safety is given for alcoholic beverages (which are ensured notwithstanding when there is no risk of the general population's being deceived by the use). So far as the protection of the design layouts of integrated circuits is concerned, TRIPS successfully acquired the minimum protection period of ten years and that the rights must also be applicable to articles assimilating encroaching layout designs (Moschini, 2003: 3; www.card.iastate.edu, 2003). Trade secret protection is solely bestowed by TRIPS (Moschini, 2003: 10; www.card.iastate.edu, 2003). Particulary, the submitted test data to the government officials for the acquirement of

marketing acceptabilty for pharmaceutical or agricultural chemicals must be protected against unfair commercial usage either due to competition (Moschini, 2003: 10; www.card.iastate.edu, 2003).

Also, stating out the rights on IP that need to be given to members, TRIPS also acknowledge responsibilities associated to the enforcements of those rights (Moschini, 2003: 10; www.card.iastate.edu, 2003). State parties have to make provision for processes and preparations entrenched in their national laws so as to make sure that IPRs are well and generally complied with. The methods given must be reasonable and impartial, ought not victimize outsiders and races and should not be pointlessly confounded or unwieldy, exorbitant or subject to preposterous time interruptions (Moschini, 2003: 10; www.card.iastate.edu, 2003). Prominent authorization commitments incorporate standards for acquiring proof (now and again turning around the weight of verification), and the accessibility of temporary measures, directives, harms and different sanctions attached. Additionally, wilful trademark duplicating or copyright theft on a business scope must be dealt with as an unlawful breach unequivocally. States should likewise guarantee that the help of traditions powers be made accessible to forestall importations of fake and pilfered products into any party States (Wto.org, 2016).

A major component of TRIPS is that, by compelling IPR safety under the tutelage of the WTO, global implementation of IPRs can be taken after inside the development accessible to authorize consistence with trading guidelines of party States (Moschini, 2003: 10; www.card.iastate.edu, 2003). A Compliance Committee for TRIPS was established to observe the process of the agreement and States' adherence to it (Moschini, 2003: 10; www.card.iastate.edu, 2003). Apparent lack of compliance by party States may be taken up within the unified WTO conflict-settlement procedures and rules. Specifically, the danger of trading approvals is relied upon to extensively promote reinforcing the global implementation of IPRs (Moschini, 2003: 8; www.card.iastate.edu, 2003).

TRIPS anticipated a very prominent phase-in term for World Trade Organization member states' agreement specifically, related to its inception date that is, January 1995 , TRIPS gave leverage a one-year transition period for developed countries to bring their legislation and practices into compliance (Moschini, 2003: 10; www.card.iastate.edu, 2003). Developing countries and (under certain conditions) transition economies were however given five years, whereas the countries which were least developed were allowed eleven years period of transition (Moschini, 2003: 10; www.card.iastate.edu, 2003). In theory, all World Trade Organization related groups must adhere and comply with January 2006 TRIPS layout, but least developed countries are allowedto seek postponement of their obligations and responsibilities to implement TRIPS. In the 2001 Doha Declaration on the TRIPS Agreement and public health, LDCs were given an extension (until January 2016) for implementing their obligations closely associated to pharmaceuticals (Moschini, 2003: 10; www.card.iastate.edu, 2003).

1.8 HISTORY OF TRIPS

The Final Act of the Uruguay Round of many-sided Trade Negotiations also included TRIPS when the negotiations that had begun in Punta del Este in 1986 and climaxed in 1994, resulting in the forming of the World Trade Organization (WTO) (Drahos, 2003: 2; twnside.org.sg, 2016). TRIPS require all WTO members to strictly follow, except exempted, to minimum standards of intellectual property protection (Drahos, 2003: 2; twnside.org.sg, 2016). Most developing nations and numerous developed nations needed to make transformation to their national intellectual property law (Drahos, 2003: 2; twnside.org.sg, 2016) with a specific end goal to adjust to the commitments in TRIPS given as of now.

On the substance of it, TRIPS indicates an intricate riddle. At the period of the arrangements, the United States as the world's major exporter of IP had much to pick up from the globalization of IP rights through the trade administration, while the economic and social impact for less developed nations were (and are) not unserious, for example, TRIPS obliges nations to recognize licenses on pharmaceutical items

and this has awesome ramifications for both the expense of protected medications, and in addition the long haul destiny of the nonexclusive commercial enterprises in those nations (Drahos, 2003: 2; twnside.org.sg, 2016). According to Susan's study of TRIPS, it was seen that twelve United States companies were mostly in charge of the political shake-up that acquired TRIPS to be in existence today (Sell, 2003). A number of research on TRIPS have experienced an identical inference. TRIPS was not an issue of soft political shake up exclusively on the ground that it went through the drafting of an itemized global treaty which includes US benchmarks of intellectual property security and after that at last directing it through a multilateral trading transaction including over one hundred Countries in a period of seven years (www.grain.org, 2016; twnside.org.sg, 2016). The key to shedding more light on how this was accomplished lies in a little amount of companies putting in place political impact that introduced more activists and systems into the reason for global intellectual property rights (www.grain.org, 2016; twnside.org.sg, 2016). The actions of Pfizer pharmaceutical company amid this period of lobbying showed a striking case on the way TRIPS was given birth to by a sequestered nodal administration (www.grain.org, 2016; twnside.org.sg, 2016).

Pfizer had most investment as compared to other pharmaceutical companies in many developing countries and along these lines saw the risk to global markets that general producers in States like India postured for the pharmaceutical business (www.grain.org, 2016; twnside.org.sg, 2016). It also predicted that developing countries were using their superior numbers in the WIPO to generate ideas that favored their own stands as net importers of foreign technology (www.grain.org, 2016; twnside.org.sg, 2016). A small group of Washington based policy entrepreneurs, during the early 80s had perceived of the idea of linking the IP regime to the trade regime (www.grain.org, 2016; twnside.org.sg, 2016). Pfizer executives and also the CEO Edmund Pratt, were also amongst the leader advocates of this inventiveness (www.grain.org, 2016; twnside.org.sg, 2016). Basically their strategy was to achieve a mutual concession to IP into the GATT(www.grain.org, 2016; twnside.org.sg, 2016). This agreement will be fit for implementation under GATT

conflict determination methods. It was seen as a drastic initiative. Countries had progressed painstakingly in yielding sway over IP rights inside the centralized framework of WIPO (www.grain.org, 2016; twnside.org.sg, 2016). Pfizer executives started the usage of their networks in dual very significant ways. The first way contained of network activation; Pfizer executives used their developed business networks to share the idea of a trade-based advance to IP and started speeches at business forums like the NFTC and the Business Round Table isolating the connections between trade, IP and investment(www.grain.org, 2016; twnside.org.sg, 2016). The CEO found it easy to influence the trading webs from the top of the business world. Other Pfizer senior executives also started to push the intellectual property issue within national and international trade associations as the case may be (www.grain.org, 2016; twnside.org.sg, 2016). The message about IP went out along the business networks to various areas such as chambers of commerce, business councils, business committees, trade associations, and peak business bodies (www.grain.org, 2016; twnside.org.sg, 2016). With each such acceptance, the trade influence behind the case for such a methodology got to be increasingly hard for governments to anticipate (www.grain.org, 2016; twnside.org.sg, 2016).

