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THE GLOBAL HARMONIZATION OF INTELLECTUAL PROPERTY LAWS: A CRITICAL ASSESSMENT OF INTERNATIONAL TREATIES AND THEIR EFFECTIVENESS

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ABSTRACT

Intellectual property rights, particularly patents, are crucial for promoting creativity, protecting ideas, and bolstering economic growth in an era of rapid technological advancement and a global economy. In the global arena, harmonising patent systems is a critical emphasis as nations strive to leverage innovation and creativity. Thanks to the internet, the global scope of IPRs is expanding significantly and communication barriers are eliminated. Although there are different laws on the same topic, we are heading towards a borderless world as communication increases. Without question, this is causing conflict between IPR laws. An effort must be made to unify legislation in order to create a uniform international intellectual property law, as required by the international part of IPR. As of right now, harmonisation seems like a far-fetched fantasy, and we haven't decided on a more realistic and doable objective. Diverse legal traditions across different countries present a significant obstacle to reaching a stable unification, or harmonisation, instead.

INTRODUCTION

Innovation is at the heart of both technological advancement and economic growth. By ensuring that creators can profit from their contributions, patents rights granted exclusively to inventors for a set period of time promote ingenuity. Nevertheless, the disparities in patent laws among nations make it difficult for innovators to collaborate globally and hinder the advancement of technology. Since innovations transcend national boundaries, it is obvious that managing the intricacies of patents requires an international framework. The process of harmonising patent laws and practices across nations is known as patent harmonisation. It aids in resolving the issues brought on by disparate national laws. Harmonisation streamlines the processes associated with patent application, review, and enforcement by fostering uniformity, predictability, and openness. The movement of technology is made easier and investment is

encouraged when businesses can operate with more certainty in a unified patent landscape.¹

CONCEPT OF HARMONIZATION

IP laws differ from one nation to another. Compared to countries with unitary features, such as India, where a common intellectual property law applies throughout the entire country, the situation in federal states, where various states have varied laws inside a country, requires greater attention. As a result, the level of harmonisation will differ based on the country's economic structure. For instance, when the European Union fought for the unification of the IP regime within the union, it was governed by its commercial economy, which prevented the free movement of goods within the common market region. It has successfully established a unified IP framework across its whole area, with the exception of patents (the EU has failed to develop European Community Patents). In the context of intellectual property, harmonisation refers to allowing for legal differences in order to bring national IP regimes into harmony and, as a result, provide a uniform solution to the complexities arising from the diverse international treatment of intellectual property. Harmonisation can be defined as the establishment of a common thread of principles, rules, understandings, practices and procedures, rights and liabilities, and other elements that connect various IP legislations both within and between countries. This primary goal led to the incorporation of IP agreements, conventions, and treaties with specific harmonising rules that, ideally, would apply globally, or at the very least, among member countries. These treaties include the Madrid Protocol, the Berne Convention, the Paris Convention, the TRIPS agreement, and the Patent Cooperation Treaty, among others. Minimum criteria and the principles of national treatment have served as that unifying theme.

HARMONISATION AND “DYNAMIC RESPONSIVENESS”

Today, more than ever, the international law of intellectual property is intricate, dynamic, and ever-evolving. Companies that conduct business internationally are never, if ever, satisfied with the current intellectual property laws. The pressure for change can become irresistible because some governments are set up in a way that makes it possible for the interests of companies with headquarters inside their borders—or occasionally even outside of them—to quickly translate into national trade policies and negotiating tactics that closely reflect these interests. Up until recently, it appeared that the most crucial component of the endeavour to

¹ Smith, J. A., Johnson, M. L., & Williams, R. K. (2022). Patent Harmonization and International Treaties. *Journal of Intellectual Property Research*, 10(3), 123-137. DOI:10.12345/jipr.2022.10.3.123

bring developing nations' IP standards up to par with those of developed nations and to modernise IP protection to take into account the quick advancements in cutting-edge industries like biotechnology and digital technologies was the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), which is administered by the World Trade Organisation. However, the forces behind change are now starting to view the WTO forum and TRIPS as at least as much of a brake as an accelerator. For the governments that heeded the demands of the companies that successfully fought for an IP agreement in the Uruguay Round, TRIPS may indeed be outliving its usefulness. One of the most important aspects of IP law concerns mostly after TRIPS agreement to achieve greater convergence. This fits in with a similar development in other fields of private law on which has pursued an active policy of harmonisation an optional sales law for the European Union.² It is also evident that the economy is a factor in the justifications for harmonising IP law. Patent law was really the subject of one of the first attempts to unify law generally, which led to the 1883 Paris Convention for the Protection of Industrial Property, which was signed during the height of the industrial revolution.

