



The protection of innovations as an instrument to attract external investments

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Received: 20- 01- 2024

Accepted: 02- 02- 2024

Published: 10- 03- 2024

Abstract:

For many years until nowadays, there has been a global trend toward stronger intellectual property rights (IPRs) protection, mainly with implementation of the international agreement that regulates commercial issues and with the expansion of global transactions in the industrial sector, the protection of innovations has been considered as essential in trade relationships. This leads many countries has set great reforms in their legislation to reinforce the regime of innovations' protection in order to attract external investors.

Conversely, there is a trend of researchers, who believe that IPRs have a negative influence on foreign direct investments because it allows to foreign investors to be dominant in the local market.

This question gave rise to different opinions and beliefs all over the world and had an impact on the regime of protection of intellectual property rights (IPRs) particularly in Algeria, which led structural and regulatory reforms to foster investment and to attract foreign firms' owners to come and invest in Algeria.

Keywords:

External investments, protection of innovations, Intellectual property rights, foreign companies, foreign direct investment.

I. Introduction:

It has been noted that legislators in many countries have made a focus on the link that exists between intellectual property rights (IPRs) and external investments and it was considered as a main determinant factor of foreign direct investments inflows.

Also, the globalization of business work and the multiplication of financial affairs have resulted in a dispute over the question of necessity of protection of innovations to drain foreign investments.

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This situation resulted in diverse attitudes among many authors and legislators. The advocates of innovations' protection affirm that any industrial investor target states and areas that offers more guarantees to industrials because their products will not be copied and imitated.

For this reason, many countries have fostered legislative reforms so as to be at the highest level of the standards of protection like Algeria in order to protect IPR regime of IPR, to attract external investors to benefit from their knowledge which needed to develop the economy and to enhance the process of research and development (R&D).

From the above, we pose the following problem: **to what extent can intellectual property rights protection contribute to foreign direct investment inflows?**

II- Reasons for choosing this topic:

This topic is very coherent with the subject of my doctoral thesis, which discusses the reform of the legal framework of investment by examining the different opinions of analysts regarding intellectual property rights' protection considered as a determinant that may influence foreign firms' owner's decisions to invest abroad.

A. Research Objectives:

My endeavor aims to demonstrate the link between the protection of IPR and its impact in the attractiveness of external investments, by setting on the one hand the authors' analyses and comments on the question, and on the other hand, to examine of the regulation of the Algerian state as a case study, to establish significant conclusions and recommendations.

B. Methodology

I examined the causal link between intellectual property (IPR) rights and foreign direct investments, based on selection of the relevant literature and critical review of the most influential studies on the role it plays in developing the national economy and attracting foreign companies.

I have used the internet documentation and consulted the few review articles that have been published in this field.

To study the implications of stronger IPRs on foreign direct investment (FDI) flows, I divided my paper, in three parts. **Part I** provides the background on the contemporary discussions concerning the link between the protection of innovation and external investment.

Part II reviews the Algerian IPR protection regime and the reforms carried out.

I- Analysis:

Part one - the link between protection of innovations and external investments

▪ Definition of concepts:

To begin with, I should clarify the concept used in this topic mentioned below:

Foreign Direct Investment means the transmission of international fund in the form of money, skills and knowledge from a foreign State into another State, by establishing enterprises with foreign affiliates.

Intellectual property rights are considered as rights conferred to any individual for an invention made.

In the Algerian Civil Code, the **Intellectual property rights (IPRs)** are defined in the article n°674 and in other different regulatory texts, particularly for the patent, which is considered to be as the most important element because of the economic effects that it entails in economic growth, competitiveness and technological progress.

▪ **The advocates of IPRS protection regime to attract FDI:**

Concerning the link between IPRs and FDI attractiveness, it is useful to introduce researches made by scholars.

In this field, many scholars argued that the protection of industrial property rights enhance the foreign companies to invest directly in countries with higher IPR rights protection because it stimulates them to do more technology transfer to domestic enterprises because it provides more security for investors since their innovations or products will not be imitated.

For many analysts, stronger IPR means better business environment and more foreign direct investment and this brings positive results to the host countries, which consist on technological and finance transfer, the growth of commercial and industrial exchange in general.

Other scholars were convinced that external investor agrees to divest technologies that are old in the form of a license.

In this field, American investigators witnessed that many that multinational companies agree to give licenses to states who offers strong protection to IPR because the risk of imitation is weak.

They found, indeed, that United States of America's multinational companies were sensitive to IPRs protection in major developing countries while deciding to invest abroad.

However, patenting is not easily divested depends on the kind of the industry requested to develop.

