

Chapter 3

Definitions and Related Concepts under International Law

3.1 Patent

Paris Convention for the Protection of Industrial Property, 1883, (“Paris Convention”) is one of the most significant laws in the domain of intellectual property rights. The regulations enunciated by this instrument are still in existence and they are regulated by World Intellectual Property Organization (“WIPO”). It formulated the core and basic principles of ‘national treatment, priority and the standard of a minimum protection’, which had not been dealt with under any other laws until the inception of Paris Convention.

With the proliferation of the patent regulatory mechanisms in different countries in the 19th century, the necessity for creation of a global regulatory framework for the securing inventions became more pronounced. The justification underlying this demand was premised on the notion that the regulations of each nation are in force only within the geographical limits of that nation while the rights of the patent holder in the utilisation of his invention, often goes outside the territory of that nation which provides the patent in relation to the relevant product or process. The patent regulations of several countries fluctuate considerably in their stance on core issues like inventorship, ownership, licensing, remedies, enforcement etc. even though the fundamental purpose remains the same. This is discernible in the random explanations associated with novelty and time limits for the rights in the concerned product or process and the complications which go with the grant of patent can be at different levels for each jurisdiction. The diversifies approach of the different jurisdictions lead to issues in securing patents for the inventions. This is due to the fact that an invention which may earn a patent in one jurisdiction may be excluded altogether from a similar protection in another jurisdiction.⁹⁶

⁹⁶ Seth M. Reiss, COMMENTARY ON THE PARIS CONVENTION FOR THE PROTECTION OF INDUSTRIAL PROPERTY, <https://www.lex-ip.com/wp-content/uploads/2021/07/Paris.pdf>

The absence of sufficient protection of foreign inventions became specifically visible when the authorities of Austria-Hungary sought the participation of other nations to take part in a global exhibition organised Vienna (1873). However, the whole process was impeded by the fact that several international visitors did not want to demonstrate their works at that exhibition considering the insufficient protection given to these novel works.⁹⁷

This resulted in two things - firstly, a specific Austrian regulation was able to manage a temporary entitlement to all international participants exhibiting their inventions and other intellectual property. Secondly, a special 'Congress' was in session during the same time. This Congress ratified several resolutions, introducing a number of premises on which a full proof and effective patent scheme should be established upon and requested the governments 'to bring about an international understanding upon patent protection as soon as possible'.⁹⁸

The Vienna Conference led to the creation of a new Committee. In 1878, Based on the recommendation of that Committee, the authorities in France set up a Congress to deliberate upon the issues relating to patents at the Paris Conference. Private entitlements theory and sociological utility theory became the themes of discussion and how these two perspectives could be harmonised.⁹⁹

The 'Natural property theory' was prioritised. The debate was affected by the French rule which was premised on the fact that the inventor has a fundamental proprietary right in his invented product or process. The applicability of 'social utility' however was not absolutely dispended with. It is manifested in the provision allowing rejection of patents when not utilised in the local jurisdiction. One more resolution mentioned that import of patented articles was to be permitted. The chief outcome of the 2nd Congress was a determination that one of the sovereign authorities should be requested to host

⁹⁷ See generally Rajeev Dhavan, Lindsay Harris and Gopal Jain, *Conquest by Patent: The Paris Convention Revisited*, Journal of the Indian Law Institute Vol. 32, No. 2 (April-June 1990), pp. 131-178

⁹⁸ *Ibid*

⁹⁹ *Ibid*

an international gathering with the objective of deciding the reason for a uniform framework in the domain of laws of industrial property rights.¹⁰⁰

Subsequent to the Congress of 1878, a last draft suggesting an ‘International Union for the Protection of Industrial Property’ was formulated. This version was shared by the Government of France with several jurisdictions, along with a request to come to the ‘International Conference’ of 1880. A draft convention was adopted having the key provisions which continue to be substantive sections of the Paris Convention till date. Sections were introduced for securing different types of intellectual property including patents, for the creation of an International Bureau to secure intellectual property and for the compliance by new countries. The sections on patents were restricted to particular questions on which it was felt that adequate concurrence could be taken to establish a Union.¹⁰¹

