

The World Intellectual Property Organization: An Agency for Implementing Foreign Trade Law

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Abstract: This study aims to clarify the relationship between the World Intellectual Property Organization and foreign trade by providing an international framework for the protection of intellectual property rights, which enhances innovation and international trade. This study summarized the necessity of activating the mechanisms of the World Intellectual Property Organization to resolve and settle international disputes that may arise from Implementing and implementing international agreements concluded within their framework, raising the level of awareness of intellectual property and encouraging creators.

Keywords: World Intellectual Property Organization, innovation, disputes, international trade, investment

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Introduction

It is no secret to anyone the effective role that international trade plays in developing the economies of countries, given that a vital sector for any society, regardless of its degree of development, as it contributes to expanding marketing capacity by opening new markets, and raising the level of national income by exporting. Any country transfers a portion of its production to countries around the world and imports a portion of what these countries produce. This is because a certain percentage of the national income in each country depends on what consumers spend in other countries.

The process of exporting and importing products and services from one country to another requires respect for a set of international legal controls that allows the respect for intellectual property rights within the framework of foreign trade relations, as the World Intellectual Property Organization is the one that works on the application of these international trade law, as this organization is keen on ensuring the necessary protection for the inventors of their inventions or the authors of their works, with the aim of creating a healthy competitive environment.

From here, the following problem is determined: What is the World Intellectual Property Organization? What is its role in establishing the rules of foreign trade in this field? In order to answer this problem, I divided my intervention into two axes. I dealt with the first axis: the legal system of the World Intellectual Property Organization and the second axis is the effectiveness of the role of the intellectual property organization in applying the rules of foreign trade - the field of intellectual property rights -?

1-The legal framework of the World Intellectual Property Organization

The Intellectual property rights constitute a major factor in driving economic development, as the wealth of countries or not is measured by the amount of intellectual property rights they possess. In view of the importance of intellectual property rights in promoting innovation in the fields of advanced technology, it was therefore decided to protect them through the World Intellectual Property Organization in particular. The global economy has not become based on the production of goods and services only, but has also gone beyond the production of information and knowledge.

1.1.The first requirement: The nature of the World Intellectual Property Organization

The World Intellectual Property Organization was established¹ according to the Stockholm Treaty concluded on 14 July 1967 and entitled by the Convention of establishing

¹ - يشار إلى المنظمة العالمية للملكية الفكرية اختصاراً باللغة الفرنسية OPMI وباللغة العربية الويبو التي هي ترجمة من الانجليزية ل WIPO

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the World Intellectual Property Organization and entered into force in 1970, and became a specialized agency of the United Nations in 1974 at its headquarters in Geneva, Switzerland.²

The number of its members reached 183 countries on 08/10/2008, its headquarters is Geneva and Algeria joined it according to Order 75/02 of 01/09/1975³. This organization seeks to: protecting intellectual property rights of all kinds⁴ by ensuring cooperation between different countries, and searching for ways to coordinate and cooperate with other international organizations in order to achieve balanced development to create international rules and foundations regarding intellectual property and strengthen international agreements concluded in the field of intellectual property⁵ in order to support it administratively and financially to enable WIPO to implement its program⁶

We note that in Article 1 of the United Nations-WIPO Agreement the United Nations recognized WIPO as the specialized agency responsible for taking appropriate action in accordance with its Basic Instrument and the treaties and agreements it administers among other things to promote creative intellectual activity and facilitate the transfer of technology related to industrial property to the developing countries in order to accelerate economic, social and cultural development⁷.

The World Intellectual Property Organization plays a prominent role in helping developing countries obtain patented foreign technology, and increasing competition in commercial aspects by providing global services in the field of intellectual property, transferring intellectual property, and facilitating its use for the sake of development. The WIPO maintains the complete independence and has its own statute and its own budget⁸. The World Intellectual Property Organization supervises 26 international treaties on intellectual property rights, 16 of which are on industrial property and 7 on copyright⁹.

If a country signs these agreements it is obligated to respect their provisions and apply them on its territory. The World Intellectual Property Organization has kept pace with the developments made at the technological level, as with the spread of intellectual property in electronics, the latter has established new rules and standards with the aim of protecting computer programs, information data, and electronic commerce more precisely.

²-احسان سمارة، مفهوم الملكية الفكرية وضوابطها في الاسلام، مجلة العلوم الانسانية جامعة خيضر معسكر، جوان 2005، ص.4.