The next approach that Pfizer functioned was via networking. One of the points that were considered vital in the negotiations over intellectual property was the Advisory Committee on Trade Negotiations (ACTN) (www.grain.org, 2016; twnside.org.sg, 2016). ACTN was developed in 1974 by Congress under US trade law as part of a private sector advisory committee system. The main purpose of this system was to ensure a concordance between official US trade objectives and US commerce (www.grain.org, 2016; twnside.org.sg, 2016). ACTN maintained a central position in the agenda. Pratt, with the help of other senior executives within Pfizer, began to put himself forward within business circles as someone who could also develop US business thinking about trade and economic policy (www.grain.org, 2016; twnside.org.sg, 2016). In 1979 Pratt became a member of ACTN and in 1981 the overall Chairman of ACTN and during the 1980s, representatives from the most senior levels of big business within the US were constituted by the President to

function on the committee (Pratt was appointed by President Carter) (www.grain.org, 2016; twnside.org.sg, 2016). The Committee exclusively had the advisory role, but with direct access to the USTR and the duty of providing advice on US trade policy and negotiating objectives in the light of national interest and out of this business, and it culminated in the strategic thinking on the trade-based approach to intellectual property (www.grain.org, 2016; twnside.org.sg, 2016). With Pratt at the top, and the CEOs of IBM and Du Pont Corporation serving, the ACTN started creating an agenda which consisted of sweeping trade and investment. John Opel, the then Chairman of IBM, headed this team (www.grain.org, 2016; twnside.org.sg, 2016).

ACTN's simple memo to the United States regime was that it ought to attempt however much as could reasonably be expected to make appeal with a specific end goal to achieve the set outcome for the US on IP. US Executive Directors to the IMF and World Bank could get some information about IP when throwing their votes on credits and access to bank offices; US help and advancement organizations could utilize their assets to spread the intellectual property news. After some time the news was heard and followed up on (cgkd.anu.edu.au, 2016; regnet.anu.edu.au, 2016). The clauses protecting IP property were automatically admitted in the Bilateral Investment Treaty program which the US was as well involved in with developing countries in the 1980s (www.grain.org, 2016; twnside.org.sg, 2016). Method for impact of an individual and capable kind likewise started to work.

Shultz, the Secretary of State had a dialogue on the Intellectual Property issue with Prime Minister Lee Kuan Yew and stated Jacques Gorlin in his 1985 analysis of the trade-based approach to IP (www.grain.org, 2016; twnside.org.sg, 2016; Fletcher, 2013). President Reagan in his message to Congress on February 1986 entitled 'America's Agenda for the Future' suggested that a key item was much (www.grain.org, 2016; twnside.org.sg, 2016; Fletcher, 2013) greater protection for US intellectual property abroad (www.grain.org, 2016; twnside.org.sg, 2016; 2016; Fletcher, 2013). This was also constant with ACTN's testimonial that the growth of an USA strategy for IP must be supported by the President and cabinet. The scenario

was created for IP to gain political imporatnce and not just technical trade negotiation between countries in the international community (www.grain.org, 2016; twnside.org.sg, 2016).

ACTN was responsible for incorporating intellectual property standards into the GATT, which turned out to be a best option to spread those valuable standards(www.grain.org, 2016). Practically ACTN noticed that the dealing of a broad IP agreement would be a lengthy procedure but the procedure might not commence except IP was put on the agenda of the next trade round (www.grain.org, 2016; twnside.org.sg, 2016). To realise this, a Ministerial Conference of Contracting Parties of the GATT must provide a declaration containinga form of interpretation paving the way for the negotiation of an Intellectual Property code (www.grain.org, 2016; twnside.org.sg, 2016). ACTN faced a problem at this stage; both Opel and Pratt had been pushing the Intellectual Property agenda with the USTR, at first with William Brock and then Clayton Yeutter (www.grain.org, 2016; twnside.org.sg, 2016). In 1981 Brock had established a four-sided Group (Quad) of nations, for the point of attempting to create unanimity for another round of multilateral trading arrangements and in the mid-1980s there were refinements of viewpoint amongst Europe and the US on the attractive quality and limit of a coming trading round (www.grain.org, 2016; twnside.org.sg, 2016). Without the agreement of the US and Europe the scene of a multilateral trade round getting off the ground were limited; the Quad contained of the US, the EC, Japan and Canada (www.grain.org, 2016; twnside.org.sg, 2016). Once these countries had accomplished a consensus on an agenda for a multilateral trade round, the round would most likely start-up (www.grain.org, 2016; twnside.org.sg, 2016).

Further, Yeutter assumed the significance of IP to the round, however the issue was, as he explained to Pratt and Opel, that when he went to gatherings of the Quad there was no genuine certification from the other Quad individuals to consolidation IP and trade (www.grain.org, 2016; twnside.org.sg, 2016). The main challenge of both were conspicuous. They had to convince business organisations in Quad countries to place

pressure on their governments to include intellectual property in the next round of trade negotiations (www.grain.org, 2016; twnside.org.sg, 2016). That meant first convincing European and Japanese business that it was in their interests for intellectual property to become a priority and target issue in the next trade round but with a strong Quad consensus there was a real possibility of intellectual property making it onto the agenda for the next trade round (www.grain.org, 2016; twnside.org.sg, 2016).

Devoid of such an agreement some under-developed nations would have the capacity to keep a thought on IP. The accurate period for the agreement forming activity was almost a year. The Ministerial Conference to initiate a new trade round was programmed to take place at Punta del Este in Uruguay in September of 1986 (www.grain.org, 2016; twnside.org.sg, 2016). The USTR have been striving to persuade the rest of the Quad of the IP matter, yet it needed to go past only an idea at the Governmental Consultation (www.grain.org, 2016). In March of 1986 they developed the Intellectual Property Committee (IPC); the IPC was an ad hoc formation of thirteen major US corporations; Bristol-Myers, DuPont, FMC Corporation, General Electric, General Motors, Hewlett-Packard, IBM, Johnson & Johnson, Merck, Monsanto, Pfizer, Rockwell International and Warner Communications (www.grain.org, 2016; twnside.org.sg, 2016). It depicted itself as "dedicated to the negotiation of an extensive agreement on intellectual property in the current GATT round of multilateral trade negotiations" (www.grain.org, 2016; twnside.org.sg, 2016).

Europe became the centre of interest in the IPC agenda. There was time when Europe was on the same grounds, with Japan to follow and Canada, even though it belonged to Quad membership, was not really a major player (www.grain.org, 2016; twnside.org.sg, 2016). It was the assistance of European and Japanese corporations that was important and what came next was an exercise to build mutual thinking and ideals at the highest levels of senior corporate management (www.grain.org, 2016; twnside.org.sg, 2016). CEOs of United States companies from IPC were likely to

make a contact with Europe and Japan to convince them for pressure buildingfor their governments to support the inclusion of IP at Punta del Este although minute, very senior and powerful business networks were activated at that time (www.grain.org, 2016; twnside.org.sg, 2016).

The IPC also sent representatives to Europe in June 1986 and Japan in August of 1986 to urge business in those countries that they also had an interest in seeing the GATT become a vehicle of universally enforceable intellectual property rights (www.grain.org, 2016; twnside.org.sg, 2016). The IPC's efforts in the lead-up to Punte del Este brought it successes, for both European and Japanese industry responded by mounting real pressure successfully on their governments to put intellectual property on the trade agenda (www.grain.org, 2016; twnside.org.sg, 2016).

The Ministerial Declaration on the Uruguay Round of September 20, 1986 consisted of a negotiating mandate on IP property rights (www.grain.org, 2016; twnside.org.sg, 2016). In the seven years that followed United States trade negotiators with the help of the many networks that had been recruited and activated in the cause of global intellectual property rights were able to deliver a strong agreement on intellectual property in the form of TRIPS (www.grain.org, 2016; twnside.org.sg, 2016).

1.9 THE WTO PANEL'S ELUCIDATION

The TRIPS Agreement was made on January 1, 1995; that facilitated the WTO member states to explore and use the Articles 7 and 8 to enhance and perfect their perspective (Yu, 2009; www.peteryu.com, 2016). The difference of these positions was debated in *Canada—Patent Protection of Pharmaceutical Products* (Yu, 2009; www.peteryu.com, 2016). During the debates and discussions sessions, and the risen issues, the European Communities debated about the regulatory review and stockpiling exceptions in Canadian patent law as it was against the TRIPS Agreement (Yu, 2009; www.peteryu.com, 2016). Articles 7 and 8 of the TRIPS were given attention by Canada arguing that these clauses are responsible fora freehand

given to the three conditions stated in Article 30 of the Agreement, so that governments may have flexibility to make adjustment to patent rights in order to implement and maintain the required balance with other vital national policies (Yu, 2009; www.peteryu.com, 2016).