A fresh diplomatic conference went into session on March 6, 1883, concluding with final ratification and execution of the Paris Convention on March 20, 1883. The instrument was executed by eleven countries. When it came into force on July 7, 1884, Great Britain, Tunis and Ecuador complied too, totalling the earlier count to fourteen. After the end of the second world war, the Paris Convention brought in more member nations. At present, the convention has 179 countries as its member. It has been subject to multiple revisions following its execution in 1883.¹⁰²

The conferences for modification and alterations were organised in Rome (1886), Madrid (1890 and 1891), Brussels (1897 and 1900), Washington (1911), Hague (1925), London (1934), Lisbon (1958) and Stockholm (1967). Each of these sessions, beginning with Brussels (1900), concluded with the promulgation of a modified law of the Paris Convention. Barring the Acts terminated at the modification conferences of Brussels and Washington (ceasing to be in force), all the previous laws continue to carry importance, although most of the nations are now a signatory to the most recent law,

¹⁰⁰ D.P. Mittal, *Indian Patent Law & Procedure* 340 (2002).

¹⁰¹ R. Campbell, *Global Patent Law Harmonization: Benefits and Implementation* IND. INT'L & COMP. L. REV. Vol. 13:2, 605, 606

¹⁰² Graeme Gooday and Steven Wilf (Ed.), *Patent Cultures: Diversity and Harmonization in Historical Perspective* 38-68 (2022)

i.e. the revised version of Stockholm (1967).¹⁰³

At present, Paris Convention is regulated by WIPO and possesses an international secretariat which was initially under the control of the Swiss Government. In 1893, the Berne and Paris secretariats came together and constituted the United International Bureaux for the Protection of Intellectual Property ('BIRPI'). Subsequently, in 1967, WIPO took the place of BIRPI and a distinct regulatory body for the supervision of both the treaties was created in the process.¹⁰⁴

This Convention is applicable to 'industrial property' in the widest possible understanding including protection against unfair competition. In relation to patents, the Paris Convention provides that they shall include the different types of commercial patents validated by the regulations of the nations belonging to the Union, like that of importation, improvement, certificates of addition etc.¹⁰⁵ The basic sections of the Paris Convention (as revised up to 1967) can be put under the following principal categories:

- a. **National Treatment** - Under national treatment, the Paris Convention stated that, in relation to the process of securing the industrial property, each Union member must provide the same level of protection to nationals of other members that it provides to its own nationals. Subsequently, they shall possess equal protection and the identical legal recourse against any breach of their entitlements, on the condition that the terms and procedures cast upon nationals are adhered to. Although, no rule as to domicile or business in the jurisdiction where the right is sought may be thrown upon nationals of members of the Union for the utilisation of any proprietary rights. The content of the regulations of each of the members of the Union with regards to the judicial and administrative processes, the issues of jurisdiction, and the allocation of an address for hiring an

¹⁰³ Louis Devaux, *Protection Interatiale et de Legislation Comparee* 191 (1982).

¹⁰⁴ Nirmalya Syam, *MAINSTREAMING OR DILUTION? INTELLECTUAL PROPERTY AND DEVELOPMENT IN WIPO*, South Centre, Research Paper No. 95, July 2019, https://www.southcentre.int/wp-content/uploads/2019/07/RP95_Mainstreaming-or-Dilution-Intellectual-Property-and-Development-in-WIPO_EN.pdf

¹⁰⁵ Sierd J. Schaafsma, *The genesis of the principle of national treatment in the Paris Convention*, <https://www.elgaronline.com/display/9781839108495.00013.xml>

agent etc. are specifically reserved. Nationals belonging to the nations outside the purview of the Union who are stationed in or who have substantive business establishments within the jurisdiction of one of the nations of the Union shall be subject to the same treatment as that of the nationals of the other states in the Union.¹⁰⁶

- b. **Right to Priority** - The Paris Convention offers an entitlement of priority for patents and utility models, designs etc. This right entails that, based on an ordinary initial application submitted in one of the Union countries, the applicant may additionally submit within twelve months from the submission date of the initial application, a different application in another Union country. These further applications will be considered to have been submitted on the same day. These applications will automatically have priority when compared to applications submitted by others in this duration of time in respect of the same invention. Thus, the entitlement is referred to as the 'right to priority'. Additionally, these further applications, being premised on the initial submission, will not be hampered by anything occurs in the interim, like the publication of the details regarding the product or process. One of the foremost benefits of this section is that applicants requiring securing the entitlement in a number of nations need not present applications at that very moment but get an additional twelve months to determine in which member states they prefer to enjoy the patent, and to effectuate with adequate care the steps required for obtaining protection of the concerned product or process. Any applicant availing the 'priority date' will need to submit a declaration mentioning the date of submission and the jurisdiction where it was made. Each country shall determine the most recent date on which this declaration has to be issued. The declarant must submit a copy of the application (containing specifications, particulars, etc.) initially submitted. The application, affirmed as correct by the designated authority, shall be exempt from any authentication, and could also be submitted,