³-الجوزي جميلة، قوري اسية، واقع الملكية الفكرية في الجزائر، مجلة الاقتصاد الجديد، العدد16، المجلد01-2017، ص.7.

⁴-تنقسم الملكية الفكرية الى ملكية صناعية وهي: براءة الاختراع، العلامات التجارية، الرسوم والنماذج الصناعية، تسمية المنشأ، وملكية ادبية حق المؤلف في المصنفات الادبية والاعمال الموسيقية و الفنية والتصويرية و السينمائية

⁵-الحولية القانونية للامم المتحدة، 2000، ص.194.

⁶-المادة 3 و4 من النظام الاساسي من اتفاقية انشاء المنظمة الموقعة في استوكهولم في 14 يوليو 1967 والمعدلة في 28 سبتمبر/ايلول 1979

⁷-Ruth Okediji, WIPO-WTO Relations and the Future of Global Intellectual Property Norms, Scholarship Repository University of Minnesota Law School, 2008, 78.

⁸- القاضي الدكتور غسان رباح، الوجيز في قضايا حماية الملكية الفكرية والفنية مع دراسة مقارنة، الطبعة الأولى، منشورات الحلبي، بيروت، لبنان، 2008، ص.184.

⁹- Carolyn Deere Birkbeck, The World Intellectual Property Organisation: A Reference Guide[Accessed 13.00th 30August 2023] AvailablefromWorld, at: <https://www.researchgate.net/publication/299996976>

1.2. The second requirement: The organizational structure of the World Intellectual Property Organization

The regulatory system of WIPO consists of a number of devices that operate technically as follows:

A- General Assembly

The Assembly is formed from the states parties to the Convention and members of any of the unions. The government of each state is represented by one delegate who can be assisted by alternates, advisors and experts. The General Assembly ensures that a set of tasks are carried out, including:

Appointment of the Director-General based on the nomination of the Coordination Committee, which decides on the Director-General's reports related to the organization and takes them into account¹⁰.

It considers and approves the reports and activities of the Coordination Committee, and gives the necessary instructions for that¹¹.

It sets a two-year budget for common expenses between the federations

Applies the procedures proposed by the Director General regarding the implementation of international agreements, sets the financial regulations of the organization¹²

It decides the working languages of the Secretariat, taking into account what is practiced in the United Nations. It appoints observers whose meetings can be attended by non-member states of the organization and from international governmental and non-governmental organizations.

The General Assembly meets in a regular session once every two years at the invitation of the Director-General. The General Assembly meets in an extraordinary session at the invitation of the Director-General, whether at the request of the Coordination Committee or at the request of a quarter of the member states in the General Assembly. The meetings are conducted at the organization's headquarters.¹³

¹⁰-راجع 3/6 من ميثاق المنظمة العالمية للملكية الفكرية

¹¹-حسام محمد محمود لطفي، الملكية الأدبية والفنية، دار النهضة العربية، القاهرة، مصر، 2000، ص.20.

¹²-wipo database of intellectual property legislative texts, [Accessed 14.00th 30August 2023] AvailablefromWorldhttp://admin.theiguides.org/Media/Documents/WIPO%20Convention_1.pdf

¹³-عمر سعد الله، القانون الدولي للأعمال، الطبعة الثانية، دار هومة للطباعة والنشر والتوزيع، الجزائر، 2012، ص.ص.268، 369.

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B- Conference:

A conference shall be composed of the States Parties to this Convention, whether or not they are members of any of the unions¹⁴ Each government is represented by a delegate assisted by alternates, advisors and experts. One of his duties is to study sensitive issues in the field of intellectual property. He can make a set of recommendations in this regard. He also sets the two-year budget for the conference. He sets a two-year program related to technical legal assistance without exceeding the conference budget. He appoints Observers from non-member countries of the organization and from non-governmental and governmental organizations

C- Coordination Committee

The Coordination Committee consists of the States Parties to the Convention, the latter of which holds membership in the Organizing Committee of the Paris Union or the Executive Committee of the Berne Union, or both¹⁵ however, if either of these two executive committees is composed of more than a quarter of the number of member states in the elected assembly, such an executive committee shall determine the states that will have the membership in the Coordination Committee from among its members, so that the number of these states does not exceed the quarter referred to above, provided that It is understood that the country in whose territory the organization's headquarters is located will not be included in the calculation of the aforementioned quarter. The government of each member country in the Coordination Committee will be represented by one delegate who can be assisted by alternates, advisors and experts.

