

INTERNATIONAL INSTRUMENTS RELATING TO TRADEMARK: BROADENING THE HORIZONS OF PROTECTION

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Abstract

Intellectual property inherently has dual nature. i.e., it has national as well as international dimension. The national law prescribes for the legislative, administrative as well judicial structure for the protection within its territory whereas the International Instruments ensure minimum standards of protection by providing certain measures for enforcement of the same by the contracting states. Over a course of history various multilateral conventions and treaties have immersed for the protection of trade mark. The main purposes of these international instruments affecting trademarks are better protection of rights for various types of marks, harmonization of laws and efficient system for multilateral filing for global protection. In this backdrop the article makes an attempt to analyse multilateral treaties and agreements on the Law of Trademarks which are international instruments for protection of trade mark worldwide. The objective of this article is to explore the international system for trademark protection by studying various multilateral conventions that provides for harmonization of laws for enhanced protection of trademark.

Keywords: International instruments, trademark protection, harmonization

Introduction:

Intellectual property inherently has dual nature. i.e., it has national as well as international dimension. The national law prescribes for the legislative, administrative as well judicial structure for the protection within its territory whereas the International Instruments ensure minimum standards of protection by providing certain measures for enforcement of the same by the contracting states.

Globalization and commercialization of intellectual property activities have created multiple challenges for protection of trademarks. The process of globalization has not

only paved way for evolution of international norms but also changed the face of the law protecting intellectual property in general and trademarks in particular. The trend of progressive harmonization of IP laws will lead to greater simplification and expediency in acquisition and protection of trademarks. TRIPs has brought certain fundamental changes in the world of intellectual property.

The ever escalating importance of trademark in international and domestic commerce is remarkable. Use of Trademarks has crossed the territorial boundaries in the age of fast developing technology. Hence the nationally protected trademarks are now inevitably required to be protected globally. Multiple efforts are being undertaken for better and global protection of trademarks. One of them is about various international instruments on trade mark rights that have played a significant role in the development and growth of legislative framework related to trademark protection in the recent past. Numerous International treaties and conventions have been negotiated to promote cooperation among states for the better protection of trademarks. These international instruments are administered by a specialized agency of the United Nations known as the World Intellectual Property Organization (WIPO).¹ Many countries have adopted stronger protection for trademarks through various bilateral regional and multilateral treaties.

Over a course of history various multilateral conventions and treaties have emerged for the protection of trade mark. The main purposes of these international instruments affecting trademarks are better protection of rights for various types of marks, harmonization of laws and efficient system for multilateral filing for global protection.

In this backdrop the article makes an attempt to analyse multilateral treaties and agreements such as the Paris Convention, the Madrid Agreement and the Madrid Protocol, TRIPS, the Vienna Agreement Establishing an International Classification of the Figurative Elements of Marks, the Trademark Law Treaty, the Nice Agreement on

¹ WIPO is the global forum for intellectual property services, policy, cooperation and information. It is established through an international instrument signed in 1967 at Stockholm and entered into force in 1970 with 186 member states.

International Classification, and the Singapore Treaty on the Law of Trademarks which are international instruments for protection of trade mark worldwide.

THE PARIS CONVENTION: BEGINNING OF INTERNATIONAL TRADEMARK SYSTEM

The Paris Convention² is one of the most comprehensive international instruments on industrial property. The convention applies to industrial property in the widest sense which includes patents, trademarks, industrial designs, geographical indications and the repression of unfair competition. It is one of the oldest international instruments in the field of intellectual property rights. Paris convention neither defines the rights it purports to protect nor prescribes any minimum standard of protection for these rights.³ The member nations are at liberty to provide for their own legal framework for the scope and the quality of right prescribed under the convention.