¹⁰⁶ See generally UNCTAD, Resource Book on TRIPS and Development, https://unctad.org/system/files/official-document/ictsd2005d1_en.pdf

without payment of any charge, within three months of the submission of the eventual application. No member state may decline a priority or an application on the basis that the applicant has asked for multiple priorities, though they arise from different jurisdictions, or on the basis that an application asking for multiple priorities has several elements that were not a part of the application from which the priority stems, provided that, in both instances, there is uniformity of invention within the scope of the regulatory framework of the jurisdiction. Priority cannot be declined on the basis of particular constituents of the product or process do not surface in the rights given in the application of the country where the patent emanates, it would suffice if the specification on the whole reveals the necessary elements. A person's right to file a divisional application stand legitimised as well.¹⁰⁷

- c. **Independence of Patents** - If a patent is executed in a member state belonging to the Union by nationals any member state of the Union, it ought to be construed as 'independent' of patents received for the identical product or process in other states whether such nation belongs to the Union or not. This principle shall be attributable to patents in force at the time of the start of Paris Convention or to patents existing at the time of execution. Additionally, patents getting the advantage of priority in the member states of the Union shall be entitled to equal duration which they would have, in case of application for or grant in the absence of the advantage of priority. The inventor's identity must be stated in the patent application. It shall not be a basis of rejection and invalidity of patent that the transfer of the protected invention, be it a product or a process, subject to limitations flowing out of the domestic regulations.¹⁰⁸
- d. **Importation, insufficient working, compulsory licences** – the patent holder's importation of commodities produced in any member state of the Union into another state, which has sanctioned patent, shall not constitute a reason for cancellation. In instances of abusive use i.e.

¹⁰⁷ *Ibid*

¹⁰⁸ *Ibid*

inability to work or inadequate working of the product or process, every member state shall be entitled to take legal steps through grant of compulsory licence. Where such a licence is not adequate to prevent undue exploitation only then cancellation of patent shall happen. And such cancellation or revocation may be started after the lapse of two years from the issuance of first compulsory licence. Additionally, compulsory licence shall not be implemented due to failure or inadequate working unless the completion of four years from the submission date of patent application or three years from the issuance of patent. Compulsory licence shall be declined if holder of the patent provided a sound justification and legitimate reasons such as non-exclusive use etc. through grant of a sub-licence except with that portion of the company or goodwill which utilises such permission.¹⁰⁹

3.1.1 Inventorship

The term is ‘inventor’ has not been defined under the TRIPS Agreement. Also, the Patent Cooperation Treaty of 1970 (“PCT”) does not expressly define ‘inventor’, but mentions under Article 2(i) and (ii) that any reference to ‘application’ or ‘patent’ will be considered as references to inventor’s certificate. The implication is that the inventor is the first automatic choice to file an application for obtaining the patent and receive the necessary certificate.¹¹⁰ Article 4(I) of the Paris Convention on the Protection of Industrial Property, 1883 (“Paris Convention”), likewise, states that the inventor can apply in a convention country and obtain a patent or, in cases where the patent applicant is a successor or assignee of the inventor, an inventor’s certificate.¹¹¹

¹⁰⁹ *Ibid*, See also Jerome H. Reichman, Comment: Compulsory Licensing of Patented Pharmaceutical Inventions: Evaluating the Options, (2009) Journal of Law, Medicine and Ethics, 247-263

¹¹⁰ Patent Cooperation Treaty, 1970, Article 2, https://www.wipo.int/pct/en/texts/articles/a2.html#_2

¹¹¹ Paris Convention on Protection of Industrial Property, 1883, <https://wipolex.wipo.int/en/text/288514>