The Coordination Committee has a set of powers: to provide advice to the bodies of the federations, the General Assembly, the Conference and the Director-General on all administrative and financial matters and on any matters of common importance, whether to two or more federations or to one or more of the federations and the organization, and in particular on the expenditure budget. shared between federations¹⁶.

The Coordination Committee is keen to prepare the draft agenda of the General Assembly, prepares the draft agenda of the conference and its draft program and budget, and proposes the name of the candidate for appointment in the General Assembly to the position of Director-General when the term of the position is nearing the end or in the event of a vacancy in the position of Director-General. Other tasks are carried out within the framework of what is specified in the agreement.¹⁷

¹⁴ -[Accessed 13.00th 30August 2023] Available fromWorld ،17 ،6 ،المواد في الفكرية في المواد 6، 17 ،
:http://www.wipo.int.

¹⁵-المادة 8 من ميثاق المنظمة العالمية للملكية الفكرية .

¹⁶-فاضلي ادريس، مدخل الى الملكية الفكرية، الملكية الادبية والفنية والصناعية، ديوان المطبوعات الجامعية، الجزائر، 2007، ص.ص.64، 65.

¹⁷-عمر سعد الله، المرجع السابق، ص.271.

D- International Office:

The administration of the International Bureau or the WIPO Secretariat is ensured by a Director General, assisted by one or more Deputy Directors General. The Director General is appointed for a limited period of not less than six years, and his appointment may be renewed for a limited period.

The General Assembly shall determine the duration of the first appointment and possible subsequent appointments, as well as all other conditions of appointment.

The Director General is considered the chief executive officer of the organization and represents the organization. He submits reports to the General Assembly and works in accordance with its guidance regarding the internal and external matters of the organization. He prepares draft programs and budgets as well as periodic activity reports and communicates them to the governments of the countries concerned and to the competent bodies in the unions and the organization¹⁸.

2.The relationship of the World Intellectual Property Organization to foreign trade

Innovators and companies need easy and cost-effective ways to protect their inventions and trademarks, and WIPO's international intellectual property filing services help them ensure this protection¹⁹. In addition, the protection of intellectual property has become an important topic in the international community, so they considered it necessary to negotiate the issue of intellectual property in parallel with foreign trade, which led to its inclusion in the Uruguay Round talks, where the developed countries welcomed this achievement on the grounds that they had been harmed by imitation and copying. By developing countries that strongly opposed the inclusion of intellectual property rights in the Uruguay Round, which they considered to be a violation of the principle of eliminating trade barriers.

2.1.The first requirement: protecting intellectual property rights in foreign trade relations

The World Intellectual Property Organization has been one of the specialized agencies of the United Nations since December 1974, which carries out a number of tasks:

To issue information related to patents and disseminate it through its database, and to develop the use of this information through training, seminars and technical studies, in the sense of developing the field of technology transfer because it allows the analysis of trends in patent issuance as well as the companies concerned.

It allows those interested in technical transfer to evaluate the ownership of intellectual property rights, their geographical scope, and their legal status in a specific region.

¹⁸-نقلا عن عمر سعد الله، المرجع السابق، ص.272.

¹⁹-Intellectual Property Rights and International Trade Updated May 12, 2020, Congressional Research Service[Accessed 11.00th 31August 2023] AvailablefromWorldhttps://crsreports.congress.gov.

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The World Intellectual Property Organization administers 23 international treaties, including 16 treaties on industrial property and 6 treaties on copyright, in addition to the agreement establishing WIPO itself. Some of the rules of foreign trade are extracted from these international agreements²⁰.

The World Intellectual Property Organization ensures the implementation of intellectual property rules worldwide and continues to support them. And institutions distribute their products across markets. It has created an integrated legal system that takes into account creativity, stimulates innovation, contributes to economic development, and protects the public interest.

The role of the World Intellectual Property Organization cannot be denied in vital areas such as health, trade, work, the environment, and technological transformations. The World Intellectual Property Organization is credited with purchasing technology or providing large markets to stimulate companies to transfer and exchange technology.

Protecting intellectual property assets helps international trade and increases prosperity by increasing the size of the market. Protecting the assets that constitute intellectual property and having their owner or holder obtain this guarantee and that they will receive fair compensation for them, whether directly or indirectly, may prompt them to give them up. To other companies by licensing their use or exploiting them directly in the markets of other countries or exploiting them directly in other markets or supplying these markets with new goods and services from their existing production sites without fear of imitation.