Paris convention prescribes for two important provisions. Firstly it guarantees a basic right known as the right to national treatment in each of the member countries; and secondly it establishes another basic right known as the right of priority. As per the provisions of the convention the principle of National Treatment⁴ requires that each member state grant the same quality and quantity of protection to eligible foreigners as it grants to its own nationals in respect of the intellectual property enumerated in the convention. Article 2(3)⁵ provides for an exception to the principle of National Treatment.

² The Paris convention was signed on 20th March 1883. Revised on 14th December 1990 at Brussels, on 2nd June 1911 at Washington, on 6th November 1925 at Hagul, on 2nd June 1934 at London & on 14th July 1967 at stockholm. It was amended last on 28th September 1979.

³ Seth M. Reiss, '*Commentary on the Paris convention for the protection of industrial property*' <<http://www.lex-ip.com/Paris.pdf>> accessed 01 August 2013.

⁴ Article 2[National Treatment for Nationals of Countries of the Union] (1) Nationals of any country of the Union shall, as regards the protection of industrial property, enjoy in all the other countries of the Union the advantages that their respective laws now grant, or may hereafter grant, to nationals; all without prejudice to the rights specially provided for by this Convention. Consequently, they shall have the same protection as the latter, and the same legal remedy against any infringement of their rights, provided that the conditions and formalities imposed upon nationals are complied with.

⁵ Article 2[National Treatment for Nationals of Countries of the Union] (3) The provisions of the laws of each of the countries of the Union relating to judicial and administrative procedure and to jurisdiction, and to the designation of an address for service or the appointment of an agent, which may be required by the laws on industrial property are expressly reserved.

As per this exception the member countries are allowed to impose conditions with regard to judicial and administrative procedure and to jurisdiction. Right of Priority which is also a basic right prescribed by the convention is sometimes referred as the 'Convention Priority Right', 'Paris Convention Priority Right' or 'Union Priority Right'. It provides that any person who has duly filed an application for registration of any type of industrial property in one of the countries of the Union shall enjoy for the purpose of filing in the other countries the right of priority during the period so fixed by the convention. The period of priority in case of trade mark is of six months.

The convention provides for substantive rules of protection for trademarks and their proprietors in article 5C (1), (2) and (3). Article 5C (1) is regarding cancellation for non-use. Trade mark is an identity of goods. It is required to be in force. It is essential to keep the registered trade mark in force to prevent the trademark register being clogged with unused mark that preclude the valid registration of identical or similar marks which are used or intended to be used.⁶As per this provision countries are allowed to enact protectionist legislation for the cancellation of those marks which are registered but not used within the member country. The provision for cancellation of such mark is made effective only after affordable period has elapsed and only when the owner fails to justify the non-use. What constitute a reasonable time period is left to the domestic law. Article 5C(2) protects the use of a mark in a form different from the form in which it has been registered, as long as the distinctive character of the mark is not thereby altered.⁷Article 5C (3) protects concurrent use of marks so long as the same is not misleading and contrary to public interest. However this is limited to the use made by co-proprietors only. Whether the concurrent use is misleading and contrary to public interest is again left to the competent authorities of the national legislation. Registration of marks is required to be renewed on timely basis. In case of any delay the rights can be lost. To avoid such situation which at times may involve involuntary delays the convention through Article

⁶ G.H.C.Bodenhausen, 'Guide to the Application of the Paris Convention for the Protection of Industrial Property as Revised at Stockholm' (1967) WIPO Publication N°611 (E).

⁷Reiss (n 3) 2.

5bis provides for grace period of at least six months for the payment of renewal fees. Independence of trademark is recognized by Article 6 of the convention. According to this Article the filing and registering of a trademark in each country is independent of the analogous acts regarding the same trademark in the other countries including the country of origin. Once registered in a country the mark remains unaffected by the fate of the similar registrations in the other countries again including the country of origin. The convention through Article *6bis* protects well-known marks. As per this provision the member country is obliged to refuse or cancel the registration of a mark that is similar to a well-known mark in that country which in turn would create confusion in the minds of customers. The effect of this Article is to extend protection to a trademark that is well-known in a member country even though it is not registered or used in that country. Well known marks are protected not due to their registration but due to the reputation and goodwill established. It is worth mentioning that the protection granted to the well-known marks extends only against the same or similar goods. It does not grant protection in case of dilution of well-known marks. Marks that have been registered for a period of five years or more in Union member countries may not be cancelled under the provisions of Article *6bis* notwithstanding that they may conflict with an unregistered well-known mark.⁸ The status of a mark being well known is to be determined as per the provisions of the domestic law of each member country.