Article 4ter of the Paris Convention empowers the inventor with the right to be identified in a patent application.¹¹² Rule 4.6 of Regulations under the PCT require that where the applicant is not the inventor, the applicant must indicate inventor(s) in the application. If the inventor is the applicant, such inventor must provide a statement to that effect. Where the requirements of the designated states are different for ascertainment of inventor, a separate statement of inventorship must be provide for each state or group of states.¹¹³ A further explanation of this national requirement may be found under Rule 51bis.1(a) read with Rule 4.17 which require the applicant to furnish a declaration of identity as the inventor or a declaration regarding what entitles him or her to file the application (e.g. succession or contractual assignment by original inventor).¹¹⁴ Section 211 of the Administrative Instructions under the PCT state the following format of the declaration of inventorship under Rule 4.17 read with Rule 51bis.1(a):

“Declaration as to the identity of the inventor (Rules 4.17(i) and 51bis.1(a)(i)):

in relation to [this] international application [No. PCT/...],

... (name) of ... (address) is the inventor of the subject matter for which protection is sought by way of [the] [this] international application.”¹¹⁵

The indication of inventor is also mandated under the PCT Receiving Office Guidelines through Section 192A(i) which requires the applicant to identify the inventor in Box VIII(i) of the application form. Section 192A(ii) requires the applicant to mention the basis for entitlement to apply where the applicant is not the inventor. In such a case, the applicant must indicate this information in Box VIII(ii) of the application form.¹¹⁶

¹¹² Paris Convention on Protection of Industrial Property, 1883, <https://wipolex.wipo.int/en/text/288514>

¹¹³ Regulations under Patent Cooperation Treaty, Rule 4.6, https://www.wipo.int/pct/en/texts/rules/r4.html#_4_6

¹¹⁴ Regulations under Patent Cooperation Treaty, Rule 4.17, https://www.wipo.int/pct/en/texts/rules/r4.html#_4_17_iv;https://www.wipo.int/pct/en/texts/rules/r51bis.html#_51bis_1_a_iv

¹¹⁵ Administrative Instructions under the Patent Cooperation Treaty, Section 211, <https://www.wipo.int/pct/en/texts/ai/s211.html>

¹¹⁶ PCT Receiving Office Guidelines, PCT/GL/RO/20, <https://www.wipo.int/export/sites/www/pct/en/texts/pdf/ro.pdf>; See also PCT Applicant's Guide, https://www.wipo.int/pct/en/guide/ip05.html#_boxII

3.1.2 Ownership

Ownership rights have been provided under Article 28 of the TRIPS Agreement (“Agreement”) which empower the holder of the patent to prevent third parties from unauthorized commercial acts like sale, offer for sale, manufacture, use etc. Additionally, under this provision, the owner may either assign, license or transfer the patent through succession.¹¹⁷ The scope of these rights has been deliberated upon by the WTO Panel in *Canada-Patent Protection of Pharmaceutical Products*¹¹⁸. The case concerned Section 55.2 of the Canada patent statute which laid down an exception to the exclusive rights of the patentee. Two exceptions were outlined – the regulatory review/Bolar exception and stockpiling. The question arose whether these exceptions were inconsistent with Article 28. The Panel observed that though the regulatory review exception did not violate Article 28, the stockpiling exception was inconsistent with Article 28. It was held that Article 28 must be interpreted in its right context by examining the text, preamble and annexes to the Agreement, including international instruments. This approach was in consonance with Article 31(2) of the Vienna Convention on the Law of Treaties.¹¹⁹ The Panel clarified that the provision does not contemplate a hierarchy of rights i.e. the right to sell cannot take precedence over right to make or use. All the rights listed under Article 28 are equally meaningful, strong and independent considering their consistent presence in most national laws across the globe. Additionally, the Panel observed that any diminution of rights of Article 28 through statutory exceptions must pass the **three-step test** of Article 30 i.e. the exceptions:

- a. should be limited
- b. should not conflict with the normal exploitation of patents, and
- c. should not prejudice the legitimate interests of the owner and third parties.

