

Industrial Property: Between the Globalization of Protection and Development Challenges

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Abstract:

The mechanisms of legal protection of industrial property raise a wide controversy among scholars and researchers, especially when they clash with the idea of its impact on development, as it encourages creativity, invention and development of technology on the one hand and is reflected in the economic and social growth of the state on the other hand. However, what it faces in the reality of international protection may limit the freedom of this industrial property and make the great powers control the mechanisms of this protection and thus obstruct the levels of development of the developing state .

Keywords: Industrial property, protection, development, rights, legal

ملخص :

تثير آليات الحماية القانونية للملكية الصناعية جدلا واسعا بين الدارسين والباحثين خاصة عندما تتصادم مع فكرة تأثيرها على التنمية ، بما تطرحه من تشجيع للإبداع والاختراع وتطوير للتكنولوجيا من جهة وبما ينعكس على النمو الاقتصادي والاجتماعي للدولة ، غير أن ما تواجهه في واقع الحماية الدولية قد يحد من حرية هذه الملكية الصناعية ويجعل من الدول العظمى تسيطر على آليات هذه الحماية ومنه عرقلة مستويات التنمية للدولة النامية.

الكلمات المفتاحية : ملكية صناعية ، حماية ، تنمية ، حقوق ، القانونية

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1. INTRODUCTION

The significance and value of protecting intellectual property rights are evident in two key aspects: first, in ensuring the exclusive attribution of an authored or invented work to its creator, and second, in fostering creativity and advancing technological inventions and innovations, which positively impact the living standards and cultural progress of societies and nations. Moreover, these rights play a fundamental and effective role in shaping and defining the social, economic, and cultural frameworks of states.

However, the reality of economic globalization and international trade, which has imposed itself through attempts to standardize the rules for protecting industrial property rights, has introduced stringent conditions and restrictions on their free use and circulation. This situation has sparked significant conflict and widespread debate, constituting one of the most complex dilemmas in this domain. On one side, developed countries—holding the largest share and ownership of these rights(Al-Kefri, n.d.)¹—advocate for strengthening and intensifying protection measures to maintain their dominant position. On the other side, developing (and underdeveloped) countries, which possess only a minimal portion of such rights and lack the fundamental prerequisites for acquiring them (including a solid scientific and technological foundation, resources for research and development, and a skilled workforce), find themselves at a disadvantage.

This raises the following key question: To what extent has industrial property protection reached a global scale, and what are the challenges it poses to development?

In addressing this issue, we will examine the contrasting perspectives on the stringent rules that underpin the globalization of protection—those who support and those who oppose them (Section One). However, this debate is not merely an academic or theoretical exchange; rather, it presents diverse and profound challenges to the development goals pursued by all nations, regardless of their level of advancement and available resources (Section Two).

2.Diverging Perspectives on Strengthening or Reducing the Level of Protection

There is no debate among countries on the need to create regulations to safeguard intellectual property rights; rather, the argument is over how much protection is necessary. While developed nations support stringent and rigorous regulations (First Subsection), developing countries demand that their social and economic circumstances be taken into account in order to strike a balance between their right to development and their duty to protect intellectual property rights by lessening the harshness of these laws, which are firmly enforced by developed nations (Second Subsection).

2.1 The Perspective of Developed Countries on the Required Level of Protection

Developed countries, in defending their stance on the necessity of a highly stringent protection system, argue that they host the majority of enterprises and corporations operating in the field of industrial property rights. Under this framework, the right to prevent third parties from importing protected products ceases once these products are placed on the market in any country, whether by the rights holder, an authorized representative, or with their consent (Petit, p. 821).

1- Advanced countries account for approximately 97% of the total number of patents, while their global corporations hold around 90% of technological patents.