Under Article *6ter* which prescribes for assignment of trade mark has its roots in the rule of independence of trademarks. It further provides that in the case of member countries whose laws require for a valid assignment the concurrent transfer of the business or goodwill to which the mark belongs, it is sufficient that the business or goodwill located within the member country be transferred, but the member country is not obliged to recognize an assignment of a nature as to mislead the public. The member states also undertake to prevent the use of state emblems or flags as trademarks or as part of trademarks without authorization from the competent authorities. Further standards

⁸ *ibid.*

enumerated with regard to protection of trademark include acceptance for registration and filing in all countries of the Union when the mark is duly registered in the country of origin. It also provides for prohibition and denial of registration as well as invalidation except in the circumstances which include lack of distinctive character (more of distinctive by nature), against public order or morality and when the mark is likely to infringe rights protected by the legislation of the country where registration is sought.

Article 6*sexies* was introduced into the Paris Convention in 1958 to deal specifically with service marks, but the revision Conference did not accept a more ambitious proposal to assimilate service marks to trademarks entirely. However, a member country is free to apply the same rules it applies for trademarks also to service marks in analogous situations or circumstances. The convention also provides categorically that the nature of the goods to which the trademark applies is not a matter of consideration for grant of registration.

The protection of collective marks in respect of association is subject matter of Article 7*bis*. Member countries are obliged to accept the filing and approve the registration of collective marks belonging to those associations which are not contrary to the law of the country of origin. It is further provided under Article 11 that temporary protection may be granted in respect of goods exhibited at official or officially recognized international exhibitions held in the territory of any member country on producing proof to the competent authorities of the member country.

MADRID SYSTEM FOR THE INTERNATIONAL REGISTRATION OF MARKS:

Madrid system comprising of Madrid agreement⁹ and Madrid protocol¹⁰ together is emerging as the definitive and most widely acceptable contemporary international

⁹ The Madrid Agreement Concerning the International Registration of Trade Marks [concluded 1891, revised Brussels (1900), Washington (1911), The Hague (1925), London (1934), Nice (1957), Stockholm (1967), and amended in 1979].

¹⁰ The Protocol Relating to the Madrid Agreement Concerning the International Registration of Marks (concluded 1989, entered into force 1995, became operative 1996).

agreement system concerning the international registration of trademarks. The protocol relating to the Madrid Agreement aims to make the Madrid system more flexible and compatible with the domestic legislation of certain countries or intergovernmental organizations that had not been able to accede to the agreement. States and organizations that are party to the Madrid system are collectively referred to as contracting parties. Thus, this system makes it possible to protect a mark in a large number of countries by obtaining an international registration that has effect in each of the designated contracting parties.

Both the protocol and the agreement are governed by the WIPO. The aim of the Madrid system is to streamline the process of obtaining global trademark protection. The Madrid agreement and the Madrid protocol are independent yet parallel treaties with separate but overlapping memberships.

Registration of a mark under the agreement provides for legal equivalent of registration in member countries designated by the mark owner. Upon India being a signatory of the Madrid Protocol, applicant while making an application to National office may select from the list of member countries where he seeks protection of mark. The National office in the country of origin examines whether the international application corresponds to the basic application and complies with home state requirements. On the national office being satisfied, it forwards the application to WIPO. On fulfilling the formalities like examination, advertisement for approval and opposition the mark is registered in the selected member countries. Registration term under the protocol is for 10 years which can be renewed for further 10 years. There is a provision for a "central attack" under the Madrid protocol under which if any application to the WIPO under the protocol is rejected in the country of origin itself at the discretion of the National Office or an opposition, the application is then treated as rejected by all member states designated in the application, in which the applicant seeks protection.