Owning advanced technology and controlling it through protection allows its holder to enter the market not only with technology but also with products and goods that depend on this technology.

International trade not only allows the illegal trade of tangible goods, but also the technology manufactured with them, and the presence of cases of counterfeiting or piracy can negatively affect foreign trade, meaning the manufacturing secrets are given up for free and the export process declines in the presence of similar goods to an extent with low price in the local markets of importing countries²¹.

The organization's transactions in the field of intellectual property are based on international business, which are:

²⁰-محمد سعد الرحاحلة، ايناس الخالدي، مقدمات في الملكية الفكرية، الطبعة الاولى، دار الحامد للنشر والتوزيع، عمان، الاردن، 2012، ص.242.

²¹-عائشة موزاوي، وسام حسيني، تاثير حماية حقوق الملكية الفكرية على استقطاب الاستثمار الاجنبي الى دول شمال افريقيا دراسة قياسية خلال الفترة (1995-2018)، مجلة التنظيم والعمل، المجلد 10، العدد 04، 2021، جامعة معسكر، ص.ص.113، 130.

A- National treatment: The first obligation is for the countries to guarantee protection within them, based on their national laws, to works from all other countries that are members of the Berne Convention. This principle is generally known as the term national treatment²².

b- Minimum rights: The protection granted to foreign authors must not fall below a certain level, meaning that there are certain and specific rights in the Berne Convention that must be observed, and that the period of protection should not be less than the period stipulated in the Berne Convention, and that the conditions imposed must be conditions stipulated in it.

c- Lack of formal procedures: It is considered the absence of imposing formal procedures for the purposes of granting protection to foreign authors, and it is prohibited to impose any registration procedures, a statement regarding copyright, or any other formal procedures. However, it is permissible to keep records for other purposes, for example, if protection is not conditional on the completion of that registration²³.

2.2. The second requirement is cooperation between the World Intellectual Property Organization and the World International Trade Organization

The United States of America and the European Union were not satisfied with the international agreements contained in the World Intellectual Property Organization that address most aspects and procedures of intellectual property rights, as they insisted on including it in the Uruguay Round, in order to reach an agreement regarding them within the framework of the World Trade Organization in order to ensure protection sufficient for the technology, patents, and trademarks they own due to their exposure to piracy and counterfeiting. These countries considered that GATT was stronger for protecting intellectual property rights and those previous international agreements were useless and ineffective. However, what is worth noting is that developing countries did not welcome this idea, and considered it an attempt by the developed country to monopolize technology and the possibility of increasing the prices of these goods on the international market.

The TRIPS Agreement aims to increase the rate of technology transfer and increase technological innovation, without interfering with the economic and social development of developing countries, contributing to the protection and enforcement of intellectual property rights to encourage the spirit of technological innovation and the transfer and dissemination of technology in a way that helps achieve the common benefit of producers and users of technological knowledge. And preventing intellectual property rights holders from misusing them in a way that negatively affects the international transfer of technology²⁴.

²²—Dr. Silke von Lewinski, INTELLECTUAL PROPERTY, NATIONALITY, AND NON-DISCRIMINATION [Accessed 10.00th 29 August 2023] Available from World, https://www.wipo.int/edocs/mdocs/tk/en/wipo_unhchr_ip_pnl_98/wipo_unhchr_ip_pnl_98_6.pdf.

²³—عمر سعد الله، المرجع السابق، ص. 276.

²⁴—عبد السلام محنوفي، اثر اتفاقية حقوق الملكية الفكرية المرتبطة بالتجارة تريبس على نقل التكنولوجيا الى الدول النامية، اطروحة لنيل شهادة الدكتوراه في العلوم الاقتصادية، كلية العلوم الاقتصادية والتسيير، جامعة الجزائر، 2008/2007، ص. 35.

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What should be noted is that the establishment of common rules regarding intellectual property rights in the international trading system aims to achieve greater certainty and address disputes related to intellectual property rights in a more systematic manner, as the TRIPS Agreement established the minimum standards of protection that most members of the World Trade Organization must provide for patents, copyright, trademarks, geographical indications, undisclosed data, and other intellectual property. These standards include the WTO's core non-discrimination principles. The TRIPS Agreement also sets out civil, administrative and criminal enforcement procedures and remedies, as well as border measures. TRIPS obligations are subject to implementation under the WTO's dispute settlement mechanism. The TRIPS Agreement has certain exceptions and flexibilities. It allows compulsory licensing of patents in specific circumstances²⁵.