As the WTO panel recounted in the following statement (Yu, 2009; www.peteryu.com, 2016) that Canadian point of view about Article 7 states that the main goals of TRIPS agreement was the creation of balance between the IP rights and some other social & economic policies WTO members. Article 8 broadened the social and economic policies with a focus on health policies (www.auilr.org, 2016; Yu, 2009).

In spite of the fact that the European Communities was not ready to ignore the expressed objective of achieving equalization inside the IP rights framework between imperative domestic arrangements, it took an altogether dissimilar point of view of Articles 7 and Articles 8; As the panel furthered, the two articles were considered as statements that show the balance of goals that had already been discussed in TRIPS Agreement. The EC further stated that Article 30 can be manipulated by governments to 'renegotiate' the balance of agreement with a focus on social and economic policies. Predominantly the EC pinpointed the last phrase of Article 8.1, which required "that the government evaluate to protect important socio-economic policies be constant", at the same time, adhering to the TRIPS agreement. The EC also mentioned Article 1.1 as reflective of the basic purpose of TRIPS agreement which is to formulate the minimum essential requirements for the protection and implementation of IP rights (Yu, 2009; www.peteryu.com, 2016).

In the end however, the panel sympathetically considered Canada's stance and found a middle ground between the two notions, thus creating some necessary adjustments and this action prevented another sessions of lengthy, useless renegotiations of the basic balance of the agreement.

As the panel declared on the note (Yu, 2009; www.peteryu.com, 2016) that Article 30's existence is indicative of the fact that the details written in Article 28 about the patent rights needs a certain reconsideration and accommodation. At the same time, there are three conditions inArticle 30 clearly shows that the negotiators were not considerate about the fact that this Article 30 did not plan to bring the renegotiation of the basic balance of the agreement, therefore it becomes imperative to investigate the wordings employed in this article. "Both the goals and the limitations stated in Articles 7 and 8.1 must" be considered alongside all the other provisions of the TRIPS agreement indicating the objectives and purposes (Yu, 2009; www.peteryu.com, 2016; Ficsor, & Mihály, 2012).

A few observers became unhappy with the panel's discovery, that they contended will achieve the shamefulness of the TRIPS Agreement and deprive the party States' political power in building up its general approaches (Peter, 2010; Yu, 2009; www.peteryu.com, 2016). Despite the fact that these approaches are justifiable, legal engagement and consequently free elucidation in WTO resolutions can be changed in either approach. In the event that the panel permitted a State to utilize Articles 7 and 8 to re-discuss the fundamental equalization of the TRIPS Agreement (Yu, 2009; www.peteryu.com, 2016), this will open up door ways for other States to be similarly opportune to do likewise. At last, it is far-fetched whether a more dissident development would aid under-developed States with little or no disadvantage (Davey, William 2005).

It is, nevertheless, worth mentioning and noting that both the bodies, that is; the WTO panels and Appellate Body, made any significant contributions in terms of effective application and interpretation of Articles 7 and 8 of the TRIPS Agreement (Yu, 2009;www.peteryu.com, 2016). As Carlos Correa also suggested, the panel in *Canada—Patent Protection of Pharmaceutical Products* expunged the interpretations of the implications and contents of Articles 7 and 8.1, although the specific references were made in compliance to the given requirements(Yu, 2009;www.peteryu.com, 2016). In a later case, *Canada—Term of Patent Protection*,

the Appellate Body also recognized that the applicability of Articles 7 and 8 still needs to be reinforced when it comes to dealing with potential cases regarding the measures that need to be taken to further advance the policy objectives of WTO members and furthermore those Articles still need the attention when it comes to the main interpretation(Yu, 2009;www.peteryu.com, 2016).

During the Doha Ministerial, WTO member states declared two very cogent documents (Yu, 2009; www.peteryu.com, 2016):

a. The Doha Official Declaration of World Trade Organization (WTO) (Ministerial Declaration) and
b. The Declaration on the TRIPS Agreement and Public Health of World Trade Organization (WTO) (etraining.wto.org, 2016; Zaman, 2013; Drexl, Ruse-Khan, & Nadde-Phlix, 2014).

Both the documents strongly boosted the principles, goals and objectives set forth in Articles 7 and 8 of the TRIPS Agreement (Yu, 2009; www.peteryu.com, 2016).

Looking through paragraph 19 of the Ministerial Declaration, it is related to the bulk of work carried out by the TRIPS Council, including 'the brush-up of Article 27.3(b) [of the TRIPS Agreement], the review of the accomplishments of the TRIPS Agreement under Article 71, which is based on the issues related with the implementation (Yu, 2009; www.peteryu.com, 2016). The Declaration explicitly states to clearly and objectively interpret the inter-relation between the TRIPS agreement and Convention on Biological variety, along with safeguarding the traditional aspects of creativity like folklores and the other related developments made in the field which concerns Article 71.1' (Yu, 2009; www.peteryu.com, 2016). The Declaration also stated that by delving deep into the work of this paragraph, TRIPS council shall be protected by the objectives and principles set out in Articles 7 and 8 of the TRIPS Agreement and take full consideration of the development (Yu, 2009; www.peteryu.com, 2016).

In comparison to the Ministerial Declaration, the Doha Declaration explicitly focused on the inter-relation between IP protection and the protection of public health (Yu, 2009; www.peteryu.com, 2016). The first two paragraphs of the Declaration clearly demarcate the importance of public health issues faced by many countries especially related to HIV, AIDS, TB, malaria and many other epidemics; as well as the need for the TRIPS Agreement to be integral part of both national and international actions to eliminate these problems(Yu, 2009; www.peteryu.com, 2016).

Paragraph 4 of the Declaration further highlights that member states agreed that TRIPS agreement should not pose hindrance for the members from making decisions and taking practical steps to guide public health (Yu, 2009; www.peteryu.com, 2016). The Paragraph continues to note that TRIPS agreement must be interpreted and applied to facilitate and compliment the ideologies of WTO members' right to protect public health, thus ensuring an easy access to medicine for all (Yu, 2009; www.peteryu.com, 2016). Finally, the Declaration highlighted the different 'tractability' appropriated to all WTO member states under the TRIPS Agreement (Yu, 2009; www.peteryu.com, 2016).

In addition, the two statements have set on high scale the relationship between the TRIPS Agreement and also the insurance of general well-being, however, their legitimate outcome on Articles 7 and 8 stays angled (Yu, 2009; www.peteryu.com, 2016). As Professor Correa in a statement mentioned that there can be many different interpretations of this paragraph. It can be taken as the statement of mere facts and not about rebalancing the Agreement; and it can also be taken as a point of reference in cases where the conflict exist. IPRs must not be considered as hindrance to the success of public health planning (Yu, 2009; www.peteryu.com, 2016).

For those who consider the Declaration as a statement of facts, they may not accredit any respectable or legal status to Articles 7 and 8 (Yu, 2009; www.peteryu.com, 2016). In fact, it is totally open to debate that the Doha Declaration was just another simplerestatement of Article 31(1) of the Vienna Convention on the Law of Treaties (Vienna Convention), which specify that treaty must be interpreted with sincerity,

according the objectives and principles and objectives (Yu, 2009; www.peteryu.com, 2016). Since the WTO panels and the Appellate Body started their functions, they have adopted specific arrangements as part of the acknowledged rules of interpretation as required by the Understanding on Rules and Procedures Governing the Settlement of Disputes (Yu, 2009; www.peteryu.com, 2016).

Furthermore, it's imperative to highlight the effect that the conferences of Doha have put up; as Susy Frankel observed that Doha declaration was able to put a stop to various meanings that could have been given by various members, but at the same time it is not justified to say that the declaration has put the words in clear terms which were already clear. Such statements steers one away from the basic principles of interpretation of the treaty (Yu, 2009; www.peteryu.com, 2016).