The Madrid system offers several advantages to the trademark owner. Instead of filing a separate national application in each country of interest, in the several different languages, as per different national or regional rules and paying several different plus higher fees, an international registration may be obtained by simply filing one application with the International bureau through the office of the home country in one language and paying one set of fees. Another advantage is with regard to maintaining and renewing registration that takes place with single procedural step in all designated contracting parties. Considering the same India, India became member of the Madrid Protocol since 8 July 2013 and amended¹¹ the national legislation to comply with the Protocol requirements

Thus, Madrid Protocol provides a convenient and cost-effective way of obtaining trademark protection. However, there are a few disadvantages of the system as well. It is worthy to mention that the International application under the Protocol is dependent on the 'Basic National Application'. Hence in case of any change or rejection of the same the International application shall stand amended or rejected automatically. Further, if an Indian basic mark is cancelled or limited in first five years then the International mark will similarly be cancelled or limited. The possibility of delay being caused in processing the national application cannot be denied as the international applications under the Protocol are compulsorily to be processed within a duration of eighteen months. So it can be concluded that effective utilization of this system in India will require greater administration and timely management of trademark applications owing to its stringent timelines.

NICE AGREEMENT CONCERNING THE INTERNATIONAL CLASSIFICATION OF GOODS AND SERVICES FOR THE PURPOSES OF THE REGISTRATION OF MARKS (1957)

¹¹ The amendment led to the inclusion of **Chapter IVA** (containing sections 36A to 36G) in the **Trademarks Act 1999**.

An international system for classification of goods and services for registration and protection of trademark and service marks is established by the Nice Agreement concerning the International Classification of Goods and Services. This agreement is an outcome of the diplomatic conference held at Nice, France in 1957. It provides for 45 classes out of which 34 classes are for goods and 11 classes are for services. This classification is updated every five years. This agreement is open to the states that are party to the Paris convention. There are at present 83 countries that are party to the agreement. Apart from this, there are trademark offices of at least 147 States, as well as the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the African Regional Intellectual Property Organization (ARIPO), the Benelux Organisation for Intellectual Property (BOIP) and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of the European Communities, actually use the Classification that uses Nice classification without being party to it. The trademark offices of the contracting States must indicate, in the official documents and publications in connection with each registration, the numbers of the classes of the Classification to which the goods or services for which the mark is registered belong. The Agreement, concluded in 1957, was revised at Stockholm in 1967 and at Geneva in 1977, and it was amended in 1979.

India follows the International Classification of Goods and Services (Nice Classification) under the NICE Agreement administered by WIPO. The Nice Classification is embodied in the Fourth Schedule of the Trade Mark Rules, 2002 which lays down the broad classification of goods or services for which marks can be registered in India. Keeping itself abreast with the latest editions of the Nice Classification, India has introduced associated changes to its trademarks law from time to time. The latest amendment to the Fourth Schedule of the Trade Mark Rules was made in May, 2010, which introduced 3 additional classes of services.

**VIENNA AGREEMENT ESTABLISHING AN INTERNATIONAL
CLASSIFICATION OF THE FIGURATIVE ELEMENTS OF MARKS (1973)**

The Vienna Agreement establishes a classification for marks which consist of, or contain, figurative elements (the Vienna Classification). The Classification consists of 29 categories, 144 divisions and some 1,667 sections in which the figurative elements of marks are classified. Although only 25 States are party to the Vienna Agreement, the Classification is used by the industrial property offices of at least 30 States, as well as by the International Bureau of WIPO, the African Intellectual Property Organization (OAPI), the Benelux Organisation for Intellectual Property (BOIP) and the Office for Harmonization in the Internal Market (Trade Marks and Designs) (OHIM) of the European Communities. The Vienna Agreement, concluded in 1973, was amended in 1985. The Agreement is open to States party to the Paris Convention for the Protection of Industrial Property (1883).