Definitely, the decision to invest abroad is influenced by strength of IPR protection

The opponents to IPRS protection regime to attract FDI:

There are scholars who indicated that the strong protection of intellectual property rights may have bad impacts on foreign direct investment.

According to many analysts, stronger IPR protection gives foreign investors more power in terms of production and commercialization and can probably cause firms to deprive local companies to develop their level and foreign investors may decrease their services to foreign countries.

Others suggest that patent rights do not have an important stimulus on decision of investment in any area.

Besides, foreign companies agree to invest abroad according to conditions which must be fulfilled in the receiving country, and the foreign country must offer location advantages that make multinational and foreign companies more profitable to locate business abroad such as low transportation costs and tariffs, low input prices, and access to distribution networks because they are considered as incentives to foreign direct investment.

Therefore, the impact of IPR policy on firms' foreign investment decisions is directly influenced by the advantages granted by the host countries.

Consequently, IPR protection may affect a company's decision to either internalize or externalize its intellectual assets.

Part II - the Algerian IPR protection regime:

It is worth to mention that Algeria had received substantial amounts of FDI inflows, a witness of the presence of a strong regime of intellectual property rights protection, and this is certainly due to the government policy which paved the way to an increase in FDI flow as a mean to increase the amount of technological transfer, achieve diversification of industrial activities and economic growth as well.

In this way, Algeria signed regional and bilateral agreements on the standards of IPR protection and led national reforms in order to strengthen the protection of IPR regimes and increase FDI incomes.

Despite the positive recognition of FDI in Algeria, the objective for Algeria as a host country also needs to ensure that foreign investors will not use their power to influence market participants, by taking advantages of stronger IPRs.

❖ Measures set by the Algerian legislator to ensure IPR protection:

➤ civil and penal protection of industrial innovations in Algerian legislation



The Algerian legislator has made many provisions and procedures to ensure foreign investors' protection because multinational companies and foreign investors are constantly seeking patent protection for their innovation and prefer to invest in a nation with stronger protection.

It must be emphasized that the Algerian government had ratified a number of international conventions, for instance, the convention of Paris on Industrial Property Rights¹ that was amended, the Convention with World Intellectual Property Organization² (WIPO), and an Agreement on Cooperation on Patents domain.³ (PCT)

As for invention, the Algerian legislator defined it in the ordinance no 03-07 (July 19th, 2003) and in the executive decree no. 05-275(August 05th, 2005) as any action that leads to the discovery of what was previously unknown.

The objective of regulating the patent of invention is due to its importance in the role it plays in creating environment favorable for scientific research and economic growth.

In addition to this, the legislator had set a number of regulations and administrative procedures to prevent the act of imitation of inventions such as the production of an invention identical to the original invention, whether it is an industrial production or a method without permission or consent of the owner, and making financial benefits without the right to exploit it, ie, without a license.⁴

A/-Civil Protection:

The legislator has given the right of compensation to every damage caused by imitation to the patent owner, and the consumer by consuming counterfeit products, according to provisions of civil law⁵, depending on the degree of the damage caused.

In Algeria, when imitation occurs, the owner has the right to claim compensation from the civil instance. The civil procedures laws include penalty of imprisonment, too.

In this way, we can refer to the Article (10) of the Paris Convention⁶, which states: "Any competition contrary to honest customs in industrial and commercial affairs shall be considered an act of unfair competition.

B/- Penal Protection:

The article 58 of Ordinance 66/54 indicates that any infringement on the rights related to the patent certificate, the manufacture of products or the use of means subject to the patent certificate is considered to be a misdemeanor of imitation, as stated in article 61 of the ordinance 03-07 including a punishment of detention with may include a financial fine of two million five hundred thousand dinars (2,500,000 dinars) to ten million dinars (10,000,000 dinars) or one of these two penalties.

In accordance with provisions consumer protection namely the article 62 of the ordinance no. 03-07 which stipulates that anyone who intentionally hides, sells, offers for sale or brings an



imitated product into the national territory shall be punished by the same penalty applied on imitator.

Because of the very bad effects that counterfeiting and piracy brings on society and economy of countries, which threaten the health and safety of consumers, the legislator divided penalties relating to counterfeiting into original penalties and complementary penalties.

- **Original penalties** concern penalties related to imprisonment and financial penalties.
- **Complementary penalties** concern confiscation, destruction, and closure.

➤ **Second: Administrative Protection:**

Customs ensures quality control to protect patent owners from the crime of counterfeiting and piracy, by using different mechanisms to purify the national markets of pirated and counterfeit goods or products which are mentioned above law:

- The customs law no. 98/10 11 issued **to** fight against the crime of counterfeiting, which includes different mechanisms to oppress acts of counterfeiting particularly the article 22 ⁽⁷⁾ authorizes customs administration to seize the imported or exported counterfeited merchandise to protect the national economy from the effects of counterfeiting and collection taxes to protect the public treasury.