On the contrary, those who consider the Declaration as an effort to balance the TRIPS Agreement yet again, are likely to highlight the fact that the trade ministers of the WTO, through the Doha Declaration, came to a consensus that TRIPS Agreement must not stop the members from taking steps to protect public health (Yu, 2009; www.peteryu.com, 2016). Notably, paragraph 4 of the Declaration did not reiterate the phrase 'taking measures *necessary* to protect public health' as used in Article 8(1) of the TRIPS Agreement (Yu, 2009; www.peteryu.com, 2016). The prerequisite was obviously not there.

If such a gap is not enough, Paragraph 4 uses the word 'agree', while the other paragraphs of the Declaration use words such as 'discern', 'stress', 'affirm', and 'reaffirm' and as noted in the *UNCTAD-ICTSD Resource Book on TRIPS and establishment* (*TRIPS Resource Book*) (Yu, 2009: 7; www.peteryu.com, 2016).

Indeed, the word 'option' in this paragraph is somewhat similar to that of paragraph 7 of the Declaration, which is a provision that changed the deadline for least developed countries to protect the pharmaceutical companies; to January 1, 2016 (Yu, 2009; www.peteryu.com, 2016). That is because only those two paragraphs used the word 'agree', so Para 4 should also be given the same legal effect. After all,

there is no demurrer that the member states have come to any agreement regarding the extension of the deadline in paragraph 7 (Yu, 2009; www.peteryu.com, 2016; www.caaa.in, 2016).

Regardless of the fact whether the Doha Declaration restates or renegotiates the balance in the TRIPS Agreement, the addition of Articles 7 and 8 in the Ministerial Declaration appears to have a major impact on the work of the TRIPS Council (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016). This is especially true when Paragraph 19 of the Ministerial Declaration is read jointly with Paragraph 4 of the Doha Declaration (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016). The two Doha documents are also most likely to have added impact on decisions reached by WTO panels and the Appellate Body (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016).

Professor Gervais observed that the importance given to certain Articles in Doha negotiations can result in the serious attention given by the panel to consider the ways to effectively interpret the Agreement within the given context(Yu, 2009; www.peteryu.com, 2016; www.caaa.in, 2016).

Furthermore, Article 31(3) of the Vienna Convention stresses that any subsequent agreements shall be considered and given due attention to the interpretation of a treaty or its application (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016).Although it is worth mentioningif the Doha documents would contain the agreement, WTO panels and the Appellate Body are most likely to consider the documents as a further development (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016). As Professor Frankel mentioned that the WTO panel in *United States Section 110(5) of the US Copyright Act* considered the WIPO Copyright Treaty as a development even though it neither has come into force nor has been ratified by either of the party (Yu, 2009;www.peteryu.com, 2016; www.caaa.in, 2016). In sequel to this concept, it is not an understatement to state that the writing of Doha ought to have some proceeding agreement in it.

1.10 KEY CHARACTERISTICS OF THE WTO TRIPS AGREEMENT AND NEGOTIATIONS

The hallmark of international trade treaties is related to and given importance to the possible consequences of negotiations (unctad.org, 2010: 5). The case of the Punta del Este mandate, which later led to the WTO TRIPS Agreement, offers concerning example; looking way back, the Punta del Este authorisation makes interesting reading: it refers to negotiations targeting to clarify (GATT) provisions and to the expansion, as reserve, of new rules and disciplines (unctad.org, 2010: 5). All the more particularly, the order discusses arrangements planning to make a multifaceted ideal of standards, principles and orders as respects global trade in fake products. Along these lines, numerous under-developed nation arbitrators have the understanding that the objective of the order contained essentially setting up a multidimensional structure managing worldwide trade in inferior products (unctad.org, 2010: 5; Druick, 2006).

At long last, notwithstanding, this order was deciphered and characterized by the more persuasive countries nations bringing about an undeniable concurrence on IP rights with respect to benchmarks and orders. Requirements states that the ensuing TRIPS Agreement was a broad as to condense superfluous a multifaceted ideal of tenets and controls in regards to the worldwide trade in fake merchandise – an issues that was denotatively specified as a focal part of the Punta del Este order on the matter.

The detail semantic in discuss order is cogent as regards the results. Further, practically everything surrounding the directive could be utilised by some States in respect to their identifiable trading programme. In this way, States must give bit of consideration and effectively and productively participate in discussion about the wordings of the provision. Because TRIPS was not the main aim of attention in Punta del Este in 1986 (and ironically enough, “services” was), the semantic of the directive escaped devoid of a number of strong checking (unctad.org, 2010: 5; Lamy, 2008). An important part of the mandate in TRIPS is the establishment bulk of the

mandate as there was not a lot of contribution from developing countries, the Punta del Este TRIPS mandate consists of no mentioning of important contents such as development, public health and transfer of technology (unctad.org, 2010: 6; Lamy, 2008). This is the sacrifice the under-developed nations when taking a gander at the main qualities of the TRIPS Agreement. This showcases some limitations, as regards retrieving enough course of action environment and discuss a quid pro quo for giving way and creating course of action environment (Boyle, 2004). Notwithstanding the directive, the discusses bringing about the TRIPS Agreement have some main elements which take into account critical and essential areas to be cultured. To begin with, for a dominant part of developing nations, the official proficiency important to manage the discuss was just not accessible; second, and perhaps going along from the first, the developing nations were quick to respond in their progresses, as opposed to taking the initiative of establishing the programme. In sum, exchange ably to several other areas of Uruguay Round Negotiations, the extent of developing country engaging in this peculiar area was far from optimal, leading to concern that the outcome of the negotiations was one-sided (unctad.org, 2010: 6).

When the decision was made, the WTO TRIPS Agreement was the pervasive treaty ever negotiated in the area of IP Rights (unctad.org, 2010: 6). The evidence that it was submitted in WTO, rather than in the WIP Organization, makes it an agreement with strong conclusive commitments and responsibilities (unctad.org, 2010: 6). In reality, the likelihood to fall back on WTO's joined and restricting framework for the resolution of disputes was the significant motivation behind why the advanced nations needed IPRs to continue under the skyline of WTO (unctad.org, 2010: 6). In terms of meaning, the TRIPS Agreement constituted minimum and universal standards, many of which are connected to additional commitments developing from the Paris, Berne, Rome and Washington Conventions in their respective fields/interests (unctad.org, 2010: 6).

The fact that responsibilities are operationalized in accordance to other international treaties, which may or may not have the similar membership requirements as WTO,

therefore, this allowance of provisions becomes a hallmark of the TRIPS Agreement (unctad.org, 2010: 6). Similarly, a country can be or cannot be a member of the Paris Convention for the protection of Intellectual Property (1967) or the Berne Convention for the Protection of Literary and Artistic Works (1971), but countries that became a member of WTO automatically are held by the TRIPS Agreement and therefore by the provisions of the Paris and the Berne Conventions as embodied in TRIPS (unctad.org, 2010: 6). From the time when some under-developed nations were not member to every one of the Conventions of IPRs, the aftereffect of the TRIPS Agreement was that they needed to (unctad.org, 2010: 6) offer some kind of reparation to their enactment to carry themselves into concurrence with the separate commitments and obligations originating from other IP agreements, encapsulated in WTO. Above all, the principles, at the long-run, acknowledged in the WTO TRIPS Agreement reflected those pervasive in the developed nations, for example, the US (unctad.org, 2010: 6). Therefore, even though the standards prescribed in the TRIPS Agreement are “minimum”, they may however be quite high for the countries in concern (unctad.org, 2010: 6). Hence, the TRIPS Agreement is entirely thorough in endorsing, interestingly, some regular fundamental guidelines for a wide template for nations. Under-developed nations' consent to TRIPS must be set in the condition of the usual flow toward the conclusion of the Uruguay Round, when under-developed nations would have liked to achieve a balance between increases developing from springing farming into the defer of WTO and challenges emerging from different sectors, prominently administrations and IP rights (unctad.org, 2010: 6).

A while later, be that as it may, numerous research have been coordinated to the benefits for industrialized States and expenses for under-developed nations. This brought about under-developed nations to direct their endeavours towards "re-harmonising" the Uruguay Round bundle, as well as through the purported "enforcement agenda".