THE TRADEMARK LAW TREATY: (1994)

The Trademark Law Treaty was adopted on 27th Oct. 1994 at Geneva after six consecutive working sessions by the Trademark Committee of experts. In order to streamline the national and regional trademark registration procedures certain features of registration procedures are harmonized and simplified through this treaty. This has made the registration of trademark less complex in multiple jurisdictions. This treaty addresses procedure for registration at three stages i.e. application for registration, changes after registration and renewal of trademark registration.

TRIPS¹²: THE TRADE RELATED ASPECTS OF INTELLECTUAL PROPERTY RIGHTS

BACKGROUND AND HISTORY

Intellectual property in terms of goods and services form a significant proportion in international trade. In case of inadequate and insufficient protection granted to various

¹²See Agreement on Trade-Related Aspects of Intellectual Property Rights, Apr. 15, 1994, Marrakesh Agreement Establishing the World Trade Organization [hereinafter WTO Agreement], Annex 1C, LEGAL INSTRUMENTS—RESULTS OF THE URUGUAY ROUND vol. 31; 33 I.L.M. 81 (1994) [hereinafter TRIPS].

forms of intellectual property in different countries there exists a threat to productive international trade. A need to develop appropriate framework for protection of intellectual property was felt which in turn would improve international trade order as well.

In this climate, the negotiations concerning Trade-Related Aspects of Intellectual Property Rights (TRIPS) became one of the important new areas for discussion at the Uruguay Round of GATT, begun in 1986. Along with other agreements to come out of the Uruguay Round, the Agreement on Trade-Related Aspects of Intellectual Property Rights (the TRIPS Agreement) was finally agreed upon at the ministerial meeting in Marrakesh, Morocco in April 1994, and came into force as part of the WTO Agreement on January 1, 1995.

TRIPS is one of the most important and comprehensive international instrument relating to protection of intellectual property rights. TRIPS stands out strikingly among all other international treaties on intellectual property rights for the reason that it covers all forms of intellectual property without separating copyright and industrial property. Further it provides for detailed provisions on enforcement of intellectual property rights. It is a crucial outcome of the Uruguay Round negotiation. It aims at providing the minimum standard for protection of IPR globally. It establishes minimum standard of protection for each type of intellectual property that each member country including India must provide under its National Laws. More extensive protection may be provided under the domestic law so long as it does not affect other provisions of the TRIPS agreement.

It is noteworthy that TRIPS is the only international treaty that prescribes minimum standards for protection for various forms of IP including industrial property and copyrights. It is the first International treaty that mandates detailed civil criminal and administrative remedial structure and it is the first International treaty that is subject to binding enforceable dispute settlement.

a. SCOPE AND OBJECT

The TRIPs agreement is concerned with trade and not with competition. As per the Preamble of the TRIPs effective and adequate promotion and protection of intellectual property rights is most desirable to reduce distortions and impediments to the international trade. It also aimed at ensuring measures and procedures to enforce intellectual property rights so that it does not become a barrier to the legitimate trade. Though it is recognized that IPRs are “private rights”, the underlying public policy objectives of national systems for the protection of intellectual property, including “developmental and technological objectives” are also recognized in the preamble.¹³ It further prescribes for the provisions of adequate standards and principles concerning the availability, scope and use of intellectual property rights. By taking into account the diversity in the national legal systems the agreement aims at providing effective and appropriate means for the enforcement of the intellectual property rights. The provisions of the agreement are prescribed further with a view to provide for effective and expeditious procedures for the multilateral prevention and settlement of disputes between governments. In nutshell the TRIPs agreement reflects twofold objectives which are completely consistent with the rationale of the WTO.¹⁴ Firstly to provide for new and improved rules establishing minimum standards of protection for various forms of intellectual property to reduce distortions and impediments to international trade. Secondly, to recognize intellectual property as private rights. It is noteworthy that the WTO members cannot provide for lesser protection in their domestic legal framework than what is prescribed in the TRIPs.