The word ‘limited’ signifies that the scope of the exception should be such that it does not adjust the

¹¹⁷ TRIPS Agreement, Section 5, https://www.wto.org/english/docs_e/legal_e/27-trips_04c_e.htm

¹¹⁸ WT/DS114/R, of March 17, 2000

¹¹⁹ Pedro Roffe & Christoph Spennmann, Canada - patent protection of pharmaceutical products, in RESEARCH HANDBOOK ON THE INTERPRETATION AND ENFORCEMENT OF INTELLECTUAL PROPERTY UNDER WTO RULES, VOLUME II 239-241 (Carlos M. Correa ed., 2010).

rights to an extent which alters the basic balance of the Agreement. Any such exception must follow stipulated conditions or a procedure. E.g. Restrictions may be imposed on exploitation of patents if the WTO member state seeks to promote public interest in critical sectors of the economy. The member state may also introduce exceptions to nullify anti-competitive effects of patents under Article 40. The Panel defined

- a. ‘exploitation’ as ‘commercial activity by which patent owners employ their exclusive patent rights to extract economic value from their patent’,
- b. ‘normal’ as ‘what is common within the relevant community’, and
- c. ‘legitimate interests’ as ‘interests that are supported by relevant public policies or other social norms’.

To quote the Panel verbatim:

*“The normal practice of exploitation by patent owners...is to exclude all forms of competition that could detract significantly from the economic returns anticipated from a patent’s grant of market exclusivity.”*¹²⁰

The Panel explained that the word ‘limited’ in Article 30 of the Agreement, as opposed to Article 9(2) of the Berne Convention, has a narrower meaning. While judging the validity of an exception under Article 30 of the Agreement, the focus should be on measuring the extent to which the exclusive rights of the patentee have been curtailed. The other two steps mandate that the economic impact of the curtailment of rights should be assessed. Since the stockpiling exception did not levy any quantitative restrictions on the quantity an unauthorized user could store in the last six months of the patent term, it was not considered to be ‘limited’ in the sense of Article 30 of the Agreement. Lastly, such an act also deprived the patent owner from the additional market advantage which he would have gained had it not been for the unauthorized stockpiling. Thus, it was held to be inconsistent with the right to ‘make or

¹²⁰ Nuno Pires de Carvalho, *The TRIPS Regime of Patent Rights* 248, 306 (2010)

use' the patented invention under Article 28 of the Agreement.¹²¹

3.2 Copyright

3.2.1 Authorship

The Berne Convention on Protection of Literary and Artistic Works ("Berne Convention") remains relevant even after TRIPS Agreement came into effect on January 1, 1995. A conjoint reading of Article 2.2 and Article 9.1 of the TRIPS Agreement provides the following pointers:

- a. If the WTO member states have existing obligations under the Berne Convention regarding the content covered under Parts I-IV, those obligations will take precedence over the TRIPS Agreement.
- b. Regardless of whether a member state is a signatory to the Berne Convention, Articles 1-21 except Article 6bis would be binding on the WTO member states.

The Berne Convention therefore remains applicable in the absence of any guidance under the TRIPS Agreement on any legal aspect of copyright. However, similar to the TRIPS Agreement, the Berne Convention also does not contain any explanation of the expression 'author'. The meaning and import of 'author' have to be figured out by referring to a few related provisions in a round-about way.¹²² Article 3, for instance, mandates copyright protection for works of authors who are the nationals of the Berne Union countries. Art. 6bis entitles the creator to claim authorship in case of damage to the original creation, harm to the reputation, or distortion of the protected work.

The Convention does not provide guidance regarding the exact import of the term 'author', deferring to the member states' discretion. According to the Berne Convention Guide, national laws adopt different stances with some recognizing only natural persons as authors, while others consider juristic entities as

¹²¹ Pedro Roffe & Christoph Spennmann, Canada - patent protection of pharmaceutical products, in RESEARCH HANDBOOK ON THE INTERPRETATION AND ENFORCEMENT OF INTELLECTUAL PROPERTY UNDER WTO RULES VOLUME II 243 (Carlos M. Correa ed., 2010).

¹²² Jane C. Ginsburg, *The Concept of Authorship in Comparative Copyright Law* 52 DEPAUL L. REV. 1063 (2003)

copyright owners. The silence of the Convention points to the lack of global consensus on the meaning and scope of authorship, and the dependency on national laws.¹²³ The lack of a uniform explanation of ‘authorship’ may be attributable to the different perceptions of the national jurisdictions which are guided either by the Anglo American or Continental school of thought. While the former places great emphasis on the mere originality of expression of the idea with a ‘modicum of creativity’, the latter goes by the additional parameter of a higher threshold of creativity and aesthetics.¹²⁴ The closest uniform definition can be derived from the records of the Committee of Experts on Model Provisions in the Field of Copyright (July 2-13, 1990) where it was noted that:

*“Author is the physical person who has created the work. Reference to ‘author’ also means the successors in title of the author as well as the original owner of rights in the work is a person other than the author, such a person.”*¹²⁵

3.2.2 Ownership

The Berne Convention recognizes the following economic rights of the author:

- a. Right of translation (Article 8)
- b. Right to authorize reproduction in any form and pursue legitimate interests (Article 9)
- c. Right of authorizing the public performance of musical work (Article 11)
- d. Right to authorize broadcasting of literary and artistic work (Article 11bis).
- e. Right to authorize adaptations, arrangements and other alterations of literary and artistic works (Article 12)
- f. Right to make any recording of musical work (Article 13)
- g. Right to authorize cinematographic adaption or public performance of literary or artistic work (Article 14)
- h. Right to file suit for infringement of copyright. (Article 15)

¹²³ See G. Dutfield and U. Suthersanen, *Global Intellectual Property Law* 84 (2008).

¹²⁴ Adolf Dietz, *The Concept of Author under the Berne Convention*, (1993) 155 RIDA 2, 10-18

¹²⁵ See Sam Ricketson and Jane C. Ginsburg, *International Copyright and Neighbouring Rights, The Berne Convention and Beyond*, Volume I 361-362 (2010)

The rights are however subject to the exceptions satisfying Article 13 of the TRIPS Agreement. Article 13 of the Agreement permits limited exceptions in ‘certain special cases’ where unauthorized use of the copyrighted work will be allowed if it does not:

- a. Unreasonably conflict with the normal exploitation of the work, and
- b. Does not prejudice the legitimate interests of the holder.

The WTO Panel has clarified in *US – Section 110(5) of the US Copyright Act*¹²⁶ that the ‘minor exceptions doctrine’ under the Berne Convention could not be incorporated into the TRIPS Agreement due to insufficient reference in the Brussels Conference and the Stockholm Conference Reports. The focus under Berne Convention was whether the exception was ‘minor’ rather than the ‘commercial’ aspects. However, the approach under Article 9(2) of the Berne Convention can be replicated under the TRIPS Agreement. Thus, any permissible exception must be construed narrowly. The use of the phrase ‘certain special cases’ merits that an acceptable exception must be clearly defined and limited in scope, both quantitatively and qualitatively. It was observed that the word ‘normal’ carries both normative and empirical connotations, and included all actions from which ‘significant income or tangible commercial gains’ could be generated. The Panel additionally explained that public policy considerations cannot be used for qualitative analysis of exceptions. Public policy can at best be used for making factual inferences about the limitation/exception. To quote the precise words of the Panel:

“...Article 13 requires that a limitation or exception in national legislation should clearly be defined and should be narrow in its scope and reach. On the other hand, a limitation or exception may be compatible with the first condition even if it pursues a special purpose whose underlying legitimacy in a normative sense cannot be discerned...However, public policy purposes...may be useful from a factual perspective for making inferences about the scope of a limitation or exception or the clarity of

¹²⁶ WT/DS160/1 (February 4, 1999)

its definition.”¹²⁷

Applying the above principles, the Panel came to the conclusion that the ‘homestyle’ Part A exception which catered to a person tuning in to regular receiver to listen to music being played did not bring significant economic consequences. However, the same logic did not extend to Part B exceptions where the number of potential users congregating in commercial food and drink establishments could not be limited to a narrow population. Thus, it was an unregulated infringement of the rights provided to a copyright holder under the TRIPS Agreement and Berne Convention. Such an exception was therefore a violation of the first step of the three-step test provided under Article 13 of the TRIPS Agreement.

The thorough examination of the international framework on inventorship, authorship and ownership create the appropriate backdrop in which the research will try and identify the corresponding position under the national laws within the research scope. The next two chapters will help in outlining the relevant provisions and cases in each of these jurisdictions which provide the required information on inventorship, authorship and ownership in the context of patents and copyright.

¹²⁷ Dalindyabo Shabalala, United States – Section 110(5) of the US Copyright Act: Summary and Analysis, in RESEARCH HANDBOOK ON THE INTERPRETATION AND ENFORCEMENT OF INTELLECTUAL PROPERTY UNDER WTO RULES VOLUME II 167, 170-172 (Carlos M. Correa ed., 2010).