Additionally, international agreements have imposed certain obligations on developed countries to support developing and least-developed nations. These obligations include:

- Technical Assistance: The agreements mandate that developed countries extend aid and assistance to developing and least-developed nations upon request,² under mutually agreed conditions.
- Technology Transfer Incentives: Developed nations are required to provide incentives to institutions operating within their territories to encourage the transfer of technology to developing and least-developed countries.³
- Non-Retroactive Application: Transactions conducted before the actual implementation of the agreement cannot be subject to retroactive enforcement(Piotraut, 2007).⁴
- Access to the Public Domain: Developing countries have the right to benefit from the vast repository of intellectual property rights that have entered the public domain (Piotraut, 2007)

2.2The Position of Developing Countries on Strengthening Intellectual Property Protection

While it is true that developing countries, under intense pressure(Agreement on Trade-Related Aspects of Intellectual Property Rights)and to avoid isolation from the global economic system, reluctantly accepted the stringent provisions governing industrial property rights as established by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS)(Lebas, 2001, p. 44), this did not prevent them from continuing to resist and oppose the stance of developed nations. Their opposition is driven by their commitment to safeguarding their right to development, based on justifications that directly contradict the claims made by developed countries (First Branch). Nevertheless, they have managed to secure certain advantages and incentives aimed at mitigating the severity and potential risks of these strict regulations (Second Branch).

2.2.1 Justifications for Developing Countries' Demand for Fair Intellectual Property Rules

In the way it was approved, poor nations strongly opposed the TRIPS Agreement's inclusion of intellectual property rights (Arab, 2001, p. 206). This opposition surfaced during the Uruguay Round discussions and continued after they signed the TRIPS Agreement and joined the World Trade Organization (WTO). Developing countries contend that the World Intellectual Property Organization (WIPO) should continue to have authority over intellectual property issues instead of the WTO(Rahman, 2009, p. 395 et seq) (Omar, 1993, pp. 44-65). They contend that the adoption of such rigid regulations would cause them significant harm, far outweighing any

2- Initially, counterfeiting and piracy were confined to a few specific sectors, such as the film and music industries (*films et musique*), the fashion industry (*articles de mode*), and luxury goods (*produitsde luxe*). However, during the 1980s, these practices expanded significantly, affecting nearly every economic sector, including spare parts, cosmetics, food products, pharmaceuticals, electronics, and many others.

3- Some sources estimate that the economic losses resulting from counterfeiting and piracy amount to billions of dollars annually, in addition to the loss of hundreds of thousands of jobs. For further details, refer to the study conducted by the International Chamber of Commerce in 2011, as well as the electronic bulletin of the Arab Thought Foundation, available at: www.arab-thought.org.

4- Recently, on January 26, 2012, an agreement was signed between the United States, the European Union, and Canada, known in English as the Anti-Counterfeiting Trade Agreement (ACTA) and in French as Accord Commercial Anti-Contrefaçon (ACAC).

potential benefits, as they would never be able to compete with developed nations given the vast disparities in technological advancement and available scientific and financial resources (Cavalmecanti, n.d.) (Henri, 2004, p. 24).

The key justifications put forward by developing countries include the following:

- **Unfair Economic Relations:** The application of these stringent rules creates an imbalance in international economic relations by placing developed and developing countries on equal footing and subjecting them to identical treatment, despite the vast disparities between them (Henri, 2004, p. 22).⁵ This situation can be likened to a race where competitors start from different positions, inherently favoring developed nations.

- **Intellectual Property as a Shared Human Heritage:** Intellectual property rights should not be monopolized by any single entity, as they constitute a collective heritage of humanity.

There is neither a legal nor an ethical justification for some to monopolize intellectual property while depriving others of access to it. Humanity as a whole has contributed, throughout its historical evolution, to the creation and development of knowledge, with numerous minds building gradually upon the work of others (Mohammad, n.d.) (World Intellectual Property Organization (WIPO), n.d.)⁶—a fact evident from the succession of civilizations. This implies that all people have a legitimate right to benefit from the fruits of such progress (Salman, p. 262).