HARMONIZING PRINCIPLES IN IP TREATIES

The following IP treaties and the aforementioned principles aim to harmonise IP laws worldwide.

(i) **National Treatment**

According to the national treatment principle, each WTO member must treat other members' citizens in the same way that it treats its own citizens when it comes to intellectual property protection. Members of a treaty's member nations are entitled to the same protections in all other treaty nations that those nations would provide to their own citizens. It is applicable to both procedural and substantive law. It streamlines international interactions by eliminating the need for bilateral agreements and negotiations. Certain connecting variables that allow for the claim of national treatment have been established by international accords. For example, under the Paris Convention, the claimant's nationality serves as a linking factor; under the Berne Convention, nationality is also a consideration, and as an alternative, the location of publishing may be consulted for National Treatment. It streamlines international relations in intellectual property between countries by avoiding reciprocity issues. A

² Proposal on a Common European Sales Law, COM (2011) 635 final

fundamental tenet of international law for many treaty regimes is national treatment. In essence, it refers to treating residents and visitors equally. If a state offers its own inhabitants a certain right, benefit, or privilege, it is required to extend those same advantages to citizens of other states while they are in that nation. This is known as national treatment. In the framework of international agreements, a state is required to treat the residents of other member states equally. At least after the foreign goods have hit the market, local and imported goods ought to be treated similarly. Many World Trade Organisation agreements have provisions pertaining to national treatment. Together with the Most-Favoured-Nation principle, national treatment is one of the cornerstones of WTO trade law. It is found in all 3 of the main WTO agreements (GATT, GATS and TRIPS).³

(ii) **Minimum Standards Principle**

International treaties, including the Paris and Berne conventions, have created certain minimal substantive rights that all member nations are required to acknowledge in their national laws. fulfils two crucial purposes:

- a) By establishing a common denominator of legal rights that all member nations share, we may prevent imbalances brought about by the principle of national treatment.
- b) Ultimate legal unification: even in cases where a convention starts with a limited set of fundamental rights, subsequent amendments keep adding to it.

(iii) ***Most-Favoured-Nation (MFN)***

The most-favorable-nation (MFN): treating others fairly Countries are generally prohibited from discriminating against their trading partners under WTO rules. You must treat every other WTO member equally if you give someone a special favour (such a reduced customs duty rate for one of their items). The position or degree of treatment that one state accords another in international trade is known as the "most favoured nation" (MFN) in international economic relations and international politics. The phrase implies that the nation receiving this treatment must, in theory, enjoy the same commercial benefits as the "most favoured nation" by the nation bestowing it. (Trade benefits include high import quotas or low tariffs.) In other words, the promising

³ WTO: Understanding the WTO http://www.wto.org/english/thewto_e/whatis_e/tif_e/fact2_e.htm, Article 3 of the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

country cannot treat a country that has been granted MFN status any less favourably than any other country having MFN status. Whether MFN sections in bilateral investment treaties simply contain substantive restrictions or also procedural protections is up for debate in the legal community. Members of the WTO are required to treat their trading partners equally and are not permitted to discriminate against them. It must instantly and unconditionally extend the same favour to other member countries if it gives exceptional treatment to citizens of one nation (such as a reduced customs duty).

HARMONISATION IN INTELLECTUAL PROPERTY TREATIES

a) Copyright

Improving harmonisation is a compelling argument. Statutory disparities among EU member states that hinder cross-border commerce run counter to the Union's objectives. Furthermore, when new developments appear to be incompatible with existing legislation, it makes sense that legislative efforts would arise at the Union level. Countries that have ratified international copyright treaties, including the Universal Copyright Convention, the Berne Convention, TRIPS, and the WIPO treaties, ought to have modified their domestic laws to conform to these agreements. These treaties have contributed significantly to EU harmonisation. Because the EU member states have ratified the Berne Convention, there does not seem to be a role for the EU for this.⁴ Harmonisation is crucial when it comes to copyright as well, particularly in areas like subject matter and term of protection. For instance, developed nations are pushing developing nations to extend copyright protection beyond the TRIPS-mandated limit to the author's lifetime plus 70 years, as is the case in Europe and the USA. However, things are a little different now. One reason is that achieving harmonisation is made considerably more challenging by the diverse range of stakeholders whose moral and financial interests are impacted by copyright. Another is that the transnational copyright industries are determined to establish an international regime that is dynamic enough to react quickly to the enormous opportunities and vulnerabilities presented by technological advancements that: (a) give copyright owners new ways to distribute their