1.11 THE TRIPS AGREEMENT AND DEVELOPMENT DEFICITS

Many beholders and commentators conceived the TRIPS Agreement to be not balanced, showcasing some "establishment deficits" (unctad.org, 2010: 7). There are various ways of how these shortcomings show themselves, for instance, the WTO TRIPS Agreement, rather unlike the GATT, the General Agreement on Trade in Services (GATS) or other WTO Agreements lacks essential provisions associating to special & distinctive treatment (S&D) (unctad.org, 2010: 6; Conconi & Perroni, 2015). The main S&D at present accessible in the WTO TRIPS Agreement is the additional intermediate time-frame accessible to some nations, which, for a considerable measure of reasons, numerous nations were not able utilize to the fullest.

A second route in which the understanding's advancement deficiency shows itself is more dissimilar from a portion of the remaining major WTO Agreements. Especially, the procurement of MFN and domestic management, fundamental in each WTO agreement, are in any case applicable to common exemption (Drahos, 2002). In fact, many other WTO agreements have a distinct article dealing with "general exceptions", e.g. for public health or other legitimate policy aims and objectives (unctad.org, 2010: 7). In the TRIPS Agreement, however, there were no basic exclusions; instead, the TRIPS Agreement only offers for "limited exceptions" (unctad.org, 2010: 7). The notion that there are not any specific exceptions in the TRIPS Agreement reduced the space for WTO members to gather and agree upon a universal public interest goals which are not concerned with protecting human, animal or plant life or health (unctad.org, 2010: 7). Thus, the very same clauses associating to MFN and national treatment have intensity in TRIPS than they do in other WTO agreements and this absence of general exceptions is confusing, especially in view of the mandate at Punta del Este which talked of negotiations aimed at "clarifying GATT provisions" (unctad.org, 2010: 7). It is doubtful that, if there exist a common prohibition, the TRIPS Agreement would represent not any impediment, genuine or envisioned, to States wanting to ensure, for example, general

well-being (unctad.org, 2010: 7). Together with the way that the TRIPS Agreement has solid procurements to defend the rights of the makers of mechanical innovations instead of its clients, this absence of populace interest springs extraordinary worries about growth shortfalls (unctad.org, 2010: 7).

The third manifestation of the agreement's possible growth shortcomings are concerned with the rare within the multilateral trading regime, for example, the new concept of protecting IPRs did not fit in the traditional GATT ideals of promoting free trade and aiding competition (unctad.org, 2010: 7). IPRs could get to be confinements to trade and outcome at long last in forestalling as opposed to cultivating rivalry. For many developing countries, therefore, IPRs is not just part of WTO, and TRIPS is considered *sui generis* amongst the WTO agreements (unctad.org, 2010: 7). Finally, the TRIPS Agreement has a standout clause in article 72 highlighting that the doubts cannot be erased that are related to any of the clauses, if all the members does not give their consent (unctad.org, 2010: 7). Interestingly, this procedure was not given space in any other WTO agreement, thus turning TRIPS into what some call a *sui generis* WTO agreement (unctad.org, 2010: 7).

Fourth, there are incredible contrasts in the fortification of the agreement's procurements (unctad.org, 2010: 7), and thus offers adapt to present circumstances. Having procurements identifying with licenses that are entirely expressed for the exclusive favourable position of the licence holders and having little entirely expressed semantics for matters, for example, general wellbeing, movement of innovation and socio-improvement targets transforms TRIPS into an askew agreement, with obligatory procurements securing IPRs right recipients, and endeavour procurements suitable for populace interest parts of IPRs and more extensive advancement points and goals. The differences between article 27 and articles 7 &8 are good examples. Article 27 clearly states that patent rights should be available irrespective to the origin of invention, domain of technology or international production of items (unctad.org, 2010: 7). On the other hand, provisions such as articles 7 and 8, dealing with crucial issues and challenges such as transfer of

technology, social and economic welfare, public health and nutrition, public interest, etc., are cast in “best endeavour language” (unctad.org, 2010: 7). As indicated by article 8, such assessments are additionally applicable to the procurement that they must be steady with the procurements of the TRIPS Agreement (unctad.org, 2010: 7). In this way, the TRIPS Agreement's improvement disservice emerge significantly from the way that it stresses on States regarding the rights of patent holders – to some extent at some expense for other general approach targets (unctad.org, 2010: 7).

In any case, accordingly, prohibiting certain essential models of IPR safety to protect the legal interests of the makers of innovative products cannot open a door way to an improvement shortfall. Or maybe, the "improvement shortfall" happens on the grounds that the possible clients of the mechanical innovation are really not able to place exertion on it for advancement, either on the grounds that the information itself is not promptly accessible, or is so costly with states of access which are challenging to meet, that it limits arrangement alternatives for clients. Thusly, the issue has tackled a cardinal facet in light of the fact that most, if not all, of the makers of mechanical innovations are more located in industrialized nations. In another bearing, most of the possible clients of mechanical skill are situated in the industrialized nations.

At last, and profound relationship with previous points, the agreement's improvement shortfall is associated with the major aims TRIPS is envisioned to accomplish. On a basic level, IPRs ought to fashion out common regale of both the makers and the clients of mechanical innovations.IPRs and their insurance ought to advance socioeconomic benefit, aid the clients of innovative technology and help the exchange and spread of innovation. Likewise, there ought to have been obvious and enforceable procurements in the TRIPS Agreement concerning the rights of the clients of innovative technology and the unequivocal right of States in enactment of legal strategic aims (unctad.org, 2010: 7).

Also, the report of the UK Commission on IP Rights and Development points out the deficits the TRIPS pose for growth (unctad.org, 2010: 7). It may, additionally and properly – termed some improvement cordial procurements, which incorporates parts of TRIPS that, in fact, oblige some strategic environmental interest. These are as follows:

a. recognition of the fact that IPRs should also add to the "transfer and circulation of technology" (article 7);
b. the statement that assesses may need to be taken to avoid the abuse of IPRs (Article 8);
c. the fact that TRIPS mainly sets minimum standard for patentability, but does not prescribe how these standards are to be operationalized;
d. the fact that TRIPS allows member countries to exclude from patentability plants and animals and importantly biological processes for producing them;
e. the fact that TRIPS gives allowance to countries to choose an "effective *sui generis*" plant variety protection system;
f. the fact that TRIPS offers countries the benefit to design their regimes for exhaustion;
g. the license to exclude diagnostic, therapeutic and surgical methods and new uses of known products from patentability (article 82);
h. the fact that there is a credit of governments' possibility to use or allow other third parties to use a patented invention without the due permission or consent of the patentee;
i. the fact that TRIPS does not require the compulsory imposition of data exclusivity, as such, on test data (but only protection against injustice and unfair commercial use);
j. the recognition that there might be a need for measures to prevent anticompetitive practices and behaviours in contractual licences (article 40);

k. the responsibilities of developed countries to offer incentives to their enterprises and institutions to further promote technology transfer to LDCs (article 66.2)17;

l. the provision that the TRIPS Council may as well grant extensions to the transition period for LDCs (article 66.1)**;** or

m. the responsibility for developed countries to offer technical and financial assistance to developing countries to alleviate its execution (unctad.org, 2010: 10).

CHAPTER FOUR

INTELLECTUAL PROPERTY RIGHTS

IP Rights are defined over impalpable assets that are the consequence of human inventiveness and innovation (Moschini, 2003: 2; www.card.iastate.edu, 2016). Patents, copyrights, trademarks and trade secrets are the major and common forms of IPRs, although associated but different forms of intellectual protection exist to deal exclusively with specific types of innovations (Moschini, 2003: 2; www.card.iastate.edu, 2016).