Providing legal protection to protect intellectual rights is a necessary prerequisite for investing countries to transfer technology, given that in the absence of protection, there is no guarantee for these projects to obtain sufficient financial returns for their investments due to their competition from producers of counterfeit goods that violate rights.

The TRIPS Agreement has an important role in advancing investment, as the latter is a factor in the prosperity of international trade, because providing protection for these rights gives a guarantee to investors in keeping their money in the countries hosting their investments, and this would advance international trade, by increasing Job opportunities and product development to increase their competitiveness, protecting the assets that make up intellectual property and obtaining their owner or holder of this guarantee that enables him to receive fair compensation for these rights, whether directly or indirectly, by selling licenses or assigning them to other companies or using and exploiting them directly in markets of other countries without fear of imitating them or compromising their monopolistic advantage. Hence, it can be said that this protection has a strong relationship with foreign investment towards markets and economies with strong protection of intellectual property assets and is less relative to other countries²⁶.

The TRIPS Agreement does not abolish other international agreements related to intellectual property, but rather refers to the most of the substantive rules. However, it is considered the most important and dangerous agreements, as it directly affects the performance of research and development institutions in all countries and imposes a set of conditions that must be taken into account, in addition to that. The World Trade Organization and the World Intellectual Property Organization have achieved a kind of cooperation and harmony in protecting intellectual property by unifying the goals that they hope to achieve, which are protecting intellectual property rights in all their aspects in the world, and helping

²⁵-Intellectual Property Rights (IPR) and International Trade, Updated February 7, 2022, [Accessed 15.00th 25August 2023] AvailablefromWorldhttps://crsreports.congress.gov.

²⁶-ميلود سلامي، جمال بوسته، حماية حقوق الملكية الفكرية وفقا لاتفاقية تريبس، مجلة الباحث للدراسات الاكاديمية، جوان 2017، ص.ص.9و12.

countries of the world to grow and advance through this protection²⁷, as well as through follow-up, training and technical assistance. The agreement concluded between the two organizations entered into force in the first of January 1996, and stipulates cooperation between the two organizations in implementing the Agreement on Commercial Aspects of Intellectual Property Rights. One of the results was this agreement that is a joint initiative undertaken by the two organizations in 2000 to help developing countries fulfill their obligations arising from the Agreement on the Commercial Aspects of Intellectual Property Rights, which is known as the World Intellectual Property Organization's programs for development cooperation, which are intended to help developing countries. In 2001, the two organizations began a new joint venture to help the least developed countries make the most of the benefits they gain from protecting intellectual property rights and help it fulfill its obligations resulting from the Agreement on the Commercial Aspects of Intellectual Property Rights in 2006, through technical assistance programs, which includes cooperation in reviewing legislation, training by specialists, rebuilding institutions, modernizing intellectual property systems, and ensuring the implementation of all of this is properly²⁸.

3-Conclusion

Intellectual property is characterized by its universality, so it was necessary to provide international protection for intellectual property worldwide. Many international agreements were concluded and the World Intellectual Property Organization was established, the most recent of which was the Agreement on Trade-Related Aspects of Intellectual Property Rights, which had a major impact on the concept of intellectual property by focusing The economic dimension of the rights related to it and it was included among the topics of international trade. Through what was mentioned above, we reached the following results:

- Intellectual property is the main driver of international trade, as it leads to an increase in the strength of international trade in the field of intellectual property and the consequent consecration of industrial monopolies, the creation of areas of commercial and cultural influence, the distribution of areas for the production of goods and intellectual property products, and the sharing of markets for these goods. As for the recommendations, we have arrived at what follows:

-The necessity of activating the mechanisms of the World Intellectual Property Organization to resolve and settle international disputes that may arise from the application and implementation of international agreements concluded within its framework, and creating an effective protection system for them.

-The need to raise awareness of intellectual property and encourage creators.

²⁷-Huala Adolf ,Trade –related aspects of intellectual property rights and developing countries, the developing economies,XXXIX-1March -2001,p.p.49-84.

²⁸-نقلا عن عائشة موزاوي، حقوق الملكية الفكرية في ظل المنظمة العالمية للتجارة ودورها في تطوير مناخ الاستثمار، تجارب دولية، اطروحة لنيل شهادة الدكتوراه تخصص اقتصاد مالي، كلية العلوم الاقتصادية والتجارية، جامعة حسنية بن بوعلي شلف، السنة الجامعية 2011، 2012، ص.ص.59، 60.