- **Commercializing Intellectual Property within a Capitalist Framework:** Subjecting intellectual property rights to capitalist market logic results in the dominance and monopolization of markets by a select few. This, in turn, leads to the privatization of these rights, effectively privatizing human life itself and subjecting all human activities to a singular standard—profit maximization (Tirole, 2002, p. 15).⁷ Moreover, the monopolies that arise from enforcing such regulations serve only to unjustifiably shield multinational corporations, thereby undermining the right of nations to development and the fulfillment of their essential needs (Al-Tayeb, n.d.) (Lebas, 2001, pp. 04-17).⁸

- **Impact on Innovation and Development:** The monopolization of intellectual property rights by a small group result in price inflation and the exclusion of competitors, ultimately stifling development and improvement efforts, which are the foundation of all progress and growth.

- **Developed Countries' Denial of Their Own History:** By demanding stricter industrial property protection regulations (Peugeot, n.d.), developed nations disregard their own past. Not long ago, these very countries engaged in the same practices they now seek to prohibit. The United States, which is one of the strongest advocates for strengthening protection measures, historically thrived

5- These pressures took various forms—commercial, financial, and even political. For example, South Korea, Thailand, China, Brazil, and India were subjected to U.S. pressure to amend their domestic intellectual property laws before joining the World Trade Organization.

6-The World Intellectual Property Organization (WIPO) has played a significant role, particularly during the 1970s, in encouraging and assisting developing countries in developing their national intellectual property systems in alignment with development requirements.

7- The most eloquent illustration of this is the famous statement by the scientist Isaac Newton: "If I have seen further, it is by standing on the shoulders of giants."

8-One example of such a situation is the story of the worker Samuel. In the 1660s, a water-powered weaving machine was invented in Britain, significantly contributing to the country's dominance in the global textile industry at the time. In response, Britain enacted legislation to prevent the spread of this invention beyond its borders. However, in 1701, a worker named Samuel managed to escape to the United States, where he established a factory similar to the one he had worked in, relying solely on his memory. The United States welcomed and honored him for his actions, without considering it an infringement of industrial property rights.

for an extended period by violating the intellectual property rights of non-American inventors. In fact, it actively encouraged the appropriation of European inventions and innovations for its own benefit (Rahman, 2009, p. 126). A similar pattern emerged after World War II with Japan, the Netherlands, and Switzerland, and continues today with East Asian countries (Al-Saghir, 2007, p. 09). Some have compared this behavior to that of an individual who borrows a ladder to climb higher, only to hastily withdraw it upon reaching the top, preventing others from following the same path.

3.Challenges of Utilizing Industrial Property Protection in the Service of Development

The focus on intellectual property rights and the effort to provide adequate protection should not be an end in itself. Rather, the primary objective should be how to employ these rights as a tool for contributing to development and progress.

Given the increasing debate and controversy surrounding this issue, particularly in the realm of international economic relations—as previously discussed—it becomes necessary to examine the relationship between industrial property rights systems and the right to development (First Subsection). Developed countries, multinational industrial corporations, international trade institutions, and major global universities and research institutions rely on strong intellectual property protections to safeguard their interests, maintain their competitive positions, and sustain their economic, technological, and cultural superiority. In advocating for this approach, they put forward several arguments and justifications (First Branch) and present various incentives and economic benefits to support their stance (Second Branch).

3.1 Justifications and Arguments for Strengthening Protection Regulations

The philosophy of developed countries regarding intellectual property rights is based on the premise that the stronger and more stringent the protection, the greater the incentive for creativity and innovation—both of which are fundamental pillars in supplying society with the means for advancement and prosperity. Without such protection, the outcome would be entirely negative, as creators and inventors would lose the financial returns they anticipate, given the potential for their work to be exploited freely by others. Furthermore, the absence of protection would not only harm innovators but also society as a whole, depriving it of the progress and prosperity that would otherwise result from fair and transparent competition among creative minds(Article 67 of The Agreement on Intellectual Property Rights).

Building on this philosophy, developed countries deemed it necessary to surround their inventors, creators, and economic and technological institutions with strict protection regulations—not only at the level of their national legislations but also by enforcing such protections internationally through the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS). The primary justification put forward by developed nations to support this initiative was the widespread phenomenon of counterfeiting and piracy(Article 66/2 of Article 67 of the Agreement on Intellectual Property Rights). They presented alarming statistics on the matter, estimating that counterfeiting accounts for approximately 5% to 7% of international trade, resulting in substantial economic losses.