1.12 PATENTS

They are perhaps the resilient type of IPRs. It is usually given by States bodies of a particular country, for instance, the Patent and Trademark Office (PTO) – after an effective appraisal of a claim (Moschini, 2003: 2; www.card.iastate.edu, 2016). It places upon the discoverer the ultimate opportunity to enjoy and be immune from economic exploitation of his/her invention within a specific period which is mostly two decades starting from the moment of notification. To get the patent licence, the idea created or invented has to be new with no prior type in design or structure.

The new creativity should likewise need a creative stride (it must be conspicuous to any man with in the area of the creativity and where it is required for utilization), and it must be profoundly helpful (the creativity should solve a problem in its use). A noteworthy condition of a patent filing is *exposure*: the patent filing must not be too sophisticated to aid those artistic in the particular turf to apply it. The prior depicts purported 'usage licenses,' one of the main fundamental and exceptionally broad type. The area of such licenses includes with no exception to equipment, industrialised procedures, and arrangement of material and objects of manufacturing (International Intellectual Property Alliance, 2002). Different patents that can be gotten

has to do with 'modern outline,' which grants safety to visual viewpoints of an item (rather than its industrial components), and 'mode of use' (unimportant) licenses.

1.13 COPYRIGHTS

Copyrights has to do with original works of authors, like books, sound or motion picture recordings, photos and many other artistic creations (Moschini, 2003: 2; www.card.iastate.edu, 2016). An exclusive right to claim the protection for such items is that they be determined in an obvious medium (Moschini, 2003: 2; www.card.iastate.edu, 2016). Not at all like patents, there is no curiosity or convenience prerequisite, even though there are requirements for undiluted innovation (in which the idea has not gone through a style of copy and paste) and writing. Registration might become possible, however particularly IP rights under copyright laws is present autonomously without convention. Protection under copyrights can ordinarily be granted for fifty years (and in the case of EU and UN, its seventy years) in addition to the age of the author till death (U.S. Government Accounting Office, 2000).

1.14 TRADEMARK

A trademarkis a sign, word, symbol or device that (www.csun.edu, 2016)differentiates the goods or services of an enterprise from those of others (Moschini, 2003: 3; www.card.iastate.edu, 2016). There is no curiosity or convenience prerequisite here, however, the major condition here is *uniqueness* (because a mark may not be regarded as a general report). For trademarks to be reasonable they typically have to be filed; any unlawful usage of a mark identical (or incomprehensibly related) to a lawful trademark is extremely and severely proscribed (Moschini, 2003: 3; www.card.iastate.edu, 2016). Protection of trademarks is devoid of timeframe which subjects it under periodical renewal (Azzam, 2009: 289).

1.15 TRADE SECRET

Trade secrets consist of any top secret or essential business information including formulas, methods and techniques that may bestow a benefit for challengers with the fact that it is not generally cognized (Moschini, 2003: 3; www.card.iastate.edu, 2016). For trade secret security to become applicable, the usual thing is that sensible moves and endeavour must be embraced to keep vital information in its highest level of confidentiality. All the more particularly, protection becomes spread out contrary to a different party revealing by inconsistent medium, yet a trade secret provides no security towards autonomous disclosure or figuring out. Particular IPR tools applicable to specific sorts of innovations (*sui generis* frameworks) is produced. Several applying for a protection certificate have to be fresh and original and it must fulfil and comply with the condition of *uniqueness*, *standardisation* and *strength*. The protection offered by PVP certificates is also similar to that provided by patents with two major qualifications (Moschini, 2003: 3; www.card.iastate.edu, 2016). To start with, there is a 'study exception,' this means secured assortments might be utilized by researchers for future study reasons (for example to create additional fresh breeds). Second, at hand is an 'agriculturist's benefit,' in which breeds of ensured assortments can be spared and rationed by agriculturists for personal growing in the future (Koyek, 2001).

1.16 OTHER IMPORTANT IPRS

Other highly essential *sui generis* IPRs includes and not limited to integrated computer circuit rights, which protect and guides the layout design of integrated computer circuits (chips) (Moschini, 2003: 4; www.card.iastate.edu, 2016). Unlike patents, novelty and non-obviousness are not compulsory here because originality suffices (Moschini, 2003: 4; www.card.iastate.edu, 2016). It is similar to a trademark, but it is not privately owned. Just as trademark, yet it is not exclusive. Database rights are additionally intended to be devoid of approved utilization of database arrangements (but rather does not present unequivocal rights to the

information) (Moschini, 2003: 4; www.card.iastate.edu, 2016). Currently, these rights are applicable in the EU yet not in the US.

1.17 IPR AND INTERNATIONAL COMMUNITY

In spite of the fact that IPR protection is profoundly established in some set of laws and in that capacity is the benefit of national purviews, universal assistance as regards this, through multifaceted agreements, has a lengthy practice as far back as 19th century. Before TRIPS almost most the conventions and treaties concerning IPRs were distributed by WIPO, a UN agencyGeneva, Switzerland. This agreements considers that every nation spreads to the populace of different nations similar patent rights which is accessible to its people (the guideline of 'domestic conduct'). It additionally takes into account a privilege of antecedence, and after disclosure in a party States, a maker can apply for protection in other States which runs for a year from the moment of disclosure. The 1979 PCT is meant to facilitate the application procedure for patent protection for the same invention in member countries by offering centralized filing and highly standardized application procedures (Moschini, 2003: 4; www.card.iastate.edu, 2016).

The 1886 Berne Convention for the Protection of Literary and Artistic Works is the main international treaty that applies to works safeguarded by copyrights (Moschini, 2003: 4; www.card.iastate.edu, 2016). The members are required to give the same rights available to their own nationals and develop min term for copyright (Moschini, 2003: 4; www.card.iastate.edu, 2016). The 1961 Rome Convention extends copyrights protection to various aspects (Moschini, 2003: 4; www.card.iastate.edu, 2016). Trademarks are safeguarded by many international treaties, including the Paris Convention for a complete national treatment as well as protection of well-known marks worldwide (Moschini, 2003: 4; www.card.iastate.edu, 2016).

UPOV was established in 1961, which helped in reinforcing the characterization of the rights involved during the revision.Latest UPOV convention (1991) permits countries to safeguard new varieties with both PVP certificates and utility patents,

and allows countries to permit farmers to save protected seeds for replanting later in the future (Moschini, 2003: 5; www.card.iastate.edu, 2016).

1.18 DERIVATIVES OF THE INTELLECTUAL PROPERTY RIGHTS

Proper adherence and execution of the agreements provide various benefits for States regardless of their phase of growth (Lewinski, 2002; www.wipo.int, 2016). It gives essential economic impetuses to inventive and creative people and organizations in this era of technological environment (Lewinski, 2002; www.wipo.int, 2016). The agreements give a generous lawful premise to solid electronic trade. They manage the domestic copyright commercial ventures, boost investment, and secure domestic inventiveness in general (Lewinski, 2002; www.wipo.int, 2016).

1.18.1 International protection of national right holders

Most importantly, the agreements would need different States to give full security inside their domains to another State's right holders when their innovations are used in a foreign country, in this way safeguarding their benefits and making sure that nearby makers tapped the economic value from other State (Lewinski, 2002; www.wipo.int, 2016). These advantages are particularly imperative in the time of worldwide advanced technological systems, when the refinement between the national and international business sectors is darkening, if not vanishing, as the scattering of works and other area are difficult to resolve inside States' outskirts.

The treaties serve as an advantage for all States. They comprise of various procurements that secure domestic makers in both the customary and the advanced setting (Lewinski, 2002; www.wipo.int, 2016). To the degree that they give clarification and fortify rights in the computerized localty, they might be all the more immediately apt to States that as of now have broad utilization of advanced technological systems (Lewinski, 2002; www.wipo.int, 2016). Be that as it may, it would too help makers in all States when their works are utilized as a part of the

advanced technological structure without their approval—a latent threat for all innovators (Lewinski, 2002; www.wipo.int, 2016).