- **Customs intervene on the base on a claim made by IPR holder.** The request made by the claimer must be notified and including accurate information about counterfeited goods, date of their arrival or expedition and the means of transport used and the identity of the importer, supplier or holder.
- **Intervention by force of law or direct intervention:** customs intervene when controlling the movement of goods, and when they discover counterfeited goods, they are immediately seized and open an inquiry investigation to get the necessary data from technical expertise to examine the sized goods.

Accordingly, if the result of inspection of goods proves that intellectual property rights have been infringed, the customs authorities will take a number of measures to destroy goods that have been found or prohibit the marketing of the counterfeited goods in order to avoid harm to the owner's.

➤ **Quality Control and Fraud Repression organism:** this organization is placed under the authority of the Ministry of Commerce ⁸. His role is to control goods and products that are commercialized in the local market, either produced locally or imported from abroad in order to ensure their conformity to standards to protect the consumer's health and benefits.

➤ **defeat counterfeiting to reinforce IPR protection:**

Counterfeiting has become a serious phenomenon that presents a threat for economy and result in decrease of foreign direct investment unfair competition, killing the spirit of

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innovation, research and scientific progress, paralyzing international cooperation and paralyzing major investment projects.

Attitudes towards foreign direct investment have changed. Many governments of developing countries were reluctant to reduce piracy and illegal imitation by amending legislation and encouraging FDI to change their policies in order to attract foreign direct investment.

The protection of industrial property rights is necessary to stimulate scientific research and encourage innovation.

In this field, many researchers said that a strong regime of intellectual property rights IPR Protection does not enable developing countries to obtain advanced technologies but they were unable to find sufficient experimental proof for their reasoning.

Others argued that technological transfer via investors seems to be more successful only where the host governments impose conditions on the investors.

The impact of such a regime can be determining for its innovation system in developed countries, such as the United States of America, which have historically strong intellectual property regimes, according to evidence emerging from them.

We also find that strong IPR benefits both sides if the innovation is the common knowledge to both players, and it improves indigenous innovation and welfare in a short term, but they will emerge in the long run.

Finally, we should reinforce legislation to put an end to counterfeiting by reinforcing the respect of intellectual property rights because they are considered as part of business environment to attract investments inflows.

V. CONCLUSIONS:

The relationship between intellectual property rights and foreign direct investment and its effects on the economy is analysed by the research findings, which vary by area. There is growing evidence that intellectual property rights (IPR) influence FDI decisions around the world.

Nevertheless, there is no conclusive empirical evidence regarding the overall strength of this effect.

Finally, through this research paper, we reached the following results can be summarized as follows:

- The Protection of industrial property rights plays an important role in developing innovations, upgrading the technological and scientific level.
- The protection of industrial property rights contributes to achieving economic development, promoting and supporting foreign direct investment, and is considered as one of its most important determinants.



- Several countries have ratified several agreements, some of which are related to the World Trade Organization, and some are related to the TRIPS Agreement, and amended the laws on industrial property rights in order to give protection to the transfer of technology.

➤ **recommendations and suggestions regarding Algeria:**

The proposals are summarized as follows.

- Supporting and strengthening the protection of industrial property rights increases innovation, and is a strong motivation for technology owners to grant licenses for their inventions to investors in developing countries, as such licenses lead to increased access to the latest technologies.
- Organize awareness campaigns to educate consumers about the effects of consuming counterfeit products on their health and safety.
- Prepare a national strategy to combat the phenomenon of counterfeiting and piracy, with the participation of each of the public institutions, members of civil society such as associations, the media to defeat counterfeiting and piracy.

The margins:

1- A treaty signed between Algeria and Paris on intellectual property rights until the Stockholm Amendment in 1976.

2- Algeria ratified the agreement relating to the creation of the World Intellectual Property Organization in 1975.

3- Algeria ratified the Patent Cooperation treaty in 1999 with reservations.

4- a “license” is permission to enter or use land or property owned by another in a manner that would otherwise constitute an infringe. License to use or enter another’s land may be either express or implied.

5- See the text of Article 53 of the Consumer Law and the Suppression of Fraud dated 02/25/2009, previous reference.

6- op.cit p -6

7- The Article 22 of the Customs Law stipulates “all goods that bear data written on the products themselves, or on the covers, boxes, belts, envelopes, company or labels that would suggest that the goods coming from abroad are of the same origin..”,

8-, “The Impact of the Phenomenon of Counterfeiting on the Consumer,” Desiree Hafeza, Dar Al-Huda, p. 123.

Biography:

1/-Legal texts:



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