TRIPs, one of the next comprehensive agreements on protection and enforcement of IPRs consists of 73 articles divided into seven parts.

The main provisions can be divided into the following three aspects groups

¹³ Training Module on the WTO Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPs) available at <http://unctad.org/en/docs/ditctncd20083_en.pdf> accessed 27 December 2013

¹⁴ Nuno Pires de Carvalho, *The Trips regime of Trademarks and Designs* (3rd ed, Kluwer Law International 2011) 68

- The agreement prescribes minimum standards of protection for each type of intellectual property covered by it.
- The agreement further provides for domestic procedures and remedies for the enforcement of intellectual property rights.
- The Agreement makes disputes between WTO Members in respect of the TRIPS obligations subject to the WTO's dispute settlement procedures.

It is noteworthy that TRIPs refers to the substantive provisions of the Paris convention for the protection of industrial property. TRIPs through this reference makes it obligatory for its members that the member country must comply with the provisions of the Paris convention even though they are not member to that convention. TRIPs is the first international treaty to introduce a system of sanctions against members who do not enforce the minimum protection of intellectual property rights.¹⁵

b. BASIC PRINCIPLE OF NATIONAL TREATMENT TO MOST FAVOURED NATION PRINCIPLE UNDER THE TRIPS

The principle of National Treatment¹⁶ can be defined as a rule of non-discrimination promising foreign intellectual property owner that they will enjoy in a protecting country at least the same treatment as the protecting country gives to its own nationals.

TRIPs has extended the protection given under the principle of National Treatment under the Paris Convention by introducing the principle of the Most Favored Nation.¹⁷ According to the Most Favored Nation principle with regard to the protection of intellectual property, any advantage, favour, privilege or immunity granted by a Member to the nationals of any other country shall be accorded immediately and unconditionally to the nationals of all other Members.

¹⁵Joanna Schmidt Szalewski, 'The International Protection of Trademarks after the TRIPS agreement' (1998) vol. 9 Duke Journal of Comparative and International Law 189.

¹⁶ TRIPS art 3.

¹⁷ *ibid* art 4.

c. TRADEMARK PROTECTION IN THE TRIPS AGREEMENT:

Articles 15 to 21 of TRIPs lay down the rules for protection of trademark. It is obligatory for the member state to enforce the principles regarding conditions and content of protection of trademark as laid down in articles Art. 15. It provides for simple definition of trademark stating that any sign or any combination signs, capable of distinguishing the goods or services of one undertaking from those of other undertaking, shall be capable of constituting a trademark. This definition very clearly conveys that the agreements on TRIPs provides for both trademarks attached to goods as well as service marks indicating services on the equal footing. It is very specifically provided under the TRIPs¹⁸ that the signs that are not inherently capable of distinguishing the relevant goods or services may be assessed on the condition of its distinctiveness acquired through use. This in turn does not prevent the member state from denying registration of a trademark on other grounds, provided that they do not derogate from the provision of the Paris convention. While appreciating the registration of a mark on its use the TRIPs agreement stipulates that actual use a trademark shall not be a condition for filing on application for registration. It further adds that an application shall not be refused solely on the ground that intended use has not taken place before the expiry of a date of application. Further, it is provided¹⁹ that it is obligatory for the member state to publish the trademark either before it is registered or immediately after registration and to provide for reasonable opportunity for application of opposition for cancellation of such trademark.

d. RIGHTS CONFERRED:

As provided under the TRIPs,²⁰ the owners of registered trademarks have exclusive lights to prevent third parties from using an identical or similar goods signs that are similar to those in respect of which the trademark is registered where such use would cause confusion. When an identical mark is used on goods and services that are identical, a

¹⁸ *ibid* art. 15(1).