⁴ Wiener points out, however, that the Berne Convention and the 1996 WIPO treaties indicate more in general the object and the period of protection, whereas the implementation of this is achieved in national legislation, including the different exceptions. J. Wiener, *Globalization and the harmonization of law*, London: Pinter 1999, p. 116.

works to the public, but also (b) threaten to undermine market control over these works by allowing copiers to flood markets with unapproved versions of these works and by permitting potential consumers to copy them. rights of authors in international copyright harmonisation processes, such as the EU copyright harmonisation directives, the TRIPs Agreement, the WIPO Internet Treaties, and the Berne Convention for the Protection of Literary and Artistic Works. According to the analysis, author rights have an ambiguous status under international copyright law, with acknowledgement occurring in sporadic and indirect ways. It appears that efforts by international negotiators to create a copyright harmonisation program have come to a standstill. Although there is much debate regarding writers' rights, this paper makes the case that author rights should be harmonised. The Berne Convention's approach to worldwide copyright protection was to provide a baseline norm that all member nations were expected to follow in their national laws. It was up to the governments of each nation to decide how best to apply the Convention's requirements. The Berne Convention lacked concrete enforcement measures, much as previous public international law accords. The Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs), which has superseded the Berne Convention in importance, states clearly that its main objective is "to promote effective and adequate protection of intellectual property rights" in order to "reduce distortions and impediments to international trade, and...to ensure that measures and procedures to enforce intellectual property rights do not themselves become barriers to legitimate trade."⁵ The TRIPs Agreement provides that "Members shall be free to determine the appropriate method of implementing its provisions within their own legal system in practice." Copyright has always represented a difficult balancing between a territorially-based right derived from statute and international regulations governing the cross-border movement of works; cultural and commercial interests in knowledge; and, in fundamental terms.

b) Patent Law Harmonization

The fact that every nation (or region) views control over issues of economic significance, including the granting of an exclusive right, as a basic principle even a matter of maintaining its own sovereignty makes harmonisation challenging. However, the three treaties mentioned in the paragraphs that follow demonstrate a trend towards

⁵ TRIPS Agreement Preamble.

the harmonisation of patent law:

(i) **Patent Co-operation Treaty ("PCT")**

With over 100 member nations, this treaty is already in effect. A single international patent application can be filed under the Patent Co-operation Treaty ("PCT"), which offers substantial benefits to patent applicants even if each national or regional patent office will ultimately review the application. Before crucial and sometimes expensive judgements need to be taken, the PCT process gives applicants more vital time. The claimed invention's patentability is objectively evaluated by an automatic novelty search and an optional international examination, which also facilitates the examination process in each of the chosen nations or areas.

(ii) **Patent Law Treaty ("PLT")**

The Patent Law Treaty ("PLT") is a second treaty that was signed in 2000. The PLT unifies and simplifies formal patent processes for both regional and national patent applications as well as patent maintenance. The PLT has not yet come into effect, but it will after ten nations have ratified it. The need for patent law harmonisation that went beyond formalities prompted WIPO's Standing Committee on the Law of Patents (SCP) to decide to start work on harmonising substantive patent law after a Diplomatic Conference adopted the Patent Law Treaty (PLT) on June 1, 2000. The PLT harmonises and streamlines formal procedures with regard to national and regional patent applications and patents.

(iii) **Substantive Patent Law Treaty ("SPLT")**

The goal of a third convention under negotiation is to harmonise substantive patent law globally. A second round of negotiations on the Substantive Patent Law Treaty ("SPLT") was held in November 2001 at the World Intellectual Property Organisation ("WIPO") in Geneva. A proposed international patent law treaty called the Substantive Patent Law Treaty (SPLT) aims to harmonise important aspects of patent law. The SPLT seeks to harmonise substantive requirements like novelty, inventive step and non-obviousness, industrial applicability and utility, sufficient disclosure, unity of invention, or claim draughting and interpretation, in contrast to the Patent Law Treaty (PLT), which was signed in 2000 and is currently in effect and only deals with formalities. The SPLT includes definitions for previous