This argument was sufficient to prompt public authorities in developed countries—backed, of course, by influential lobbying groups benefiting from intellectual property rights, as well as

multinational industrial corporations—to launch a comprehensive international campaign against counterfeiting and piracy([Article 70/1 of The Agreement on Intellectual Property Rights](#)).

During the Uruguay Round negotiations, the United States led the coalition of developed nations in pressuring developing countries to accept the regulations enshrined in the TRIPS Agreement. This coincided with amendments to U.S. trade law (Section 301). It established the U.S. Trade Representative (USTR) and assigned it the responsibility of looking into intellectual property rights infringement and sending violators to the U.S. International Trade Commission (ITC) ([Article 70/2 of The Agreement on Intellectual Property Rights](#)) (Piatì) ([Commission on Intellectual Property Rights, 2002](#)),⁹ an American court responsible for adjudicating unfair trade practices under U.S. law, including intellectual property violations (Section 337)(Piatì)(Roubier, 1946, p. 146).¹⁰

Further pressure was exerted on developing countries through bilateral agreements initially and later within the broader framework of the World Trade Organization (WTO). Ultimately, despite significant opposition before the TRIPS Agreement was signed,¹¹ developed nations succeeded in securing their objectives. The agreement's principles and objectives, especially its preamble, which emphasizes the need to lessen trade distortions and barriers, support adequate and effective protection of intellectual property rights, and make sure that actions taken to uphold these rights don't themselves become impediments to lawful trade, amply demonstrated this.¹²

3.2 Incentives and Positive Economic Impacts

Developed countries have not limited their advocacy for strengthening intellectual property rights protection to merely presenting justifications. They have also highlighted a series of incentives and economic benefits, which they argue are essential for achieving development and prosperity for all. The most significant of these benefits can be summarized as follows:

- Encouraging Innovation and Economic Growth: Strong protection of intellectual property rights fosters higher rates of creativity and innovation, ultimately leading to increased economic returns for society as a whole, rather than just benefiting the rights holders.¹³
- Facilitating Technology Transfer: Robust intellectual property protection enhances the transfer and accessibility of technology from developed to developing countries under more favorable and simplified conditions. When rights holders are assured that their intellectual property is safeguarded, they are more willing to share their technology. Conversely, in the absence of

9- "The purpose of legal rules is not only to achieve justice and ensure security but also to contribute to the development of civilization and the progress of society."

10-See also the Report of the Commission on Intellectual Property Rights, prepared in 2002 following a recommendation from the UK Department for International Development (DFID), available at: <http://www.iprcommission.org>.

"The purpose of legal rules is not only to achieve justice and ensure security but also to contribute to the development of civilization and the progress of society."

11- At the national legislative level, various legal provisions support this approach. For instance, the U.S. Constitution of 1776 and the 1980 U.S. Technology Transfer Act reflect this perspective. The preamble of the latter states:

"Technological innovations and advancements provide an opportunity to improve the standard of living both socially and economically..."

The full text of this law, known as the Stevenson-Wydler Act, was published in the journal *Industrial Property Review*, July–August 1982.

12 See the proposal submitted by the United States regarding the establishment of a special program within the World Intellectual Property Organization (WIPO), published at: www.kipo.ke.wipo.net.

13 Convention on Biological Diversity (CBD)

adequate protection, they may refuse to transfer their technology or impose stringent and restrictive conditions to prevent potential infringements.¹⁴

– Boosting International Trade and Investment: Strong intellectual property protection promotes the expansion of international trade and increases the inflow of foreign direct investment into developing countries.

– Enhancing Product and Service Quality: By strengthening intellectual property protection, markets benefit from more effective, safer, and technologically advanced products and services. This is achieved through continuous modifications and improvements to existing technologies, products, and services. Additionally, such protection stimulates competition among economic enterprises that rely on innovation, research, and development, ultimately resulting in positive outcomes for consumers (3D Organization, 2006).