Enforcement of the agreements can be valuable for under-developed States specifically since it energizes foreign investments and sets up a legitimate structure that would empower rivalry once the limit of introductory right to use to advanced technological systems is approved totally. This structure gives instigators of domestic makers, and entertainers, aiding the advancement of traditional mien. With the assistance of a satisfactory framework of rights, makers of all assortments of things would have the capacity to optimally make use of their inventions on the cyberspace, showcasing them to users in all States with no requirement for the expenses of international mediators, or conveyance frameworks.

Protection of international works and topic would permit domestic makers to compete soundly on a reasonable level. The unfriendly impact of securing just local works and not giving recognition to international copyright and related rights has been noticed in numerous cases (www.wipo.int, 2016). At the point once local effort is secured by copyright (www.wipo.int, 2016), permit expenses ought to be paid to the makers, dissimilar to unsecured international works which can be utilized unreservedly with no type of compensation. Writers in the US in the 19th century found it difficult to perform better than the British in their prominent written books that were accessible at an incredibly cheap cost. A comparative circumstance happened in regards to local movie industry in Malaysia. It is in this way not astonishing that those local right holders formed into the most grounded advice of expanding security for international right holders. Advances techno have developed, yet the fundamental precept stays balanced (Ralph Oman, 2000).

1.18.2 Major contribution to the national economy

The business sector which deliver and disperse innovative items, incline exclusively for their employment on successful and authorized copyright enactment/agreement. Thus these businesses came to be known as copyright commercial ventures. Over

years, copyright-based items progressively have been known to drive the development of States economies and worldwide economy. Copyright commercial ventures likewise make a huge number of employments everywhere throughout the world for both industrialized and less industrialized States, and for some economic segments that partake tremendously to production, and trades of these items.

The commercial significance of copyright industries in industrialised State economies are no stranger and satisfactorily recognised. The Commission of the European Communities estimates that the market for copyright goods and services ranges Community-wide between 5 and 7% of the GNP of the EU countries (www.wipo.int, 2016).The United States of America's core copyright industries such as software, publishing, broadcasting, sound recording and audio-visual, accounted for almost a 5.24% of the gross domestic product (GDP) in 2001 generally (www.wipo.int, 2016). If one enlarges this to the total copyright industries, including other industries which distribute or depend solely upon copyrighted products (recording and listening device, for example), it accounted for approximately 8% of GDP (www.wipo.int, 2016). The core copyright industries grew at an estimated compound annual growth rate of 7.0% while the rest of the other economy grew at an approximate annual rate of 3.0% (www.wipo.int, 2016). The copyright industries experience a six percent growth rate within the period of 1994 – 1996.

In the research carried out in some less developed countries, it was noted that copyright industries may likely be a central contributor to the economies of some less industrialized States. According to a WIPO study undertaken in member countries of the (MERCOSUR) and Chile, the value added by the copyright industries to the GDP in Argentina was (www.wipo.int, 2016) around 7% in 1993, 8% in Brazil in 1998, 6% in Uruguay in 1997, an approximate average of 2% for Chile between 1990-1998, and an average of 1% for Paraguay between (www.wipo.int, 2016) the year 1995-1999 (faujivakil.in, 2016).

The first step to highlight the importance and relevance of, copyright and related rights as a tool for economic, social and cultural growth, WIPO has developed a

Guide on Surveying the Economic Contribution of the Copyright-Based Industries to countries (faujivakil.in, 2016).

The prospect of items and services secured by copyright and related rights (faujivakil.in, 2016) would progressively have to do with online deal and conveyance of digitized articles (www.wipo.int, 2016). The legitimate alteration via enforcement of the agreement is relevant in giving aggregate backing to copyright commercial enterprises. Inability to address these requirements can create bad and deteriorating economic conditions.

1.18.3 Encouragement of increased investment

The agreements would help with increasing and suggesting interest in the State, both local and international, by giving more noteworthy assurance to organizations that their property are secured and prone to be reliably dispersed there.

An Organization for Economic Co-operation and Development (OECD) study pointed out that the absence of IP rights is taken as a negative point for foreign investment (www.wipo.int, 2016).According to a similar study of 14 developing countries, by the International Finance Corporation, shows that technological industries have a major effect on technology transfer and investment by Japan, Germany and US companies (www.wipo.int, 2016).

The level of IP protection and enforcement is very much a factor in industry's decisions to invest millions and billions in any particular country (www.wipo.int, 2016). Organizations assess the probability that they would sufficiently market the genuine copies of the items. It is unethical for business firms to invest in a business sector where loosing is certain. For copyrighted items, this rest totally and significantly on the level of copyright assurance and observance to the agreements puts forth a solid expression of the State's dedication to copyright insurance and preparation to react to global change (www.wipo.int, 2016).

1.18.4 Protection of local creativity as well as folklore

Enforcement of the agreements would give more grounded prompting to makers to deliver new innovations, and would assist the improvement of articulations of any society. While some show that the maximum state of copyright security would just prompt outpouring of incomes to international right proprietors, solid domestic taste is clearly seen in utilization of cultural items. The share of category of music, including juju from Nigeria, gamelan from Indonesia, and salsa or tango from Latin America, could be the next trend in copyright treaties (www.wipo.int, 2016).

As folklore is concerned, there may be some unconscious omission, in the sense that certain creators and performers of folklore are protected under the WCT and WPPT (www.wipo.int, 2016).

CONCLUSION

The United States, Japan, the Netherlands and many developed European countries safeguard the inventions; works, images, names, designs under the premise of intellectual property (IP). They participate in this since they are aware that protecting these property rights advances economic development, gives motivating forces to advancement, and in addition draws in venture that would make new employments and open doors for everyone. The World Bank's Global Economic Prospects Report for 2002 attested to the fact that IP is essential for modern globalized economies.

Innovatively blessed individuals have the privilege to prohibit the unapproved usage or offer of their imaginative works, likewise as proprietors of physical property, for example, automobiles, houses, and warehouses. Despite this, compared to makers of tangible items, people whose creations is importantly intangible have stress in earning a livelihood if their claim to their creations is not accorded due respect (usinfo.state.gov, 2016; www.stopfakes.com, 2016). Artists, authors, inventors, and others unable to rely on locks and fences to protect their work turn to IP rights to keep others from harvesting the fruits of their hard labour (globalexecutives.org, 2016; usinfo.state.gov, 2016; www.stopfakes.com, 2016).

In the era, with innovation progressing in an expanding pace, just upholding the TRIPS Agreement is insufficient to launch a vigorous IP framework. While it was the first wide IPR agreement of its time, it is a decade old, which mirrors a "picture" in phase (Al Shouani, Al Zu'bi & Milhem, 2009; amcorners.kz, 2016). Technological advances in information technology, biotechnology, and other fields require the updating of national and international laws that protect IP (www.fsa.ulaval.ca, 2016; amcorners.kz, 2016). However, by chance, World Intellectual Property Organization has achieved a feat in putting up fresh international ways that would address these set of encounters. WIPO also has successfully led the way in simplifying and streamlining the procedures for seeking, obtaining, as well as maintaining rights in

many countries (www.fsa.ulaval.ca, 2016; amcorners.kz, 2016). Through its “Global Protection Services” and its harmonization treaties, it saves creators, inventors and national IP offices a great deal of time and effort (www.fsa.ulaval.ca, 2016; amcorners.kz, 2016).

Since its beginning, copyright law has responded to innovative change, subsequently, today, the progressions that are getting every one of the features firmly associate to advanced innovation and computerized interchanges systems, for example, the Internet, PCs and other mechanical contraptions(usinfo.state.gov, 2016; naulibrary.org, 2016). These advances, in the same way as other developments, are both promising and in addition conceivably destructive to different parties indicating enthusiasm for the utilization and exploitation of works of authorship, from books and music to movies and website pages (usinfo.state.gov, 2016; naulibrary.org, 2016). There is most likely however that the issues identified with accomplishing the right harmony between these interests in light of late advancements are palling and legitimately can be portrayed as "innovative" or "exceptional” (usinfo.state.gov, 2016; naulibrary.org, 2016). However, in the meantime, they are hardly one stage in an adventure of persistent and effective adjustment that portrays the historical backdrop of copyright law (usinfo.state.gov, 2016; naulibrary.org, 2016).