¹⁹ *ibid* art. 15(2).

²⁰ *ibid* art 16(1).

likelihood of confusion shall be presumed. TRIPs has strengthened the protection granted to the well-known marks.²¹

Protection is provided to both service marks as well as trademark in terms of well-known marks. It is further provided that for determining whether a trademark is a well-known mark, the knowledge of the trademark in the relevant sector of the public, including knowledge in the member concerned which has been obtained as a result of the promotion of the trademark shall be taken into consideration. The same article of Paris Convention shall apply to goods or services which are not similar to these in respect which a trademark is registered. The term²² of protection as prescribed under TRIPs is of minimum seven years which is renewable indefinitely.

SINGAPORE TREATY ON THE LAW OF TRADEMARKS (2006)

The Singapore Treaty on the Law of Trade Marks was adopted by member states of WIPO in 2006 and stems from the Trade Mark Law Treaty of 1994. The Singapore Treaty introduces important changes to the TLT 1994, thereby internationally harmonizing the administrative rules and procedures for trade mark registration. Having received its 10th ratification by Australia, the Singapore Treaty enters into force on 16 March 2009. The Singapore Treaty is separate from the Trademark Law Treaty 1994 and, as of 18 May 2009, has 11 contracting members. The Singapore Treaty aimed at creating a modern and dynamic international framework for the harmonization of administrative trademark registration procedures. The Treaty is applicable to all types of marks, including non-traditional visible marks, such as holograms, three-dimensional marks, color, position and movement marks, and also non-visible marks, such as sound, olfactory or taste and feel marks. The Regulations provide for the mode of representation of these marks in applications, which may include non-graphic or photographic reproductions. The Singapore Treaty includes provisions on the recording of trademark licenses, and

²¹ *ibid* art 16(2).

²² *ibid* art 18

establishes maximum requirements for the requests for recordal, amendment or cancellation of the recordal of a license.

CONCLUSION:

Various international instruments have established a system for international protection of trademark. One of the most challenging tasks before India as a member country was to incorporate the provisions laid down in TRIPs in the existing legal frame work for the protection of trademark. By virtue of becoming party to the WTO, India committed herself to extreme levels of domestic reforms. To address this requirement India made various concessions to facilitate transition from country centric IPR protection which was purely domestic by nature to an international system of IPR protection that would meet the minimum standards established by the TRIPs. TRIPs has played a pivotal role in encouraging developing countries like India to create highly productive IPR regime.

With the abovementioned data the level of harmonization of trademark laws among the countries seem to be unusually high. Nonetheless harmonization does not include all areas and issues. With the diversity of Laws of each country increasing every year, most protective measures require for the intangible assets needs to be revisited. In case of any dispute involving a worldwide market, there are more than two hundred potential laws applicable for the assessment of the principle on territoriality. This complex issue is not address by any of the international instruments on intellectual property rights particularly on trademarks. Most comprehensive conventions like Paris convention and TRIPs are also addressing these three principal concepts: (i) signatory states must provide minimum standards of substantive trademark protection; (ii) states must offer protection on the basis of national treatment (i.e., accord the same protection to citizens of foreign signatory states as they do to their own citizens); and (iii) national trademark rights in one signatory country are independent of rights in other countries.²³ These three

²³Draft Convention on Jurisdiction and Recognition of Judgments in Intellectual Property Matters, prepared by WIPO Forum on Private International Law and Intellectual Property, <http://www.wipo.int/edocs/mdocs/mdocs/en/wipo_pil_01/wipo_pil_01_7.pdf> accessed on 12 February 2013.

principles contain little that is determinative on complex issues of jurisdiction and enforcement of intellectual property rights. The ultimate goal of WIPO is to harmonies the substantive law for trademark protection globally, however, this at present, seems to be too lofty to pursue.