– Strengthening the Institutional and Collective Nature of Research and Development: Intellectual property protection has gained particular significance due to the institutional and collective nature of modern research and development activities. Unlike in the past, when individual inventors and small commercial enterprises played a central role, intellectual property rights have now become a national priority for countries. This shift has contributed significantly to job creation, both in core industries and related sectors.

However, alongside these advancements, counterfeiting and piracy techniques have also evolved, posing a serious threat to intellectual property rights. This reality necessitates the implementation of stringent and deterrent protection measures to safeguard jobs, ensure stability, and maintain integrity in commercial transactions (Peugeot V. , n.d.).

3.3 Incentives and Concessions to Alleviate Developing Countries' Concerns

In response to the strict provisions imposed by the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS) on developing countries, certain incentives and advantages were introduced to help mitigate the negative effects that initially led to opposition from these nations. If properly utilized, these measures could enable developing countries to overcome many of the challenges posed by the agreement. Some of these incentives include:

3.3.1 Transitional Periods

Particularly in the field of patents, developing and least-developed countries were not required to implement the agreement immediately. Instead, they were granted transition periods, allowing them to adjust their legal and economic frameworks in order to minimize the adverse effects of the stringent regulations. To this end, the agreement categorized countries into three groups based on their level of development:

- First Category: Developed Countries
 - Required to implement the agreement starting from January 1, 1996.
 - It is worth noting that the agreement was signed on April 15, 1994.

14- Proposal of the African Group at the World Intellectual Property Organization (WIPO) on the Development of an Action Plan for Development – Submitted to the Intergovernmental Committee Meeting, held from July 20–22, 2005, in Geneva. The full text is available at: www.wipo.com.

- Second Category: Developing Countries
 - Required to implement the agreement from January 1, 1996.
 - However, they were granted a four-year delay for provisions they had not previously enforced.
 - Additionally, the agreement allowed them an extra five-year extension, meaning they benefited from a transitional period until December 31, 2004.
- Third Category: Least-Developed Countries (LDCs)
 - Allowed to delay implementation for ten years, with the initial period ending on December 31, 2005.
 - Subsequently, during the Doha Ministerial Conference, the transition period was extended further until 2016(Al-Kefri, n.d.).

3.3.2 Exceptions to Overcome the General Requirements of the Agreement

The TRIPS Agreement provided exceptions that allowed all countries, including developing nations, to deviate from standard protection rules without violating industrial property rights. Among these exceptions and incentives are:

– Compulsory Licensing

- The TRIPS Agreement permits compulsory licensing under clear conditions and within specific limits whenever necessary.
- This measure, outlined in Article 31 under the section on "Other Uses", serves as an effective tool for correcting imbalances caused by unfair practices and addressing emergency situations that impact public interest.

– Exhaustion of Intellectual Property Rights

- While intellectual property rights generally grant their holders the authority to prevent third parties from importing protected products from other markets, the agreement sought to prevent monopolistic abuse by allowing nations to incorporate the principle of international exhaustion into their legal frameworks.
- Under this principle, once a protected product is lawfully placed on the market in any country, the rights holder loses the ability to prevent its importation into another country, whether the product was introduced by the rights holder, an affiliate, or with their consent (Ibrahim, 2001) (Atwa, 2005, p. 23).¹⁵

4. CONCLUSION

In conclusion, the globalization of intellectual and industrial property based on a profit-and-loss logic, as advocated by developed countries, has significant negative repercussions for developing nations. Under such a framework, genuine development becomes unattainable. Consequently, the integration of developing countries into this new international intellectual property protection system will likely result in substantial economic losses for them, while simultaneously amplifying the benefits and profits of developed nations.

This reinforces the perspective shared by many experts in the field—that the new global intellectual property rights system, by institutionalizing a commercial logic, serves as nothing

15- Examples of the success of such experiences include the cases of Singapore, Indonesia, and South Korea. These countries implemented strategic policies to develop their industries, encourage technological transfer, and enhance innovation. Their approaches included investing in education and research, attracting foreign investments, and adopting intellectual property regulations that balanced protection with economic growth

more than a tool devised by developed countries to consolidate their control over global economic resources.

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