The advances that at present raising issues and issues for copyright law are those identified with computerized stockpiling and also transmission of works and there are various angles to these advances that have suggestions for copyright law (chiangmai.usconsulate.gov, 2016; usinfo.state.gov, 2016; naulibrary.org, 2016), including and not limited to the following:

A. **Easy Reproduction:** The moment a work is in computerized structure, it can be imitated rapidly, inexpensively, and with no forfeiture of character. Every copy, thusly, can be more imitated, again with no loss of value. Along these lines, one copy of a work in computerized structure can meet the necessities of many clients. An illustration is the manner by which the minimal circles (CDs) containing the first advanced adaptations of recorded music are sold to customers in the '80s and '90s

have turned into the "bosses" from which billions of duplicates have been made and dispatched on PCs and on the Internet in this present day, 21st century (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

B. **Ease of Dissemination:** The growth of global digital networks paves the way for rapid, global distribution of piece in computerized structure. Like broadcasting (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016), computerized systems permit spreading to numerous people from a position/point. Propelled frameworks allow each individual to get the material on the framework to take part in more dispersal of the work, which could realize the work to circulate around the web at a high rate of development (www.charlestonco.com, 2016) to other internet connected individuals. This, joined without breaking a sweat of repeating works, delineates that a solitary advanced duplicate of a work can be multiplied and even increased numerous a huge number of times far and wide inside a brief timeframe (www.usembassy-mexico.gov, 2016). At the point when transmitted through rapid transmission lines, as coaxial link organizes or even fiber optic lines, the procedure is considerably speedier, and the limit for the transmission of works becomes geometrically too (pharmatree.in, 2016; amcorners.kz, 2016)

C. **Ease of Storage:** Advanced capacity is idiotic, and it gets denser with every progressing year after some time. Perpetually expanding amounts of material can be put away in a littler and littler measure of space, for example, a microchip memory card.In the mid 1990s, CDs, which can store more than 600 megabytes of information, were maybe the transcendent type of computerized stockpiling utilized by business privateers for putting away whole libraries of PC projects or sound recordings with total retail values in the a great many dollars roughly(www.america.gov, 2016; usinfo.state.gov, 2016). Case in point, today's prominent iPod versatile music player can store near 70 times that sum (around 10,000 tunes) in a gadget the measure of a cigarette pack (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

Other future challenges include;

I. **Determining the Proper Area of Secondary Liability in the Digital Age:** Another fascinating part of the fast development of advanced innovations in the previous decade is the individual way of the new innovation. A person, with next to no speculation, now can make duplicates and circulate a huge number of duplicates of works over the online by means of Internet, particularly works that can be digitized effortlessly, similar to music or films or photos. In the United States, there are organizations that convey shared systems administration innovation to take vantage of this, essentially enrolling a huge number of shoppers into a system of copyright encroachment on a scale never seen. The way that the exercises of numerous people can bring about monstrous, substantial scale encroachment brings up risky issues about authorization. It is however very troublesome for copyright proprietors to distinguish, find, and bring authorization activities against the tremendous number of people who may barge in their manifestations. Also, regardless of the fact that the proprietors could bring such activities, it is far-fetched that such people would have the capacity to pay for the debilitation that their activities have brought on. With an end goal to address viably the encroachment in these circumstances, copyright proprietors worldwide have swung to teachings of optional risk to hold the facilitators of these systems subject for the encroachment(usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016)

In order to curtail the challenges posed by the technological advancement, the following are put forward to be considered by the international body as regards intellectual property protection;

II. **Embracing New Forms of Expression:** On numerous occasions in the course of the most recent two centuries, the topic of copyright has secured new types of initiation. Photography, cinematography, electronic databases, and PC projects are some great cases. For every situation, arrangement creators at long last could look past the specific innovation or medium of

expression keeping in mind the end goal to recognize the repeating theme of imaginative origin that goes through all of copyright (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

III. **Maintaining the Framework of Exclusive Rights:** A principal doctrine of both national and global frameworks of copyright is that creators are qualified for select rights over specific activities (e.g. generation, dispersion, or execution) consolidating their imaginative works. These rights permit the creator to save both his monetary and non-financial interests in his innovative works, which, thusly, advances scholarly and aesthetic inventiveness and advantages people in general welfare when all is said in done. This same rule is perceived in a procurement of the US Constitution giving the Congress the power to allow elite copyrights, i.e "To advance the Progress of Science and helpful Arts. As new advancements have extended the methods by which works might be tapped, arrangement creators occasionally have needed to re-check the selective rights offered to creators under copyright, to guarantee that creators and proprietors of copyright go ahead to practice elite control over their works. Once in a while, a more broad understanding of existing rights is the answer; in the United States, for instance, a current right of open execution was meant additionally incorporate radio and TV shows. On different events, new rights have been incorporated to the copyright group, as when privileges of correspondence to the general population were added to the underlying global copyright settlement, the Berne Convention, because of the coming of TV (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

IV. **Market-Driven Solutions:** One reason that an arrangement of select rights like copyright has been so effective all through history in the past at giving the way to bolster innovative movement is that it appropriates copyright proprietors to depend entirely on the commercial center to discover money related backing for their imaginative venture. Specifically, where innovative change is becoming quickly, the adaptability of the commercial center is regularly the most proficient and powerful approach to ensure that works

keep on being made and scattered to the general population. Any commercial center will have its inefficiencies, be that as it may, and it is a test for nations to attempt to address them, for occasion, a selective right does not as a matter of course pick up a rights holder if inefficiencies in the commercial center make the activity of the privilege infeasible. The abuse of open execution rights in musical works is an exemplary case in the United States. Ordinarily, the estimation of any single open execution of a musical work is little moderately. The class of clients, which incorporates and not restricted to supporters, bars, eateries, markets, and so forth, is to a great degree and broadly vast. In total, the estimation of this type of abuse is significant, yet so is the expense of managing rights over such a vast base of clients (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

Aimster, Grokster, Morpheus, and Kazaa, took into consideration programming and administrations to clients, and increase promoting dollars taking into account the measure of the group of onlookers the infringing action draws in. Optional obligation teachings have for some time been an a vital part of the U.S. custom-based law of copyright. They give an effective method for implementation by putting risk on the individuals who are profiting from the encroachment and are in a circumstance to control or limit it. These precepts may play a significantly more critical part in copyright later on, as more innovative advancements permit organizations to exploit/people's encroaching action. The different arguments brought against such organizations propose the courts might experience issues finding the fitting standard for auxiliary risk in the advanced/web age. In the United States, the possibility of auxiliary obligation for copyright encroachment customarily was a legitimate protection that demoralized organizations from utilizing copyrighted fills in as a "draw" for clients without due authorization. This prospect of obligation, in any case, must be equilibrated by the courts with opportunity to take part in to great extent irrelevant territories of trade (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

V. **Reducing Inefficiencies for Subsequent Users:** As it has been in the course of recent years, the Internet furnishes the person with access to a tremendous wellspring of data of various types, from content to photos to music to varying media works Moreover, computerized innovation additionally offers that person with the ability to end up a creator by making and disseminating her own works. Frequently that creator might want to utilize a portion of the material he or she may discover, yet is dubious of the copyright status of a work or whom to request due permission. Corporate licensing of works can help such a creator by offering productive instruments so he or she can get consent to utilize works (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

There might be, nonetheless, a few or even a great deal of works for which the creator can't locate a proprietor or a directing collective office, and he or she can't settle the subject of whether the copyright law permits or forestalls utilizing such works. One issue for what's to come is the means by which the law ought to treat these supposed "orphan works". In the event that it is genuinely the case that the copyright proprietor of such a work no more focuses about its subsequent use, then such utilize ought not be avoided on account of vulnerability around a work's status. This outcome would deny general society of access to another and gainful utilization of the work, which is at last the objective and point of any productive copyright framework on the planet (usinfo.state.gov, 2016; naulibrary.org, 2016; hylc.in, 2016).

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