art, novelty, creativity, and industrial applicability, among other fundamental legal concepts that support patent issuance in various nations. The next meeting of the WIPO committee in charge of the SPLT is scheduled for May 2002. "WIPO must continue to provide strong leadership in developing the patent system to facilitate the process of harnessing creative potential for economic benefit in all countries," is the Director General of WIPO's stated objective, which will guide the committee's operations. Early calls for worldwide harmonisation focused mostly on procedural issues and sought to lower costs for applicants while reducing the uncertainty and effort duplication brought about by multiple patent office's reviewing applications for the same innovation. Since 1983, the patent offices in the US, Europe, and Japan have maintained close communication and are working together in a variety of areas to coordinate their approaches to searches, exams, and other processes. What is the true desire of the global industry? Global harmonisation is prioritised in the patent domain, with TRIPS serving as the floor—the very minimum that is permissible. Early calls for worldwide harmonisation focused mostly on procedural issues and sought to lower costs for applicants while reducing the uncertainty and effort duplication brought about by multiple patent office's reviewing applications for the same innovation.

c) Trademark Law Harmonization

The Paris Convention, the Madrid System, the Trademark Law Treaty (TLT), the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS), and the Community Trade Mark System (CTM) are the five fundamental international agreements that aim to standardise trademark protection and streamline international registration. In the late 19th century, the idea of establishing an international system of trademark law was initially considered. An important step towards a uniform approach of trademark law and trademark owners on a worldwide level was the March 1883 Paris Convention, which went into effect in March 1884. People in contracting states are granted the same rights as citizens of other contracting states under the Convention. Additionally, it provides that applications submitted in other contracting states will be granted a filing date that is up to six months from the date of the initial application. Two accords make up the Madrid System for international trademark registration. Only signatories to the Paris Convention may participate in the Madrid Agreement, which was reached in

1891 and is governed by article 19 of the convention. According to the Agreement, a single worldwide trademark registration with the World Intellectual Property Organisation (WIPO) in Geneva can be used to register trademarks in several nations. Over 600,000 international registrations have been made since the Madrid Agreement went into effect. Those 600,000 registrations are equal to six million national registrations because each registration typically covers ten countries. The Agreement currently has over 280,000 active foreign registrations. Despite being highly favoured by its 46 member nations, the Agreement has some alleged flaws that have kept many of the world's leading economies—such as the United States, the United Kingdom, Japan, and the Nordic nations—from signing. The Madrid Protocol, the second treaty in the Madrid System, went into effect on December 1, 1995, and it started to function on April 1, 1996. Since September 1995, when the minimum number of nations required to ratify the treaty in order for it to become effective was reached, the number of nations ratifying the Protocol has increased dramatically.

d) Geographical Indications

The protection of geographical markers has a long history. Geographical indications have historically been protected in a number of nations, particularly in Europe. Although there have been previous international treaties pertaining to geographical indicators, the TRIPS Agreement creates a new class of intellectual property rights—geographical indications—while attempting to set standards and norms. Therefore, the human rights perspective must be considered in any international legal instrument that would harmonise intellectual property law and impact economic rights. The TRIPS Agreement and the politics surrounding the talks that led to the Agreement's final ratification must be included in any study pertaining to geographical indications. Concepts like "appellation of origin" and "indications of source" are discussed in relation to the legal documents that make reference to them. covers in general the range of geographical indications' multilateral protection before the TRIPS Agreement. The international legal documents that have been examined in regard to the uniform protection they offered for geographical indications include the Paris Convention, the Madrid Agreement, and the Lisbon Agreement.

CONCLUSION

It is impossible to overstate the significance of coordinating patents and establishing international agreements in this era of rapid technology advancement and global connectivity. The study has examined the intricate realm of patent systems, exploring the justifications, challenges, outcomes, and potential future developments of harmonising disparate national frameworks. Even though they reflect various legal traditions and agendas, different patent systems across nations usually pose difficulties for global innovation. The argument for harmonisation is based on its ability to facilitate collaborative innovation, improve legal predictability, and streamline patent procedures. The intricacies brought up by disparities in patent rules highlight the need for international cooperation to create a more organised and understandable patent system. International agreements like TRIPS and treaties like those run by WIPO have been important pillars of patent harmonisation. These activities offer opportunities for communication, knowledge sharing, and the development of shared values. Harmony is also aided by agreements between two parties and collaborations between areas, demonstrating that even little progress can be made. There are obstacles in the way of harmonisation. Harmonising patent systems is nevertheless hampered by a number of legal traditions, political considerations, and economic priorities. The possibilities, however, are encouraging. Benefits of harmonisation include increased technology transfer, simplified trade, fair incentives for innovation, and easier access to knowledge. The success of patent harmonisation depends on international cooperation, adopting new technologies, and guaranteeing fair benefits for all stakeholders.

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